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nominating process to the voters and thereby undercut the influence of party bosses in determining who would stand for election.

Generally speaking, direct primaries are described as being either "closed", "open", or "blanket", although there is significant variation within these categories.

Closed Primary

In a closed primary system, voters must be registered party members to participate in the party primary election. A person registered as a Democrat, for example, may vote only in the Democratic primary. At the polling place, he or she will receive a ballot containing only candidates seeking the Democratic nomination. Voters who are registered as nonpartisans or who have not declared a party preference (unaffiliated voters), may not vote in the primary election.

Closed primaries are more or less closed, depending on the length of time that a voter must be registered prior to the primary. In the classic closed system, voters must be registered for 30 days or longer before the primary, and they may not change their party registration during that period. In semi-closed systems, voters may register or change their party registration as late as election day. According to a recent political science textbook, 27 states use a closed primary, including ten that allow voters to register or change party registration at the polling place.²

Open Primary

In an open primary system, voters do not have to be registered members of a party to vote in the primary of that party. A person registered as a Republican, for example, may choose to vote in the Democratic primary. Unaffiliated voters may vote in the primary of any party that qualifies for the ballot (normally only the two major parties do so).

Open primaries vary in their degree of openness: in the classic open primary, voters decide which party ballot to vote in the privacy of the voting booth (either they are given one ballot with party candidates in separate columns, and they vote only one column, or they are given separate ballots for each party and they return only one with voting marks). In semi-open primaries, the voters must publicly request a party ballot. Twenty states use an open

²John F. Bibby, et al., "Parties in State Politics," *Politics in the American States*, Virginia Gray, Herbert Jacobs, Robert B. Albritton, eds. 5th Edition, 1989, p. 98.

primary, including 11 of the semi-open type that require voters to request a party ballot.³

Blanket Primary

In both the open and closed primary, voters may cast votes for candidates of only one party. In the blanket primary, all voters receive a single ballot that groups candidates of both parties by office, and they may cross from one party to the next as they move through the list of offices. That is, a voter may cast a ballot for a Republican candidate for governor, a Democratic candidate for state senator, a Republican candidate for state representative, and so on, regardless of the voter's own party affiliation (or lack thereof). This system is the most open of the conventional party primaries, as it is least constraining from the standpoint of the individual voter. Two states have a classic blanket primary: Washington and Alaska.

Louisiana has had since 1976 a unique nonpartisan primary which bears some resemblance to a blanket primary. The critical difference between the Louisiana primary and the blanket primaries of Alaska and Washington is that it is not designed to produce nominees from each of the contending parties. The ballot is organized like a blanket primary ballot (with all candidates for an office, regardless of their party, listed by office), but the two candidates who receive the highest number of votes advance to the general election, even if they are of the same party. Furthermore, if one of the candidates receives a majority (more than 50 percent) of the vote in the primary, he is the victor and does not have to stand at the general election.

Impact of the Primary System on Parties

The purpose of the direct primary was to reduce the influence of parties in the political life of the nation, and it has undeniably had that effect, together with other factors that have also contributed to the decline of parties in our society. It is interesting to note that a respectable body of opinion in the United States today laments the moribund state of the major parties and believes that revitalized parties could invigorate and animate American democracy.⁴ While few observers or political practitioners advocate the return to party conventions and caucuses for nominating electoral candidates, many are critical of open, and especially blanket, primaries. The closed primary is preferred by many political scientists and party activists because it encourages party affiliation, gives meaning to party ties, and enhances the development and significance of party platforms. The popularity of open

³*Ibid.*, p. 98.

⁴See, for example, Leon D. Epstein, *Political Parties in the American Mold*, University of Wisconsin Press, 1986, especially pp. 9-39.

primaries with voters, however, is usually to check the impulse of party officials to seek the closing of an open primary, and accounts for the fact that only 17 states have a classic closed system.

Legislative History of Alaska's Blanket Primary

Alaska first adopted the blanket primary in 1947, during territorial days. Prior to that time Alaska had an open primary: at the polls, voters were given a single ballot listing the party candidates in two separate columns. Voters could vote in only one column.

In the special legislative session of 1946, when both houses of the legislature were overwhelmingly dominated by Democrats, a conservative Juneau Democrat, Curtis Shattuck, introduced House Bill 4 which would have changed the open primary to a blanket primary. While the bill did not have sufficient support in the House of Representatives to pass, there was enough interest to keep it alive. The compromise was an amendment to put the question before the voters in a referendum at the next general election (October 8, 1946).⁵ The amended bill passed the House of Representatives with no dissenting votes, and it passed the Senate with only three dissenting votes.

There was apparently little public discussion of the issue preceding the referendum, in part perhaps because it was overshadowed by a second referendum on the same ballot--a referendum on the hotly debated question of statehood. In any case, the question of a blanket primary seems not to have generated much controversy. The Anchorage Daily Times opined that the proposal "has received virtually no publicity and the vote on it will probably be unintelligent." The newspaper editorial said "nobody seems to know what it is all about." It continued:

...inasmuch as the two parties in Alaska are different only in leadership and in their position as "in" or "out" of power, it can be argued that the blanket ballot would be appropriate here.

⁵Historian Bob DeArmond of Juneau wrote the following about the adoption of the blanket primary in his column "Days of Yore", published in *Info Juneau*, October 25, 1986. The blanket primary "was particularly pushed by Editor Sidney D. Charles of the *Alaska Fishing News* (now the *Ketchikan Daily News*) and a bill was introduced in the 1945 legislative session by Representative Curt Shattuck of Juneau. It was quickly batted down by the party stalwarts, but in 1946 there was a special session and Shattuck introduced it again. To get rid of it, the opponents turned it into a referendum for the 1946 general election."

Both parties are interested in developing Alaska. Either one would follow a program very similar to the other should it be placed in power. It has been said that the voters, during the primary election, separate into two parties for the purpose of eliminating some candidates for public office and nominating others. The general election is a continuation of this process, only with the voters all using the same ballot with the candidates of the parties on the same list. Therefore, it is argued, there would be nothing lost by having a blanket ballot in the primary.

We have heard no argument that is, by itself, convincing. We believe that Alaska will fare just as well no matter what form of ballot is used.⁶

While newspaper editors may have been indifferent, the voters clearly were not: the opportunity to vote for candidates from either party in the primary strongly appealed to Alaskans, who voted yes on the referendum to adopt a blanket primary by an extraordinary margin.⁷ In the face of this unequivocal support by the electorate, members of the Eighteenth Legislature dutifully adopted a blanket primary in 1947. It passed without a dissenting vote in the House of Representatives, and with two Democrats and two Republicans casting no votes in the Senate.

Increasingly, however, the question of the blanket primary became a partisan issue. Democrats tended to oppose it, and Republicans to support it. Democrats feared that it would erode party loyalty and discipline,⁸ and they thought that Republicans used it to their advantage by crossing party lines in the primary to nominate the weakest Democratic candidates. Republicans

⁶*Anchorage Daily Times*, October 7, 1946.

⁷Unofficial returns from 46 of the 60 precincts reported in the *Anchorage Daily Times* on October 10, 1946, showed 4,225 in favor of the blanket primary and 878 opposed. DeArmond states "In the final tally . . . a whopping 78 percent [of the voters] wanted the [blanket] primary." DeArmond, "Days of Yore," *op. cit.*

⁸In a letter to Secretary of State Lew Williams in 1948, Alaska's Delegate in Congress Bob Bartlett (a Democrat) commented on the new blanket primary: "I still fail to appreciate whatever good qualities, if any, it may have. The good old party ballot was good enough for me. I still think that party responsibility will, to a large degree, be a thing of the past with this form of ballot." University of Alaska Archives, Bartlett Collection, Box 14, Personal File 1948.

supported the blanket primary in hopes that Republican candidates would benefit by attracting conservative Democrats and nonaligned voters.⁹

In the first session of the first state legislature in 1919, when Democrats firmly controlled both houses and the governor's office, the blanket primary was replaced by the single ballot open primary.¹⁰ Adoption of the comprehensive election code in 1960 incorporated this change.¹¹

Republicans led the opposition to the single-ballot open primary, although some Democrats also sought a return to the blanket primary. Several bills were introduced to restore the blanket primary, but they languished in Democrat-controlled committees. In 1966, during the second session of the Fourth Legislature, a blanket primary bill passed the House and almost passed the Senate. Senate debate on the measure was reported in the *Anchorage Daily Times*.¹² Democrats Jim Nolan of Wrangell, Robert Blodgett of Teller, and Robert Ziegler of Ketchikan spoke in favor the bill. Senator Blodgett is reported to have said:

The Democratic party is a hollow shell. The Republican party is a hollow shell. How many people actually are active workers in the two parties? Darned few. I support the bill."

Senator Ziegler declared:

The measure is vitally important to the people of this state. In Ketchikan, probably nine of every ten voters want to vote for the man, not the party.

Despite this show of bipartisan support, the bill failed to pass the Senate.

The general election of 1966 broke the Democratic monopoly on legislative power which had existed since the 1950s: Republican majorities were elected to both houses and Republican Walter Hickel was elected governor. The blanket primary was thereupon restored during the first session of the Fifth

⁹Interview with Judge (Ret.) Thomas B. Stewart. See also Herman E. Slotnick, "Alaska: Empire of the North," in Frank H. Jonas, ed. *Politics in the American West* (Salt Lake City: University of Utah Press, 1970). Since the 1930s, the Republican party tended to be the minority party in Alaska, and it is the minority party that typically perceives partisan advantage in opening primaries.

¹⁰Chapter 41 SLA 1959 (HB 8).

¹¹Chapter 83 SLA 1960 (CSHB 252).

¹²March 28, 1966.

Legislature.¹³ The bill to restore the blanket primary was introduced at the request of Governor Hickel, but it attracted considerable bipartisan support. Among the 35 yeas in the House, nine were cast by Democrats; of the five nays, four were cast by Democrats. In the Senate the bill received 18 yeas, four of which were cast by Democrats. Both nays in the Senate were cast by Democrats.

The blanket primary seems to suit contemporary Alaska, where party ties and party organizations are weak.¹⁴ Elected officials from both parties acquiesce to (and many benefit from) voter enthusiasm for the blanket primary.

Open primaries of all kinds, however, are often unpopular with party loyalists and party candidates because they allow nonparty members to "cross over" and influence the selection of party candidates. If done with mischievous intent--so-called strategic voting--the result may be the nomination of the weakest candidate. Even if not done mischievously, cross-over voting may sufficiently dilute the vote of party members to produce a nominee with little attachment to the party platform. Do parties have any rights to determine who may vote in their primary? A recent opinion of the U.S. Supreme Court says that they do, although the opinion was rendered in a case involving the efforts of a party to open (partially) its closed primary. That is the *Tashjian* decision.

Freedom of Association and the *Tashjian* Decision

Although the freedom of association is not explicitly guaranteed by the U.S. Constitution or the Bill of Rights, the U.S. Supreme Court has, through a series of cases that began in the late 1950s, conferred constitutional status upon it, declaring that the right to freedom of association is implicit in such constitutionally protected rights as speech, petition, and assembly. Although initially applied in civil rights cases, the doctrine of freedom of association has recently been invoked by the courts in disputes over state

¹³Chapter I SLA 1967 (HB 1am).

¹⁴More than half of the voters in Alaska are unaffiliated with a party (at registration they decline to state a party preference or declare themselves nonpartisan). Information from the Division of Elections prior to the 1990 elections showed there were 285,219 people registered to vote in Alaska with the following party affiliation: Democrats, 56,074; Republicans, 59,107; Alaska Independence Party, 2,227; nonpartisan, 89,548; undeclared, 72,195; and other, 6,068. For a general discussion of parties in Alaska see Carl E. Shepro, "Alaska's Political Parties," Gerald A. McBeath and Thomas A. Morehouse, eds. *Alaska State Government and Politics* (Fairbanks: University of Alaska Press, 1987).

regulation of political parties. The U.S. Supreme Court has used it to uphold challenges by parties to state regulations that unduly interfere with internal party operations and the process by which the parties select their electoral candidates. The notable case involving state primaries is *Julia H. Tashjian, Secretary of State of Connecticut, Appellant v. Republican Party of Connecticut et al.* [479 U.S. 208 (1986)].

The *Tashjian* Decision

Connecticut has a history of strong party organizations, and since 1955 it has had a classic closed primary. The state Republican party has fewer registered voters than the Democratic party, and there are a substantial number of unaffiliated voters in the state. In January, 1984, the state convention of the Republican party adopted a rule that allowed unaffiliated voters to participate in the Republican primary for certain offices (excluding state legislative office). This rule conflicted with the state's election law. After failing to obtain the necessary statutory amendment from the legislature (which was dominated by Democrats), the party sued on constitutional grounds in federal court to enjoin the state from enforcing the closed primary statute. The party prevailed in the U.S. district court and the circuit court of appeals, and the state appealed to the U.S. Supreme Court.

The Supreme Court sided with the Republican party, upholding the lower court decisions. It ruled that the Connecticut statute was unconstitutional because its infringement on the associational rights of the party was not justified by compelling state interests. Prohibiting unaffiliated voters from participating in the primary of a party that invites such participation "limits the Party's associational opportunities at the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community."

The Implications of *Tashjian*

At a minimum, the *Tashjian* decision means that states with closed primaries may not prohibit unaffiliated voters from voting in the primary of a party that takes formal action to open its primary to these voters. A number of closed primary states with election laws similar to Connecticut's have made the necessary statutory amendments to bring their codes into compliance with *Tashjian*. The relevant law in states that have not done so will be unenforceable in the face of party action to open a primary to unaffiliated voters.

Because few political parties have followed the precedent of the Connecticut Republicans in seeking to open, even partially, their closed primary, and because only the participation of unaffiliated voters is at stake (a small proportion of registered voters in most states), the *Tashjian* decision has not had a tumultuous impact. The big question about *Tashjian*, however, is what

the underlying logic of the decision implies for other forms of state regulation of parties and primaries. That is, how much freedom of association will the Supreme Court ultimately extend to political parties? Leon Epstein, a noted political scientist, has observed: "Only if parties were able, as well as willing, to use *Tashjian* as a precedent for broader challenges to state primaries would there be far-reaching political consequences."¹⁵

Open and blanket primaries are clearly suspect under an extension of the freedom-of-association reasoning in *Tashjian*. If prohibiting a party from allowing unaffiliated voters to participate in its primary amounts to an unconstitutional interference in a party's affairs, what of election laws that force a party to accept the participation of voters registered in opposition parties? More than one analysis of the *Tashjian* decision has pointed to the possible consequences for open and blanket primaries. For example, "*Tashjian* clearly indicates that great deference should be accorded to a party's determination of its affiliates. The open and blanket primary systems, however, limit the ability of parties to choose their affiliates by preventing parties from restricting their primaries to party members. . . . Thus, there is a strong argument that both the open and blanket primary systems are unconstitutional."¹⁶

The limits of the *Tashjian* decision in this regard have not been tested because no party in an open or blanket primary state has sought to close its primary by party rule and to enforce this closure through court action against contrary state laws. That is, no party had done so until June, 1990, when *Allen Grant Doyle, Jr. and the Republican Party of Alaska v. State of Alaska et al.* was filed in the U.S. District Court in Anchorage.

Alaska's Primary and *Doyle v. State of Alaska*

At its statewide convention in March, 1990, the Republican party of Alaska amended its rules by adopting the following provision:

Only registered Republicans, registered Independents, and those who state no preference of party affiliation shall be allowed to vote in the Republican primary election for Governor, Lieutenant Governor, U.S. Senator, U.S. Representative, and members of the State Legislature.

¹⁵Leon D. Epstein, "Will American Political Parties Be Privatized?" *Journal of Law and Politics*, Vol. 239, p. 240.

¹⁶Susan Yarborough Noe, "North Carolina General Assembly Amends Election Laws to Allow Unaffiliated Voters to Vote in Party Primaries," *North Carolina Law Review*, Vol. 66, No. 6 (September 1988).

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The Republicans expected the Democratic party at its statewide convention in May to adopt a similar provision closing its primary to registered Republicans, but the Democratic party did not do so. Notwithstanding this development, the Republican party thereupon requested state election officials to honor the new rule in the up-coming primary (August, 1990). State officials protested that the request for a change in the method of holding the August primary was too ambiguous and made too late to be implemented. Furthermore, state officials demanded that the party rule be "precleared" by the U.S. Department of Justice under the federal Voting Rights Act of 1965 before they could begin to modify state election procedures (a process that would also require preclearance by the federal justice department).

Confronted with these objections, the Republican party filed suit asking the court to enjoin the state from conducting the August primary in a manner contrary to its new rule.

In its response to the plaintiff's motion, the state did not dwell at length on the merits of the Republican party's assertion that the doctrine of associational rights enunciated in *Tashjian* conferred upon the party the prerogative to close its primary to Democrats. Rather, confronted with the immediate threat of an injunction against the August primary, the state built its defense around the argument that a change in the election procedures at such a late date would cause confusion and uncertainty that would disadvantage minority voters, in violation of the federal Voting Rights Act of 1965.

The Democratic party of Alaska and the Alaska Federation of Natives (AFN) filed a joint *amicus curiae* brief in support of the state's opposition to the party's motion. The *amici* also stressed the harm that would be suffered by rural Native voters if electoral procedures were altered for the August primary. However, both the state and the *amici* argued that it was not clear, as averred by the Republican plaintiffs, that the party's suit would ultimately prevail on its merits, and they both offered several reasons why the blanket primary could survive constitutional scrutiny, notwithstanding the *Tashjian* doctrine.

Also, both the state and the *amici* suggested that the federal voting rights act may be a fundamental impediment to closing Alaska's primary. The *amici* brief stated:

Any election procedure which abridges the opportunity for Native voters to enhance their political influence through bi-partisan coalitions fundamentally impairs voting prerogatives protected under the "no retrogression" provisions of the Act. (Indeed, AFN suspects that the Party Rule is specifically intended to frustrate the formation of bi-partisan coalitions

and, in turn, to impair the influential role of legislators who represent Native voters).¹⁷

The brief warned that the Alaska Federation of Natives "intends to raise claims under Section 2 of the Act which allege that implementation of the Party Rule is violative of the substantive protection of the Act. (AFN notes that the State has indicated that it, too, may assert such claims as a counter-claim in the immediate litigation.)"¹⁸

On July 16, 1990, the district court denied the request for a preliminary injunction. However, the case is still active and will be decided on its merits unless the Republican party withdraws the action.

Revision of Alaska's Primary Election Law

Efforts of the Republican party in the summer of 1990 to partially close its primary were thwarted because its request to modify the ballot and voting procedures was deemed untimely, and because state officials and party leaders could not agree on an interpretation of the party rule.¹⁹ Had the request been made earlier, the state may have acquiesced to it and not contested the merits of the Republican party's claim that the blanket primary is unconstitutional under the *Tashjian* doctrine. In anticipation of future requests by one or both parties to close their primaries to voters of other parties, should the legislature now establish procedures in law that will smooth the process? For example, should state statutory provisions specify deadlines for filing requests, and authorize the state Division of Elections to determine by administrative procedure the form of the ballot?

The legislature should not revise the blanket primary to facilitate future efforts by the parties to close their primaries unless it first decides as a matter of policy that the blanket primary should be abandoned (or, at a minimum, that the desire of a party to close its primary to some extent should take precedence over the protection of the integrity of the blanket primary). If the legislature favors the blanket primary, its constitutionality should be defended in court before any revision to the election laws is contemplated.

¹⁷ *Memorandum of Amicus Curiae in Opposition to Motion for Preliminary Injunction*, p. 18.

¹⁸ *Ibid.*, p. 18.

¹⁹ The state argued, for example, that it was not inconsistent with the party rule to include on the Republican ballot the names of Democratic candidates, in order that Republican and unaffiliated voters could continue to enjoy a blanket primary.

Despite the presumptive case against the blanket primary on the basis of rights of freedom of association of political parties, a plausible defense can be made on its behalf. In deciding cases such as these, the court weighs the severity of the infringement on the party against the interest of the state in imposing it. The U.S. Supreme Court recognizes the importance of regulations that strengthen the two-party system and preserve the integrity of the electoral process. Indeed, a footnote in the *Tashjian* decision cautioned that the reach of the decision may not be very far. It said that had the request of the Republican party of Connecticut been to open its primary to Democrats in addition to unaffiliated voters, the circumstances would have been much different because of the potential disruption to the party system.²⁰ Also, the defense of Alaska's blanket primary around the federal Voting Rights Act of 1965--and the compelling interest of the state in protecting the electoral participation of Alaska Natives--is also available.

Furthermore, the Republican party may decide not to pursue *Doyle v. State of Alaska*. The circumstances that prompted the suit may now make it moot.²¹ In general, political parties have demonstrated caution in using the *Tashjian* doctrine to upset the status quo. The *Doyle* suit was improbable. Writing about the likelihood of such a suit, political scientist Epstein noted:

It is hard to conceive of many electoral circumstances in which a party would find it expedient to exercise such a right [to close an open primary]. For one party in a competitive two-party state to require a previously unused party registration only for its primaries, thus excluding customary primary voters who remain unaffiliated, looks politically risky.²²

The politics of the issue in Alaska are certainly complicated, if not risky. For example, the bill restoring the blanket primary in 1966 was introduced at the request of Governor Hickel. How his new administration will deal with the *Doyle* case is not yet clear.

I hope this overview of the primary situation in Alaska is helpful to you.

²⁰*Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986) n. 13.

²¹Presumably, the conservative wing of the Republican party sought to close its primary to Democratic voters to forestall them from crossing over and casting ballots for Arliss Sturgulewski, a moderate Republican candidate for governor.

²²Epstein, "Will American Political Parties Be Privatized?" p. 271.

[479 US 208]
JULIA H. TASHJIAN, Secretary of State of Connecticut, Appellant

v

REPUBLICAN PARTY OF CONNECTICUT et al.

479 US 208, 93 L. Ed. 2d 514, 107 S. Ct. 544

[No. 85-766]

Argued October 8, 1986. Decided December 10, 1986.

Decision: Connecticut prohibition of political party's choice to permit independents to vote in certain party primary elections held to violate freedom of association under First and Fourteenth Amendments.

SUMMARY

A Connecticut statute allowed only party members to vote in a primary election for a nomination to public office by a major political party. In 1983, one of the state's two major political parties adopted a rule (1) attempting to permit independents--registered voters not affiliated with any political party--to vote in the party's primaries for federal and statewide public offices, while (2) remaining silent as to the party's primaries for nominations for the state legislature. Then, challenging the state statute, the party, its federal officeholders, and its state chairperson filed suit in the United States District Court for the District of Connecticut against the Secretary of the State of Connecticut, who was charged with the administration of the state's election statutes. The District Court granted summary judgment in favor of the party and its members, expressing the view that the statute (1) imposed a substantial burden on their right of association under the First and Fourteenth Amendments to the United States Constitution, and (2) was not supported by any compelling state interests (599 F. Supp. 1228). On appeal, the United States Court of Appeals for the Second Circuit affirmed, expressing the view that (1) the qualifications clauses of Art. I, § 2, cl. 1, and the Seventeenth Amendment to the United States Constitution, requiring that voters in elections for the United States House of Representatives and Senate have the same qualifications as voters in elections for the most numerous branch of the state legislature, did not apply to party primaries; and (2) the state statute prohibiting the party rule substantially interfered with the party's constitutional right of political association, by determining

Briefs of Counsel, p. 1089, *infra*.

On appeal, the United States Supreme Court affirmed. In an opinion by MARSHALL, J., joined by BRENNAN, WHITE, BLACKMUN, and POWELL, JJ., it was held that (1) the state's statutory prohibition of the party's primary voting rule placed an unconstitutional burden on the fundamental freedom of political association guaranteed by the First and Fourteenth Amendments, while the interests asserted by the state in defense of the statute were insubstantial, and (2) the party rule did not violate the qualifications clauses of Art. I, § 2, cl. 1, and the Seventeenth Amendment, because the clauses did not require a perfect symmetry, even though the clauses did apply to congressional primary elections.

STEVENS, J., joined by SCALIA, J., dissented, expressing the view that, under the circumstances, allowing independents to vote in primary elections for the United States House of Representatives and Senate, while prohibiting such voters from participating in primary elections for the state house of representatives, violated the qualifications clauses of Art. I, § 2, cl. 1, and the Seventeenth Amendment.

SCALIA, J., joined by REHNQUIST, Ch. J., and O'CONNOR, J., dissented, expressing the view that the Connecticut restriction on a party's primary voting to party members was constitutional, and that the Supreme Court's opinion exaggerated the importance of the associational interest at issue, if indeed such an interest existed.

ATTORNEY

TASHJIAN v. Rep. Party of Conn.

Constitutional Law § 940.5; Elections § 2 — party choice to allow independents to vote in primaries — freedom of association

1a-1g. A state statute which prohibits a political party from exercising its choice to permit independents—registered voters not affiliated with any party—to vote in the party's primary elections for federal and statewide offices places an unconstitutional burden on the fundamental freedom of political association guaranteed by the First and Fourteenth Amendments to the

United States Constitution, where (1) any interference with the freedom of a political party is simultaneously an interference with the freedom of its adherents; (2) under the circumstances, there is no conflict between the associational interests of members and nonmembers over voting in such elections; (3) a state law which permits registration as a party member until noon of the last business day preceding a primary is not a satisfactory response, for it requires action by the voters rather than the party, and insists upon a public act

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- 25 Am Jur 2d, Elections §§ 116-119, 129-131, 150-152, 159; 77 Am Jur 2d, United States § 23
- USCS, Constitution, Article I § 2 cl 1, Article I § 4 cl 1, Amendments 1, 14, 17
- US L Ed Digest, Constitutional Law § 940.5; Elections §§ 2, 4
- Index to Annotations; Congress; Due Process; Elections and Voting; Freedom of Association; Legislature; States
- VERALEX™: Cases and annotations referred to herein can be further researched through the VERALEX electronic retrieval system's two services, Auto-Cite® and SHOWME™. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references. Use SHOWME to display the full text of cases and annotations.

ANNOTATION REFERENCES

- Supreme Court's views regarding the First Amendment right of association as applied to the advancement of political beliefs. 67 L Ed 2d 859.
- Supreme Court's views as to concept of "liberty" under due process clauses of Fifth and Fourteenth Amendments. 47 L Ed 2d 975.
- What provisions of the Federal Constitution's Bill of Rights are applicable to the states. 18 L Ed 2d 1388, 23 L Ed 2d 985.
- Fourteenth Amendment as affecting nomination or election to state office. 11 L Ed 2d 1057, 23 L Ed 2d 782.

annation with the party as a condition of association; (4) the power of the state under the Constitution (Art I, § 4, cl 1) to prescribe the time, place, and manner of holding elections for United States Senators and Representatives, which power is matched by state control over the election process for state offices, does not extinguish the state's responsibility to observe the limits established by the First Amendment rights of the state's citizens; and (5) the interests which the state asserts in defense of the statute are insubstantial. (Scalia, J., Rehnquist, Ch. J., and O'Connor, J., dissented from this holding.)

Elections §§ 2, 4 — primaries — different qualifications for federal congressional and state legislative voters

2a-2e. A political party's rule permitting independents—registered voters not affiliated with any party—to vote in the party's primary elections for the United States House of Representatives and Senate, while remaining silent as to voting by such independents in the party's primary elections for the state legislature, does not violate the Federal Constitution's clauses on qualifications of federal congressional electors (Art I, § 2, cl 1, and the Seventeenth Amendment), where (1) the two clauses apply to the state's primary elections in precisely the same fashion as they apply to general congressional elections, (2) the two clauses do not require perfect symmetry, and (3) the party rule does not disenfranchise any voter in a federal congressional election who is qualified to vote in a primary or general election for the more numerous house of the state's legislature. (Stevens and Scalia, JJ., dissented from this holding.)

Constitutional Law § 940.5; Elections § 1 — First Amendment — tests

3. Constitutional challenges to specific provisions of a state's election laws cannot be resolved by any "litmus-paper test" that will separate valid from invalid restrictions; instead, a court must (1) consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that a plaintiff seeks to vindicate, and (2) identify and evaluate the precise interests put forward by the state as justifications for the burden imposed by its rule; a court must not only determine the legitimacy and strength of each of these state interests, but also consider the extent to which these interests make it necessary to burden the plaintiff's rights.

Constitutional Law § 36.3 — freedom of speech and association — due process

4. Freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the "liberty" assured by the due process clause of the Federal Constitution's Fourteenth Amendment, which embraces freedom of speech.

Constitutional Law § 940.5 — freedom of political association — extent

5a-5c. The freedom of association protected by the First and Fourteenth Amendments of the United States Constitution includes partisan political organization; the right to associate with the political party of one's choice is an integral part of this basic constitutional freedom; freedom to join together in the furtherance of common political beliefs necessarily presupposes the freedom

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

Constitutional Law § 940.5 — political organization — privacy of members

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

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

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

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

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

Elections § 2 — primaries — raiding by other party

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

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

10a, 10b. A state has a legitimate interest in fostering informed and educated expressions of the popular will in a general election, but this interest is not sufficient to justify, under the First and Fourteenth Amendments to the United States Constitution, the state's prohibition of a party rule permitting independents—registered voters not affiliated with any political party—to vote in certain party primaries, on the grounds that voters would be misled by party labels in the ensuing general election, where (1) the United States Supreme Court's cases reflect faith in the ability of individual voters to inform themselves about campaign issues, (2) in the state in question, to be listed on a primary ballot requires that a candidate have obtained at least 20% of the vote at a party convention which

only party members may attend, and (3) the argument in favor of such a prohibition disregards the substantial benefit the party rule provides the party and its members in seeking to choose successful candidates, given the numerical strength of independent voters in that state. (Scalia, J., Rehnquist, Ch. J., and O'Connor, J., dissented in part from this holding.)

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

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

Elections § 2 — single nominations

12a, 12b. A state may adopt a

policy of confining each voter to a single nominating act.

Constitutional Law § 9 — construction — new subject matter

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

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

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

SYLLABUS BY REPORTER OF DECISIONS

A Connecticut statute (§ 9-431), enacted in 1955, requires voters in any political party primary to be registered members of that party. In 1984, appellee Republican Party of Connecticut (Party) adopted a Party rule that permits independent voters—registered voters not affiliated with any party—to vote in Republi-

can primaries for federal and state-wide offices. The Party and the Party's federal officeholders and state chairman (also appellees) brought an action in Federal District Court challenging the constitutionality of § 9-431 on the ground that it deprives the Party of its right under the First

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

Held:

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

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

(b) The interests asserted by appellant Secretary of State of Connecticut as justification for the statute—that it ensures the administrability of the primary, prevents voter raiding, avoids voter confusion, and protects the integrity of the two-party system and the responsibility of party government—are insubstantial. The possibility of increases in the cost of administering the election system is not a sufficient basis for infringing appellees' First Amendment rights. The interest in curtailing raiding is not implicated, since § 9-431 does not impede a raid on the Republican Party by indepen-

dent voters; independent raiders need only register as Republicans and vote in the primary. The interest in preventing voter confusion does not make it necessary to burden the Party's associational rights. And even if the State were correct in arguing that § 9-431 in providing for a closed primary system is designed to save the Party from undertaking conduct destructive of its own interests, the State may not constitutionally substitute its judgment for that of the Party, whose determination of the boundaries of its own association and of the structure that best allows it to pursue its political goals is protected by the Constitution.

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

would arise if state voters found themselves disqualified from participating in federal elections does not require that qualifications for exercise of the federal franchise be precisely equivalent to the qualifications for exercising the franchise in a given State.

770 F2d 265, affirmed.

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

APPEARANCES OF COUNSEL

Elliot F. Gerson argued the cause for appellant.

David S. Golub argued the cause for appellees.

Briefs of Counsel, p 1089, infra.

OPINION OF THE COURT

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Justice Marshall delivered the opinion of the Court.

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

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of that party. Conn Gen Stat § 9-431 (1985).¹ Appellees, who in addition to the Party include the Party's federal officeholders and the Party's state chairman, challenged this eligibility provision on the ground that it deprives the Party of its First Amendment right to enter into political association with individuals of its

own choosing. The District Court granted summary judgment in favor of appellees. 599 F Supp 1228 (Conn 1984). The Court of Appeals affirmed. 770 F2d 265 (CA2 1985). We noted probable jurisdiction, 474 US 1049, 88 L Ed 2d 762, 106 S Ct 783 (1986), and now affirm.

I

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

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

2. A "major party" is defined as "a political party or organization whose candidate for

governor at the last preceding election for governor received . . . at least twenty per cent of the whole number of votes cast for all candidates for governor." Conn Gen Stat § 9-372(5x3) (1985). The Democratic and Republican parties are the only major parties in the State under this definition.

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

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

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

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

"Any elector enrolled as a mem-

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

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

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

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

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

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

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

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

II

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

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

necessary to burden the plaintiff's rights." 460 US, at 789, 75 L Ed 2d 547, 103 S Ct 1564.

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

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

tion." Democratic Party of
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United States v Wisconsin ex rel. La Follette, 450 US 107, 122, 67 L Ed 2d 82, 101 S Ct 1010 (1961).

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

[1b] Were the State to restrict by statute financial support of the Party's candidates to Party members, or to provide that only Party members might be selected as the Party's chosen nominees for public office, such a

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

6. [1c] It is this element of potential interference with the rights of the Party's members which distinguishes the present case from others in which we have considered claims by nonmembers of a party seeking to vote in that party's primary despite the party's opposition. In this latter class of cases, the nonmember's desire to participate in the party's affairs is overcome by the countervailing and legitimate right of the party to determine its own membership qualifications. See *Rosario v Rockefeller*, 410 US 752, 36 L Ed 2d 1, 93 S Ct 1245 (1973); *Nader v Schaffer*, 417 F Supp 837 (Conn), summarily aff'd, 429 US

prohibition of potential association with nonmembers would clearly infringe upon the rights of the Party's members under the First Amendment to organize with like-minded citizens in support of common political goals. As we have said, "[a]ny interference with the freedom of a party is simultaneously an interference with the freedom of its adherents." *Democratic Party*, supra, at 122, 67 L Ed 2d 82, 101 S Ct 1010 (quoting *Sweezy v New Hampshire*, 354 US 234, 250, 1 L Ed 2d 1311, 77 S Ct 1203 (1957)).⁶ The statute here places limits upon the group of

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registered voters whom the Party may invite to participate in the "basic function" of selecting the Party's candidates. *Kusper v Pottiker*, supra, at 58, 38 L Ed 2d 260, 94 S Ct 303. The State thus limits the Party's associational opportunities at the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community.⁷

989, 50 L Ed 2d 602, 97 S Ct 516 (1976). Similarly, the Court has upheld the right of national political parties to refuse to seat at their conventions delegates chosen in state selection processes which did not conform to party rules. See *Democratic Party of United States v Wisconsin ex rel. La Follette*, 450 US 107, 67 L Ed 2d 82, 101 S Ct 1010 (1981); *Cousins v Wigoda*, 419 US 477, 42 L Ed 2d 595, 95 S Ct 541 (1975). These situations are analytically distinct from the present case, in which the Party and its members seek to provide enhanced opportunities for participation by willing nonmembers. Under these circumstances, there is no conflict between the associational interests of members and nonmembers. See generally Note, *Primary Elections and the Collective Right of Freedom of Association*, 94 Yale LJ 117 (1984).

7. [1d] Appellant contends that any infringement of the associational right of the Party or its members is de minimis, because Connecticut law, as amended during the pen-

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

denry of this litigation, provides that any previously unaffiliated voter may become eligible to vote in the Party's primary by enrolling as a Party member as late as noon on the last business day preceding the primary. *Conn Gen Stat § 9-56* (1985). Thus, appellant contends, any independent voter wishing to participate in any Party primary may do so.

[1e] This is not a satisfactory response to the Party's contentions for two reasons. First, as the Court of Appeals noted, the formal affiliation process is one which individual voters may employ in order to associate with the Party, but it provides no means by which the members of the Party may choose to broaden opportunities for joining the association by their own act, without any intervening action by potential voters. 770 F2d, at 281, n 24. Second, and more importantly, the requirement of public affiliation with the Party in order to vote in the primary conditions the exercise of the associational right upon the making of a public statement of adherence to the Party which the State requires regardless of the actual beliefs of the individual voter. Cf. *Wooley v Maynard*, 430 US 705, 714-715, 51 L Ed 2d 752, 97 S Ct 1426 (1977); *West*

the interests which appellant asserts to justify the burden cast by the statute upon the associational rights of the Party and its members.

III

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

A

Although it was not presented to the Court of Appeals as a basis for the defense of the statute, appellant argues here that the administrative burden imposed by the Party rule is a sufficient ground on which to uphold the constitutionality of
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§ 9-431.⁸

Virginia Board of Education v Barnette, 319 US 624, 633-634, 87 L Ed 1628, 63 S Ct 1178, 147 ALR 674 (1943). As counsel for appellees conceded at oral argument, a requirement that independent voters merely notify state authorities of their intention to vote in the Party primary would be acceptable as an administrative measure, but "[t]he problem is that the State is insisting on a public act of affiliation . . . joining the Republican Party as a condition of this association." *Tr of Oral Arg 40*.

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

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

[8] Even assuming the factual accuracy of these contentions, which have not been subjected to any scrutiny by the District Court, the possibility of future increases in the cost of administering the election system is not a sufficient basis here for infringing appellees' First Amendment rights. Costs of administration would likewise increase if a third major party should come into existence in Connecticut, thus requiring the State to fund a third major-party primary. Additional voting machines, poll workers, and ballot materials would all be necessary under these circumstances as well. But the State could not forever protect the two existing major parties from competition solely on the ground that two major parties are all the public can afford. Cf. *Anderson v Celebrezze*, 460 US 780, 75 L Ed 2d 547, 103 S Ct 1564 (1983); *Williams v Rhodes*, 393 US 23, 21 L Ed 2d 24, 89 S Ct 5, 45 Ohio Ops 2d 236 (1968). While the State is of course entitled

8. As we have previously noted, a study commission established by the national Democratic Party concluded that "the existence of 'raiding' has never been conclusively proven by survey research." *Democratic Party of United States v Wisconsin ex rel. La Follette*, 450 US, at 122-123, n 23, 67 L Ed 2d 82, 101 S Ct 1010 (quoting *Openness, Participation and*

to take administrative and financial considerations into account in choosing whether or not to have a primary system at all, it can no more restrain the Republican Party's freedom of association for reasons of its own administrative convenience than it could on the same ground limit the ballot access of a new major party.

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B

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

Party Building: Reforms for a Stronger Democratic Party 68 (Feb. 17, 1978)). In view of our conclusion that § 9-431 is irrelevant to the question of raiding, we express no opinion as to whether the continuing difficulty of proving that raiding is possible attenuates the asserted state interest in preventing the practice.

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

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C

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

[10a] As we have said, "[t]here can be no question about the legitimacy of the State's interest in fostering informed and educated expressions of the popular will in a general election." *Anderson v Celebrezze*, 460 US, at 796, 75 L Ed 2d 547, 103 S Ct

1564. To the extent that party labels provide a shorthand designation of the views of party candidates on matters of public concern, the identification of candidates with particular parties plays a role in the process by which voters inform themselves for the exercise of the franchise. Appellant's argument depends upon the belief that voters can be "misled" by party labels. But "[o]ur cases reflect a greater faith in the ability of individual voters to inform themselves about campaign issues." *Id.*, at 797, 75 L Ed 2d 547, 103 S Ct 1564. Moreover, appellant's concern that candidates selected under the Party rule will be the nominees of an "amorphous" group using the Party's name is inconsistent with the facts. The Party is not proposing that independents be allowed to choose the Party's nominee without Party participation; on the contrary, to be listed on the Party's primary ballot continues to require, under a statute not challenged here, that the primary candidate have obtained at least 20% of the vote at a Party convention, which only Party

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

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

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

[10b] In arguing that the Party rule interferes with educated decisions by voters, appellant also disregards the substantial benefit which the Party rule provides to the Party and its members in seeking to choose successful candidates. Given the numerical strength of independent voters in the State, one of the questions most likely to occur to Connecticut Republicans in selecting candidates for public office is how can the Party most effectively appeal to the independent voter? By inviting independents to assist in the choice at the polls between primary candidates selected at the Party convention, the Party rule is intended to produce the candidate and platform most likely to achieve that goal. The state statute is said to decrease voter confusion, yet it deprives the Party and its members of the opportunity to inform themselves as to the level of support for the Party's candidates among a critical group of electors. "A State's

claim that it is enhancing the ability of its citizenry to make wise decisions by restricting the flow of information to them must be viewed with some skepticism." *Anderson v Celebrezze*, supra, at 798, 75 L Ed 2d 547, 103 S Ct 1564. The State's legitimate interests in preventing voter confusion

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

D

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

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

11. At the present time, 21 States provide for "closed" primaries of the classic sort, in which the primary voter must be registered as a member of the party for some period of time prior to the holding of the primary election. See *Ariz Rev Stat Ann* § 16-467 (1984); *Cal Elec Code Ann* § 501 (West Supp 1986); *Colo Rev Stat* § 1-2-203 (Supp 1986); *Conn Gen Stat* § 9-431 (1985); *Del Code Ann*, Tit. 15 § 3161 (1981); *Fla Stat* § 101.021 (1985); *Kan Stat Ann* § 25-3301 (1981); *Ky Rev Stat* §§ 116.045, 116.055 (1982); *Me Rev Stat Ann*, Tit. 21-A, § 141 et seq. (Supp 1986-1987); *Md Ann Code*, Art. 33, § 3-8 et seq. (1985); *Neb Rev Stat* § 32-530 (1984); *Nev Rev Stat* § 293.287 (1985); *NM Stat Ann* § 1-4-16 (1985); *NY Elec Law* § 1-104.9 (McKinney 1978); *NC Gen Stat* § 163.74 (1982 and Supp 1985); *Okl*

Stat, Tit. 26, § 1-104 (1976); *Ore Rev Stat* § 247.201 (1985); *Pa Stat Ann Tit* 25, § 2832 (Purdon 1963); *SD Codified Laws* § 12-4-15 (1982); *W Va Code* § 3-1-35 (1979); *Wyo Stat* § 22-5-212 (1977). Sixteen States allow a voter previously unaffiliated with any party to vote in a party primary if he affiliates with the party at the time of, or for the purpose of, voting in the primary. See *Ala Code* § 17-16-14(b) (1985); *Ark Stat Ann* § 3-126 (1976); *Ca Code Ann* § 21-2-235 (1982); *Ill Rev Stat*, ch. 46, § 7-43(a) (1986); *Ind Code* § 3-10-1-6 (Supp 1986); *Iowa Code* §§ 43.41, 43.42 (1985); *Mass Gen Laws* § 53:37 (1984); *Miss Code Ann* § 23-15-575 (1986 pamphlet); *Mo Rev Stat* § 115.397 (1978); *NH Rev Stat Ann* § 654:341I (1936); *NJ Stat Ann* § 19:23-45 (West Supp 1986); *Ohio Rev Code Ann* § 3513.19 (Supp

pellant

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

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

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

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

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

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

1985); *RI Gen Laws* § 17-9-26(c) (1981); *SC Code* §§ 7-5-120, 7-9-20 (1976 and Supp 1985); *Tenn Code Ann* § 2-7-115(b)(2) (1985); *Tex Elec Code Ann* § 162.003 (1986). Four States provide for nonpartisan primaries in which all registered voters may participate, *Alaska Stat Ann* §§ 15.05.010, 15.25.090 (1982); *La Rev Stat Ann* §§ 18:401B, 18:521B (West 1979 and Supp 1986); *Va Code* § 24.1-182 (1985); *Wash Rev Code* § 29.18.200 (1965), while nine States have adopted classical "open" primaries, in which all registered voters may choose in which party primary to vote. *Haw Rev Stat* § 12-31 (Supp 1984); *Idaho Code* §§ 34-402, 34-404, 34-904 (Supp 1986); *Mich Comp Laws*

§§ 168.575, 168.576 (1967 and Supp 1986); *Minn Stat* § 204D.08(4) (1985); *Mont Code Ann* § 13-10-301(2) (1985); *ND Cent Code* § 16.1-11-22 (Supp 1985); *Utah Code Ann* § 20-3-19(2) (Supp 1986); *Vt Stat Ann*, Tit. 17, § 2363 (1982); *Wis Stat* §§ 5.37, 6.80 (1983-1984).

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

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

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We conclude that the State's enforcement, under these circumstances, of its closed primary system

13. [12b] Our holding today does not establish that state regulation of primary voting qualifications may never withstand challenge by a political party or its membership. A party seeking, for example, to open its primary to all voters, including members of other parties, would raise a different combination of considerations. Under such circumstances, the effect of one party's broadening of participation would threaten other parties with the disorganization effects which the statutes in *Storer v Brown*, 415 US 724, 39 L Ed 2d 714, 94 S Ct 1274 (1974), and *Rosario v Rockefeller*, 410 US 752, 36 L Ed 2d 1, 93 S Ct 1245 (1973), were designed to prevent. We have observed on several occasions that a State may adopt a "policy of confining each voter to a single nominating act," a policy decision which is not involved in the present case. See *Anderson v Celebrezze*, 460 US 780, 802, n 29, 75 L Ed 2d 547, 103 S Ct 1564 (1983); *Storer v Brown*, supra, at 743, 39 L Ed

burdens the First Amendment rights of the Party. The interests which the appellant adduces in support of the statute are insubstantial, and accordingly the statute, as applied to the Party in this case, is unconstitutional.

IV

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

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primaries held to contest nominations for seats in the state legislature. See supra, at 212, 93 L

2d 714, 94 S Ct 1274. The analysis of these situations derives much from the particular facts involved. "The results of this evaluation will not be automatic; as we have recognized, there is 'no substitute for the hard judgments that must be made.'" *Anderson v Celebrezze*, supra, at 789-790, 75 L Ed 2d 547, 103 S Ct 1564 (quoting *Storer v Brown*, supra, at 730, 39 L Ed 2d 714, 94 S Ct 1274).

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

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

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

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

"We may assume that the framers of the Constitution in adopting that section, did not have specifically in mind the selection and elimination of candidates for Congress by the direct primary any more than they contemplated the application of the commerce clause to interstate telephone, telegraph and wireless communication, which are concededly within it. But in determining whether a provision of the Consti-

tution applies to a new subject matter, it is of little significance that it is one with which the framers were not familiar. For in setting up an enduring framework of government they undertook to carry out for the indefinite future and in all the vicissitudes of the changing affairs of men, those fundamental purposes which the instrument itself discloses." *United States v Classic*, 313 US 299, 315-316, 85 L Ed 1368, 61 S Ct 1031 (1941).

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

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

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

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

great many persons of that description." *Id.*, at 471. James Madison later defended the resulting provision on similar grounds:

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

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

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

state legislature are also qualified to participate in the election of Senators and Members of the House of Representatives.

[2e] Our conclusion that these provisions do not require a perfect symmetry of voter qualifications in state and federal legislative elections takes additional support from the fact that we have not previously required such absolute symmetry when the federal franchise has been expanded. In *Oregon v Mitchell*, 400 US 112, 27 L Ed 2d 272, 91 S Ct 260 (1970), five Justices agreed that the Voting Rights Act Amendments of 1970 could constitutionally establish a minimum age of 18 for voters in federal elections, while a majority of the Court also concluded that Congress was without power to set such a minimum age in state and local elections. See *id.*, at 117-118, 27 L Ed 2d 272, 91 S Ct 260 (Black, J., announcing the judgments of the

SEPARATE OPINIONS

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Justice Stevens, with whom Justice Scalia joins, dissenting.

The threshold issue presented by this case is whether, consistently with the Constitution, a State may permit a voter to participate in elections to the Congress while preventing that same person from voting for candidates to the most numerous branch of the state legislature. If we respect the plain language of Article I, § 2, cl 1, of the Constitution and the Seventeenth Amendment, the intent of the Framers, and the reasoning of the opinions in *Oregon v*

Court). Appellant's reading of the Qualifications Clause, which would require identical voter qualifications in state and federal legislative elections, is plainly inconsistent with these holdings. We hold that the implementation of the Party rule does not violate the Qualifications Clause or the Seventeenth Amendment because it does not disenfranchise any voter in a federal election who is qualified to vote in a primary or general election for the more numerous house of the state legislature.

V

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

Mitchell, 400 US 112, 27 L Ed 2d 272, 91 S Ct 260 (1970), we must answer that question in the negative.

Every person who votes in a federal election for a Member of the House of Representatives or for a United States Senator must be qualified to vote for candidates to the most numerous branch of the state legislature. The Constitution has imposed this condition of voter eligibility on congressional elections since 1789¹ and on senatorial elections since the Seventeenth Amendment was ratified in 1913.²

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

for Electors of the most numerous Branch of the State Legislature."

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

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

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

The Court does not dispute the fact that the plain language of the Constitution requires that voters in congressional and senatorial elections "shall have" the qualifications of voters in elections to the state legislature. The Court nevertheless separates the federal voter qualifications from their state counterparts, inexplicably treating the mandatory "shall have" language of the Clauses

as though it means only that the federal voters "may but need not have" the qualifications of state voters. In support of this freewheeling interpretation of the Constitution, the Court relies on what it describes as the Framers' purpose in enacting the first Qualification Clause and on the judgment in *Oregon v Mitchell*, supra, 27 L Ed 2d 272, 91 S Ct 260. Neither of these arguments withstands scrutiny.

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

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

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

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the Committee on Detail show that it was decided to strike the provision granting to Congress the authority to set voting qualifications and to add in its stead a clause making the qualifi-

cations 'the same from Time to Time as those of the Electors, in the several States, of the most numerous Branch of their own Legislatures.' The proposed draft reported by the Committee on Detail to the Convention included the following:

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

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

It was this clause that Gouverneur Morris proposed to strike in order to substitute a clause permitting Congress to prescribe the electoral quali-

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

4. See opinion of Justice Harlan, 400 US, at 152, 212-213, 27 L. Ed 2d 272, 91 S Ct 260

fications or to adopt a provision "which would restrain the right of suffrage to freeholders." Id., at 467. Not surprisingly, his proposal was defeated by a vote of 7-1 because it would have disenfranchised a large number of voters in States that did not impose a property qualification on the right to vote. Id., at 467, 468, 471-472. Despite the Court's reliance on the concerns that led the

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

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

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

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

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

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

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

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

"The provision made by the Convention appears therefore, to be the best that lay within their op-

tion. It must be satisfactory to every State; because it is conformable to the standard already established, or which may be established by the State itself." *The Federalist* No. 52, p 354 (J. Cooke ed 1961).

I respectfully dissent.

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

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

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

6. This was certainly the view of Justice Harlan, see *id.*, at 210-211, 27 L Ed 2d 272, 91 S Ct 260, and of Justice Stewart and the two Justices who joined his opinion, see *id.*, at 287-290, 27 L Ed 2d 272, 91 S Ct 260. As Justice Stewart observed: "The Constitution

thus adopts as the federal standard the standard which each State has chosen for itself." *Id.*, at 288, 27 L Ed 2d 272, 91 S Ct 260. The opinions of Justice Douglas and Justice Brennan are silent on the issue.

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

whether we are presented with a real limitation on First Amendment freedoms").

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

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

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

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

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determined by outsiders, there is no reason why the State is bound to honor that desire—any more than it would be bound to honor a party's democratically expressed desire that its candidates henceforth be selected by convention rather than by primary, or by the party's executive committee in a smoke-filled room. In other words, the validity of the state-imposed pri-

mary requirement itself, which we have hitherto considered "too plain for argument," *American Party of Texas v White*, 415 US 767, 781, 39 L Ed 2d 744, 94 S Ct 1296 (1974), presupposes that the State has the right "to protect the Party against the Party itself." Connecticut may lawfully require that significant elements of the democratic election process be democratic—whether the Party wants that or not. It is beyond my understanding why the Republican Party's delegation of its democratic choice to a Republican convention can be proscribed, but its delegation of that choice to nonmembers of the Party cannot.

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

I respectfully dissent.

[479 US 238]
FEDERAL ELECTION COMMISSION, Appellant

v

MASSACHUSETTS CITIZENS FOR LIFE, INC.

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

[No. 85-701]

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

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

SUMMARY

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

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

Briefs of Counsel, p 1091, infra.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

March 11, 1991

SUBJECT: Closed Republican primary (Work Order No. 7LS0949)

TO: Representative Fran Ulmer

FROM: John B. Gaguine
Legislative Counsel

You have asked several questions regarding the effect of the Alaska Republican Party's vote recently to close its party to all but registered Republicans and independents. This memorandum will try to answer those questions.

1. You first ask whether the Republican Party's action will allow Republican and independent voters to vote twice, once in the Republican primary and once in the "open" primary where all other parties' candidates will appear (assuming that no other party changes its party rules). I think the answer is clearly no. AS 15.15.230, applicable to primary elections under AS 15.25.090, provides that when a voter has qualified to vote, the election judge shall give the voter an official ballot. AS 15.15.410, also applicable to primaries, provides that if the director of elections determines that a person has voted more than once in the same election, he or she shall notify the attorney general. I think that this clearly implies that a voter may vote only once. This is not stated in either AS 15 or in Article V of the constitution, but probably because it was considered so obvious. Of course, it certainly could not hurt to add a section to AS 15.25 stating that a person may vote in only one primary election.

Let me note, though, that unless other parties change their rules, or the legislature amends the primary election laws, a registered Republican would still have the right to forego the Republican primary and vote in the "open" one. Independents would also have this choice.

2. You next ask whether Alaska's primary election could be changed to a system such as Wisconsin's, where a person must select a ballot at the time of the primary, but where a person registered in one party may choose to vote in the primary of another. The answer is yes, if no party objected. However, such a system would be inconsistent with the recently adopted Republican rule, since it would allow registered

- CLOSED REPUBLICAN PRIMARY
J. Gaguine 3/11/91

Representative Fran Ulmer
March 11, 1991
Page 2

Democrats, Libertarians, etc. to vote in the Republican primary. And in the recent case of Tashjian v. Republican Party of Connecticut, 479 U.S. 208, 55 U.S.L.W. 4057 (1986), the U.S. Supreme Court ruled that the First Amendment associational rights of a party override state election laws, absent exceptional circumstances. I cannot imagine any arguments that the state could put forth to justify a Wisconsin-type system that was inconsistent with party rules.

Indeed, Tashjian involved a situation where the party's First Amendment claim was nowhere near as clear as it would be under a Wisconsin-type primary. In Tashjian state law restricted voting in the Republican primary to registered Republicans, and the party wanted to open its primary to independents as well. The majority of the Court rejected the argument that the party had no First Amendment rights to extend its primary to independents, since state law already ensured that Republican candidates would be chosen only by Republicans. (Three dissenters, in a dissent by Justice Scalia, found this argument persuasive.) Here, by contrast, a Wisconsin-type primary would allow those who are registered members of other parties to assist in the selection of Republican candidates. Even Justice Scalia's dissent found that such a scheme would impair the party's associational rights: "The ability of the members of the Republican Party to select their own candidate, on the other hand, unquestionably implicates an associational freedom." 55 U.S.L.W. at 4065. Thus, Tashjian would clearly be controlling here.

Ideally, state election law should be amended to reflect the rules of each party. However, if it is not so amended, the party rules would, as noted, override the election laws. In that case I assume that those rules would be implemented either by regulations issued by the lieutenant governor or by court order. (Tashjian is not instructive on this matter because the district court stayed its injunction pending appeal. According to the Alaska Attorney General (in a pleading in Doyle v. State, No. A90-248 Civil (U.S. Dist. Ct. D.Alaska), where the Republican party tried unsuccessfully last year to close the 1990 primary), Connecticut was allowed an additional year after the U.S. Supreme Court's decision to implement the party rule, and was only in 1990 beginning to implement that rule. However, since Tashjian has made the law on this question clear, a court today likely would not be as lenient toward Alaska.)

3. Your final question is whether the state election laws can be changed to require that an individual file for an office prior to the primary election, so that it would be impossible for late filers to wait until they knew the results of the primary before deciding whether to enter the race. The answer to this question is no, based on a recent Anchorage Superior Court decision which the state did not appeal.

The current filing date for independents, under AS 15.25.150, is August 1. This date was established by the legislature in 1989 instead of the former June 1, which the superior court had ruled unconstitutionally impeded ballot access. Last year, in Sykes

Representative Fran Ulmer
March 11, 1991
Page 3

v. State, Judge Dana Fabe ruled that even the new date was unconstitutional: since the Division of Elections had acknowledged that it would have no problem with processing a third party or independent petition filed after the date of the primary, the state had no compelling reason to justify a filing deadline as early as August 1 (over three months before the election). The state did not appeal, since, in light of the division's acknowledgement, it felt it had no grounds for a successful appeal.

Of course, what occurred in the last gubernatorial election was not an independent candidate filing a late petition, but rather the resignation of the candidates of a party chosen in a primary, and the replacement of those candidates by the party officers with Governor Hickel and Lieutenant Governor Coghill. AS 15.25.110 provides that if a candidate nominated in a primary election resigns no less than 48 days before the general election, the party may replace the resigned candidate. Since the Division of Elections can apparently handle a replacement within 48 days, it seems unlikely that that deadline could constitutionally be moved back. Indeed, it would seem that the deadline for independent filing should be the same as that for replacement of candidates - namely, the minimum amount of time necessary for the Division of Elections to place a new candidate's name on the ballot before the general election.

I hope that this has satisfactorily answered your questions. If I may be of further assistance, please let me know.

JBG:mi
91-049.mai

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
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Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

April 3, 1991

SUBJECT: Party rules and primary election laws

TO: Senator Pat Pourchot
Attn: Jeanne Larson

FROM: John B. Gaguine *JBG*
Legislative Counsel

You have asked about the relationship between party rules and the state's primary election laws. The question is easily answered: if there is a clash between party rules and election laws (e.g., the party rules call for a closed primary, and the election laws provide for an open one), the party rules prevail.

This answer derives from a recent decision of the United States Supreme Court, Tashjian v. Republican Party of Connecticut, 479 U.S. 208, 55 U.S.L.W. 4057 (1986). In that case Connecticut law restricted voting in a party's primary to registered members of the party, and the Republican party wanted to open its primary to independents as well as registered Republicans. The Court ruled in favor of the Republicans, holding that the party's First Amendment's guarantee of freedom of association overrode the state law.

Ideally, state law should be amended to conform with party rules. (In Tashjian the Republicans in the legislature passed a bill to open primaries to independents, only to have the bill vetoed by the Democratic governor.) However, if that is not done the party rules nevertheless control. A court, I believe, would clearly have the power to order the Division of Elections to follow procedures consistent with party rules and inconsistent with the statutes. I also believe that even absent a lawsuit the lieutenant governor would be empowered to issue regulations reflecting the party rules, since the law is clear on this point.

However, I should note a significant difference between Alaska and Connecticut. Connecticut law required a closed primary, and the only effect of Tashjian would seem to be to require election officials to give Republican ballots to those independents who request them, as well as Republicans. In Alaska, however, implementation of the Republican party rules would require a total overhaul of the primary process.

PARTY RULES / St. Elections Laws
Gaguine to Pourchot 4/3/91

Senator Pat Pourchot
April 3, 1991
Page 2

There would seemingly have to be two separate ballots prepared - one with Republican candidates, and one with candidates of other parties. (If other parties changed their rules to parallel the Republican rules, there would seemingly have to be even more ballots prepared.) Thus, a court might allow the lieutenant governor to phase in a new system gradually. However, if the lieutenant governor decided to implement party rules without a statutory change, I do not think that a court would enjoin this, even given the magnitude of the procedural change that would be necessary. ^{1/}

If I may be of further assistance, please advise.

JBG:pl
91-225.plm

^{1/} My research has disclosed no post-Tashjian cases on this point, so my conclusions must be tentative.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 297

Revision Date: 01/14/92
Title: Relating to Primary Elections
Sponsor: Senate State Affairs
Requestor: Senate State Affairs

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

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	41.7	41.7	0	41.7	0	41.7
CONTRACTUAL	581.8	60.0	531.8	60.0	531.8	60.0
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	633.5	101.7	531.8	101.7	531.8	101.7

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	633.5	101.7	531.8	101.7	531.8	101.7
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	633.5	101.7	531.8	101.7	531.8	101.7

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.)
See attached.

Prepared by: Elizabeth Ziegler, Deputy Director
Division: Elections

Phone: 465-4611
Date: 01/14/92

Approved by Commissioner: *Robert C. Thibault*
Agency: Office of the Governor

Date: 01/15/92

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

Rev 10/07/91
SB297.FH

Page 1 of 2

STATE OF ALASKA

OFFICE OF THE GOVERNOR

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

MEMORANDUM

To: Representative Eugene Kubina, Chair
House State Affairs Committee
Alaska State Legislature

From: Elizabeth A. Ziegler, Deputy Director
Division of Elections
Office of the Governor

Date: November 12, 1991

Subj: Effect of Primary Rule Changes on Elections

The Division of Elections has reviewed the changes made by the House State Affairs Committee to HB 327, Relating to primary elections. We are very pleased with the result and thank the committee for its response to the Division's prior testimony.

Since the committee last met in late September, the Division has asked the political parties to submit their party rule changes to the Department of Justice (DOJ) for preclearance. The DOJ preclearance process takes at least 60 days. Today the Division will be sending certified letters to the Democratic Party of Alaska and Green Party of Alaska requesting that they get their preclearance submission in by December 15, 1991. This will ensure that the state has the right to implement the rule changes. The Alaska Independence Party will also be sent a letter requesting that it indicate if their members will make any rule changes.

As the Division has continued to analyze the ramifications of changing elections operations to implement the party rule changes, we have found that some of our statutory requirements cannot be met without the ability to begin implementation of the rule changes as soon as possible. For example, under AS 15.20.081(b) and 6 AAC 25.650(b)(1) regarding absentee voting by mail and permanent absentee voters, the Division is required to send out its absentee ballot applications to absentee voters and allow the voter to request all ballots that are available during one calendar year. As you are aware, the Division conducts REAA and CRSA, municipal incorporation and local liquor option elections year round. The Division has met these requirements by sending out an absentee application in January for all elections. An absentee voter can direct the division to send him or her all ballots that the voter may vote on that year. With the primary changes, the Division would be required to inform the voter that a certain type of primary ballot is available to the voter because of his or her

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 297

Revision Date: 01/14/92
Title: Relating to Primary Elections
Sponsor: Senate State Affairs
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Department Affected: Office of the Governor-Elections
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Component: Primary and General

COMPONENT SERIAL NO.

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OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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TRAVEL	41.7	41.7	0	41.7	0	41.7
CONTRACTUAL	581.8	60.0	531.8	60.0	531.8	60.0
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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	633.5	101.7	531.8	101.7	531.8	101.7

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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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.)
See attached.

Prepared by: Elizabeth Ziegler, Deputy Director
Division: Elections

Phone: 465-4611
Date: 01/14/92

Approved by Commissioner: *Robert C. Thibault*
Agency: Office of the Governor

Date: 01/15/92

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

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Page 1 of 2

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 297

ANALYSIS: (continued)

Semi-Closed Primary Costs:

Travel:

72240	Field Travel	6.5
72270	Administrative Travel (To Train Review Boards and Poll Workers For New Precincts)	33.6
72250	Per Diem (To Cover Additional Travel To New Precincts)	1.6
	Total Travel	<u>41.7</u>

Contractual Services:

73100	Professional Services	
	Voter Education Program	60.0
	DGA Contract	12.0
	Voting Rights Act Program	51.2
	Additional Poll Workers\	73.2
	Review Boards	
	Contracted Poll Worker Training	63.9
73300	Communications	
	Additional Postage	89.5
	Toll Charges	6.4
73400	Transportation	
	New Booth Set Up	13.3
73420	Transportation/State Equipment Fleet	
	Locating New Polling Places	1.3
73500	Advertising, Printing, and Binding	
	Statewide Advertising of Primary and Precinct Changes	39.0
	Ballot Printing for Semi-Closed Primary Party Ballots	180.0
73800	Rental For Land, Buildings, and Space	
	Rental of Additional Polling Places	2.0
	Total Contractual	<u>531.8</u>

Total Costs of Implemental Primary Changes 633.5

1) There will be a separate ballot for each party that desires one or must have a separate ballot because of the effect of other party rule changes.

2) Based on the current state of the political party rule changes, every registered voter will be allowed to vote in the election.

3) A specific party ballot will be available at the polls. The election worker will check the precinct register and determine which party ballots are available to a voter, then ask which ballot he or she wants. Only one ballot per voter.

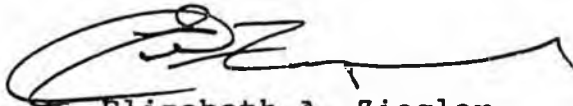
4) Candidates who file a declaration of candidacy representing a party will appear on the primary ballot just as they have been.

5) Based on the current political party rule changes, all nonpartisan voters can choose a party ballot of their choice.

6) Nonpartisans can vote for whoever they want. The poll worker will tell the voter which parties the voter can vote for. The voter must choose one ballot.

Thank you for your patience regarding this letter. If you need any information, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read 'Elizabeth A. Ziegler', with a long horizontal flourish extending to the right.

Elizabeth A. Ziegler
Deputy Director

STATE OF ALASKA

OFFICE OF THE GOVERNOR

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

MEMORANDUM

To: Representative Eugene Kubina, Chair
House State Affairs Committee
Alaska State Legislature

From: Elizabeth A. Ziegler, Deputy Director
Division of Elections
Office of the Governor

Date: November 12, 1991

Subj: Effect of Primary Rule Changes on Elections

The Division of Elections has reviewed the changes made by the House State Affairs Committee to HB 327, Relating to primary elections. We are very pleased with the result and thank the committee for its response to the Division's prior testimony.

Since the committee last met in late September, the Division has asked the political parties to submit their party rule changes to the Department of Justice (DOJ) for preclearance. The DOJ preclearance process takes at least 60 days. Today the Division will be sending certified letters to the Democratic Party of Alaska and Green Party of Alaska requesting that they get their preclearance submission in by December 15, 1991. This will ensure that the state has the right to implement the rule changes. The Alaska Independence Party will also be sent a letter requesting that it indicate if their members will make any rule changes.

As the Division has continued to analyze the ramifications of changing elections operations to implement the party rule changes, we have found that some of our statutory requirements cannot be met without the ability to begin implementation of the rule changes as soon as possible. For example, under AS 15.20.081(b) and 6 AAC 25.650(b)(1) regarding absentee voting by mail and permanent absentee voters, the Division is required to send out its absentee ballot applications to absentee voters and allow the voter to request all ballots that are available during one calendar year. As you are aware, the Division conducts REAA and CRSA, municipal incorporation and local liquor option elections year round. The Division has met these requirements by sending out an absentee application in January for all elections. An absentee voter can direct the division to send him or her all ballots that the voter may vote on that year. With the primary changes, the Division would be required to inform the voter that a certain type of primary ballot is available to the voter because of his or her

party affiliation and ask the voter to make a ballot choice. We will not be able to give the voter this information on the application in January because two parties that have changed their rules and have not had them precleared in time for this deadline. Additionally, there is no legislation in place to allow the division to make needed regulatory changes in time.

As 15.20.207 requires the Division to train election workers in all precincts in even numbered years. The Division begins this training in early spring. The election workers have to know the rules of the election to effectively do their job and to alleviate chaos at the polls. When the Division was sued in 1990 by the Republican Party of Alaska over the implementation of its party rule changes, the Division staff testified that it was crucial that the election workers know the new primary rules during the election training session.

The four regional election supervisors are responsible for conducting the training. It is not prudent to have the supervisors out of their offices any later than June because of the need to manage the tasks necessary to conduct the primary in their regions. This management deadline cannot be changed especially in light of the additional duty to redraw precinct lines and educate voters as to their new districts and precincts due to reapportionment.

Because the Division must uphold the integrity of the election process and ensure that all types of voters be treated equally, the Division proposes that it promulgate regulations under its general authority granted by AS 15.15.010.

These regulations would adopt the procedures outlined HB 327, including one ballot per voter and the ability to change party affiliation at the polls, and would include the following addition:

Absentee voter applications would be sent to voters to coincide with parties precleared rule changes.

The Division has been advised by the Attorney General's Office that regulations can be implemented because the U.S. Supreme Court in Tashjian v. Republican Party of Connecticut, 479 U.S. 208 (1986) gives the parties the right to choose who can vote in their primaries. Once a political party decides to pass a rule which implements its associational rights, statutes to the contrary are void.

The Division requests that it work in tandem with both the House and Senate State Affairs Committees. Even though the Division will adopt procedural regulations necessary to effectively manage the primary election, statutory changes are still required to conform to the constitutional requirements imposed by the federal courts.

The Division will send these draft procedural regulations to both the House and Senate State Affairs Committees for review.

7-LS1188D
Gaguine
10/31/91

**CS FOR HOUSE BILL NO. 327 (STATE AFFAIRS)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION**

BY THE HOUSE STATE AFFAIRS COMMITTEE

**Offered:
Referred:**

Sponsor(s): HOUSE STATE AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to primary elections and declarations of affiliation with a political party."

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

3 * Section 1. AS 15.07 is amended by adding a new section to read:

4 Sec. 15.07.062. DESIGNATION OF POLITICAL AFFILIATION. (a) The director shall
5 provide a person registering to vote under this chapter with the opportunity to declare affiliation
6 with a political party or to declare no affiliation with a party. The director shall explain that a
7 person registering is not required to furnish information relating to party affiliation, and that the
8 information furnished by the person, or the person's failure to furnish information, might affect
9 the person's eligibility to vote in a primary election that has been limited under AS 15.25.060(b).
10 The director may satisfy the requirement of this section by including the explanation on a voter
11 registration form that the director may distribute.

12 (b) A person who has previously registered to vote under this chapter may declare an
13 affiliation or nonaffiliation with a political party, or change a previously declared affiliation, at
14 any time. The director shall provide an opportunity at every polling place for a registered voter

1 to declare or change an affiliation.

2 * Sec. 2. AS 15.25.060 is amended to read:

3 Sec. 15.25.060. PREPARATION AND DISTRIBUTION OF BALLOTS. The primary
4 election ballot shall be prepared and distributed by the director in the manner prescribed for
5 general election ballots except as specifically provided otherwise for the primary election.
6 Except when (b) of this section otherwise requires, the [THE] director shall place the names
7 of all candidates who have properly filed in groups according to offices filed for, without regard
8 to party affiliation. The names for each office shall be rotated as provided for the general
9 election ballot. No blank spaces shall be provided on the ballot for the writing or pasting in of
10 names.

11 * Sec. 3. AS 15.25.060 is amended by adding new subsections to read:

12 (b) If (1) the central committee or other governing body of a political party adopts a rule
13 that, notwithstanding AS 15.25.010 - 15.25.130, nominees of the party may not be chosen by a
14 primary election open to all voters, but rather shall be chosen by a primary election limited to
15 voters whose political affiliation or nonaffiliation is designated by the party rules; and (2) the
16 central committee or other governing body of the party delivers a copy of the rule to the director,
17 no later than March 1 of the year in which a primary election is to take place, the director shall
18 prepare a separate ballot listing only the candidates of that party, and shall authorize the
19 distribution of that ballot only to the registered voters who are eligible to vote in that party's
20 primary under the party rule. Candidates who are listed on a separate ballot under this subsection
21 may not be listed on the ballot described in (a) of this section. The names of the candidates for
22 each office shall be rotated as provided for the general election ballot, and no blank spaces shall
23 be provided on the ballot for the writing or pasting in of names.

24 (c) If at a primary election under AS 15.25.010 there is more than one ballot available,
25 a registered voter may choose which ballot the voter wishes to use. A voter may not be given
26 more than one ballot, and may not be given a ballot of a political party if under the rules of that
27 party, as delivered to the director under (b) of this section, the voter would not be eligible to vote
28 in that party's primary election.

29 (d) If the director is required to prepare separate ballots for all political parties under (b)
30 of this section, the director is not required to prepare a ballot under (a) of this section.

STATE OF ALASKA

OFFICE OF THE GOVERNOR

DIVISION OF ELECTIONS
P.O. BOX AF
JUNEAU, ALASKA 99811-0105
PHONE (907) 466-4611

DIVISION OF ELECTIONS

POSITION PAPER ON PRIMARY CHANGES

The United States Supreme Court has held that political parties have a Constitutional right to free association and can determine who can vote in their primaries.

The Division of Elections position is that this right must be tempered with the division's right to maintain the integrity and orderly conduct of state elections.

In light of the decisions of the Democratic, Green and Republican Parties, it appears that the voters of the state may be confused as to who can vote for what candidates. The Division's goal is to create a voting situation that makes it as easy as possible for people to vote in the primary and know that his/her vote will be counted.

The Division proposes that any legislation regarding the primary include the following language:

1. Parties must inform the Division of Elections of any party rule changes that impact the conduct of the primary by March 1 of any election year.
2. Voters may change their party affiliation at the polling place.
3. A voter may vote only one ballot in the primary election.

The Division has included a fiscal note which estimates that the primary changes will cost about \$450,000 to the state. This

Post-It™ brand fax transmittal memo 7671 # of pages >

is only an estimate. When the Division prepared its affidavits for the 1990 lawsuit with the Republican Party, the costs were estimated at about one million dollars due to the fact that the party wanted the state to implement its primary in time for the 1990 elections. With proper notice, the state can plan more effectively, but the attached fiscal note is far from absolute. There may be additional costs due to the increased ballot order, printing and data programming that will not be apparent until we actually start the process.

In conclusion, while the Division will implement any parties rule changes, we are concerned about the costs. The burden to the voting public and the costs to the state may outweigh the benefits to the political parties. Frankly, we believe that if the parties desire to select their own candidates they should do so privately by the convention system.

S B

3 1 5

FISCAL NOTE

BILL NO. SB 315

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____
Title: An Act relating to retirement incentive programs for the Public Employees' and Teachers' Retirement System
Sponsor: Kertulla
Requestor: Senate State Affairs

Department Affected: Administration
BRU: Retirement and Benefits
Component: Retirement and Benefits
COMPONENT SERIAL NO. 64

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	575.7	630.0	277.5	277.5	277.5	277.5
TRAVEL	3.0	3.0	1.0	1.0	1.0	1.0
CONTRACTUAL	20.0	3.3	0	0	0	0
SUPPLIES	3.0	2.5	1.0	1.0	1.0	1.0
EQUIPMENT	112.3	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	714.0	638.8	279.5	279.5	279.5	279.5

CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	714.0	638.8	279.5	279.5	279.5	279.5
TOTAL	714.0	638.8	279.5	279.5	279.5	279.5

POSITIONS

FULL-TIME:	6	6	6	6	6	6
PART-TIME:	0	0	0	0	0	0
TEMPORARY:	9	9	0	0	0	0

Estimate of current year impact: Zero

ANALYSIS: (attach a separate page if necessary.) The actuarial costs to participating employers due to this program are to be paid up front and no additional costs are anticipated.

Prepared By: Gary Bader *R. J. Christopher*
Division: Retirement and Benefits

Phone: 465-4460
Date: January 16, 1992

Approved by Commissioner: Nancy Bear Usery
Agency: Department of Administration *NU*

Date: _____

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

Senate Bill 315
Analysis of Fiscal Implications to the Retirement Fund
Prepared by Division of Retirement & Benefits
Department of Administration
January 16, 1992

Analysis: This bill would place a temporary retirement incentive provision in statute for the Public Employees' (PERS) and Teachers' (TRS) Retirement Systems. Active PERS and TRS members could retire on an accelerated basis with an increased benefit under the following conditions: at age 47, if vested; with 17 years of service as a qualified peace officer, fire fighter or teacher; or with 27 years of credited service in the PERS. Before qualifying for an accelerated benefit, however, the member must pay a lump sum indebtedness payment or take an actuarial reduction from their life time benefit for the indebtedness amount.

We estimate that five permanent full-time positions will be needed in Juneau and one in Anchorage to administer the increased demand for information and services resulting from adding potentially over 4000 new retirees to the PERS and TRS, resulting from prior RIPS and projected for this one. In addition, we estimate that nine long term non-permanent employees will also be needed for varying lengths of time over the next two fiscal years. Personnel will handle increased counseling, address and beneficiary changes, account maintenance, and other services.

We estimate that we will need to increase our normal number of counseling trips by 5 trips over the next two fiscal years to assure that members understand the options and requirements of the program.

SB 315
 Analysis of Fiscal Implications to the Retirement Fund
 Prepared by Division of Retirement & Benefits
 Department of Administration
 January 16, 1992

The total estimated administrative cost to the division by fiscal year is as follows:

	<u>FY 93</u>	<u>FY 94</u>	<u>FY 95</u>
PERSONAL SERVICES			
FY 93			
2 Retirement Specialist I/II	104.5		
8 Retirement Technician I/II	338.2		
1 Accountant I	46.1		
2 Accounting Clerk III (6 months)	38.0		
2 Clerk II (9 months)	<u>48.9</u>		
Total FY 93 Personal Services Cost	\$575.7		
FY 94			
2 Retirement Specialist I/II	104.5		
8 Retirement Technician I/II	338.2		
1 Accountant I	46.1		
2 Accounting Clerk III (12 months)	76.0		
2 Clerk II (12 months)	<u>65.2</u>		
Total FY 94 Personal Services Cost		\$630.0	
FY 95			
2 Retirement Specialist I/II	104.5		
3 Retirement Technician I/II	126.9		
1 Accountant I	<u>46.1</u>		
Personal Services Cost (FY 95 and beyond)			\$277.5
TRAVEL			
Traveling to various locations throughout the state to counsel prospective retirees and give seminars			
	3.0	3.0	
CONTRACTUAL			
FY 93			
Computer services for additional PC's	16.5		
Additional telephone costs (4 add phones)	.2		
Telephone service for 4 phones	.8		
Long distance call expense based upon previous RIP	<u>2.5</u>		
FY 93 contractual costs	20.0		

SB 315
 Analysis of Fiscal Implications to the Retirement Fund
 Prepared by Division of Retirement & Benefits
 Department of Administration
 January 16, 1992

	<u>FY 93</u>	<u>FY 94</u>	<u>FY 95</u>
CONTRACTUAL			
FY 94			
Telephone service for 4 phones	.8		
Long distance call expense based upon previous RIP	<u>2.5</u>		
FY 94 contractual costs.....		3.3	
SUPPLIES			
Office supplies, calculators cost.....	3.0	2.5	
EQUIPMENT			
5 Work stations	23.0		
5 Chairs	1.5		
5 PCs and other office equipment	30.0		
Other office equipment (Dictaphone, calculators, etc.)	5.0		
1 File cabinets	.3		
5 Phones (600/instrument)	3.0		
5 Personal Computers	27.5		
5 Microfiche viewers	4.0		
1 Computer Output Printer	18.0		
Total Equipment cost.....	<u>112.3</u>	<u>-0-</u>	<u>-0-</u>
TOTAL Operations Cost	<u><u>\$714.0</u></u>	<u><u>\$638.8</u></u>	<u><u>\$279.5</u></u>

The retirement technicians, retirement specialists, accountant, and accounting clerks need constant access to the PERS and TRS computer files. We don not have any excess terminals, microfiche viewers or calculators. Our equipment request will satisfy our equipment needs for the duration of this program. We propose the purchase of personal computers to be used as terminals because they will be compatible with the division's Local Area Network.

We are also proposing the purchase of an additional computer output printer. the previous RIP's put great demand on our existing two printers and we were always in a state of backlog. Our current day-to-day printer needs maximize the capacity of our existing printers. After comparing the cost of leasing a printer for two years, coupled with our existing needs, purchasing a new printer would be more cost effective.

All administrative costs of the program will be paid in advance by participating employers as required by the bill.

The Other Funds are comprised of PERS at \$392.7 and the TRS at \$321.3 for FY 93.

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 315

Revision Date: _____ Department Affected: Administration
 Title: "An Act establishing a retirement incentive program...effective date." BRU: Finance
 Component: Finance
 Sponsor: Senator Kerttula
 Requestor: Senate State Affairs COMPONENT SERIAL NO.

59			
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	10.0	62.6	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	10.0	62.6	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	10.0	62.6	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	10.0	62.6	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	1	4	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: See attached

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Don Wanie *DW* Phone: 465-2240
 Division: Finance Date: 01/21/92
 Approved by Commissioner: Nancy Bear Usera
 Agency: Administration Date: _____

Impact of a Retirement Incentive Program

The Division of Finance is responsible for verification of employment history and processing of termination pay for all state employees. This includes verifying the length of employment, accounting for all leave without pay during the entire employment with the state and determining salaries for the three highest years. In addition, final and terminal leave pay must be processed in accordance with contractual agreements.

With implementation of a Retirement Incentive Program (RIP) the workload for these functions would be significantly increased and additional support will be required by the Division of Finance to meet processing deadlines. Approximately five hundred employees took advantage of the previous RIP. It is anticipated that a comparable number of employees would participate if a RIP was implemented in the next year. Based on past experience, this would require four additional positions, including one Accountant I and three Accounting Technicians I, for a period of six months. Estimated cost for these positions would be:

Accountant I (1)	Range 14A	19.7
Acct Tech I (3)	Range 12A	<u>52.9</u>
Total Cost		72.6



Alaska State Legislature

SENATE

Official Business

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

Prepared by Senator Jay Kerttula

SPONSOR STATEMENT SENATE BILL 315 RETIREMENT INCENTIVE PROGRAM

Senate Bill 315 is a reimplementaion of the retirement incentive program which was established first by Ch. 26, SLA 1985, as amended by Ch. 76, SLA 1988 and most recently by Ch. 89, SLA 1989, as amended by ch. 18, SLA 1993.

The retirement incentive program was made available to public employees covered by either the Public Employees' Retirement System (PERS) or the Teachers' Retirement System (TRS).

The intent of the legislation was to lessen the impact of personnel layoffs by providing a program which would pay for itself and would result in a "net reduction in personal services costs to the state or other employers " during a period of declining revenues.

Briefly, the retirement incentive program enables employees with the greatest amount of seniority to retire three years before their normal retirement date, provided the employer can show that a personal services cost savings will be realized by the employee's participation in the retirement incentive program.

SPONSOR STATEMENT

In so doing, the employee with the least seniority, who would normally be laid off first, continues on the job and in the community, the employer may fill the vacated position with an employee at a lower pay range- one way to recognize a cost savings and the retiree will continue to remain in and contribute to the local community; according to the Division of Retirement and Benefits actuarial statistics, as of July 30, 1991 70% of PERS and TRS retirees have remained in Alaska as compared to 56% prior to the enactment of the first retirement incentive program in 1986.

According to a November 22, 1991 Legislative Budget and Audit report, the legislature's intent in establishing the retirement incentive program has been met. The report indicates that approximately 1800 employees had participated in the second (1989) retirement incentive program at a savings to the participating employers of \$29 million.

Alaska continues to face the prospect of declining oil production and declining oil prices and there will be an ever-increasing scrutiny of government spending. I have introduced Senate Bill 315 because the retirement incentive program has proved itself to be an effective and efficient method of reducing government spending while continuing to provide a high level of public services.

I urge the Senate State Affairs Committee's favorable action on this legislation.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

January 17, 1992

SUBJECT: Sectional summary of SB 315 (Retirement Incentive Program)

TO: Senator Jay Kerttula

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Because this bill sets up a time-limited program which is repealed July 1, 1994, it is not placed into the codified statutes. If the bill is enacted, it will be published in the Session Laws and also in the Temporary and Special Acts volume of the Alaska Statutes.

Section 1 states the legislative purpose in adopting a retirement incentive program for public employers and employees.

Section 2 establishes the general requirements for a retirement incentive program. Subsection (a) permits employers to designate organizational units of employees eligible to participate. Subsection (b) sets out criteria for the organization units. Subsection (c) limits which employees are eligible to participate to those who will be qualified to retire after receipt of the retirement incentive. Subsection (d) sets out requirements for the plan filed by the employer and requires the employer to agree to reimburse the retirement system for the extra costs incurred by the system from participation by the employer's employees.

Subsection (e) sets out the formula for computing how much each member of TRS who participates in the plan owes in order to receive the three-year credit. It is based on the former annual contribution rate of 7% for members of TRS set out in AS 14.25.050 before it was amended in 1990. Subsection (f) sets out the formula for computing how much each member of the Public Employees' Retirement System

SECTIONAL

(PERS) who participates in the plan owes in order to receive the three-year credit. It is based on the annual contribution rates, set out in AS 39.35.160, of 7.5% for peace officers who are members of PERS and 6.75% for other members of PERS.

Subsection (g) provides that the retirement incentive is a credit of three years, to be used either to meet retirement eligibility requirements or, if those are met, to increase the amount of credited service a participant is entitled to use when computing benefits. Subsection (h) limits the kinds of credited service that employees retiring under the retirement incentive plan may use when determining whether they are eligible to retire. Note that the subsection does not limit the credited service that may be considered when computing the employee's benefits.

Subsection (i) permits employees to assume part of the employer's liability in order to become eligible to participate in a retirement incentive plan.

Section 3 authorizes the state to adopt a retirement incentive plan for its employees, to begin September 30, 1992, and ending March 31, 1993. Subsections (b) and (c) limit which employees may participate. Subsection (d) requires that participants be appointed to retirement on or before November 1, 1993.

Section 4 authorizes political subdivisions and public organizations which participate in PERS to adopt a retirement incentive plan for their employees, to begin September 30, 1992, and ending March 31, 1993. Subsection (b) requires that participants be appointed to retirement on or before November 1, 1993.

Section 5 authorizes the University of Alaska to adopt a retirement incentive plan for its employees, to begin June 30, 1992, and ending December 31, 1992. Subsection (b) requires that participants be appointed to retirement on or before August 1, 1993.

Section 6 authorizes employers in TRS other than the state or the University of Alaska, which are covered in sections 3 and 5 above, to adopt a retirement incentive plan for their employees, to begin June 30, 1992, and ending December 31, 1992. Subsection (b) requires that participants be appointed to retirement on or before August 1, 1993.

Section 7 permits state employee participants to receive credit for certain employment with political subdivisions or public organizations who did not participate in PERS or TRS at the time of the employment for purposes of determining whether the participant is eligible to retire under TRS or PERS. The employment may not be counted when the amount of the participant's benefits are calculated.

Section 8 permits the Department of Administration to take certain actions if employers who are participating in the retirement incentive program become

Senator Jay Kerttula
January 17, 1992
Page 3

delinquent in the payments they owe the system for the increased benefits paid to their retirees under the program.

Section 9 establishes an indebtedness owed by participants in the retirement incentive program who, after retirement, are reemployed in a position that is covered by PERS or TRS. Subsection (b) prohibits participants from entering into personal services contracts with the state, other than the University of Alaska, for a period of one year after retiring under the retirement incentive program.

Section 10 directs state agencies to file with the Office of Management and Budget reports showing the expected effect of the program on the agency's personal services cost and operation. It also directs OMB to report to the legislature on the retirement incentive program.

Section 11 states that employees do not have a vested or contractual right to benefits under a retirement incentive program until an agreement is executed with the administrator of the retirement system. The legislature reserves the right to make changes to the program.

Section 12 permits a person who submitted a timely application to the retirement incentive program to be considered for participation in the program even if the person's application has not been acted upon by the time the program is repealed, July 1, 1994.

Section 13 makes the definitions in TRS and PERS, as appropriate, applicable to the bill.

Section 14 repeals sections 1 - 7 of the Act, which establish and authorize the retirement incentive programs, on July 1, 1994.

Section 15 is an immediate effective date clause.

If I may be of further assistance, please advise.

TBC:gc
92-030.glc

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FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SSSB 326

Revision Date: _____
Title: An Act relating to eligibility
for a permanent fund dividend
Sponsor: Pourchot
Requestor: State Affairs

Agency Affected: Revenue
BRU: Permanent Fund Dividend Division
Components: Permanent Fund Dividend
Division
COMPONENT SERIAL NO. 9 8 1

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: None.

ANALYSIS: None necessary.

Prepared By: Thomas C. Williams
Division: Permanent Fund Dividend Division

Phone: 465-2323
Date: January 22, 1992

Approved by Commissioner: Paul P. [Signature]
Agency: Revenue

Date: 1/24/92

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

page 1 of 1

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 326 ()

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS POURCHOT, Zharoff, Halford

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to eligibility for permanent fund dividends; and providing for an effective
2 date."

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

4 * Section 1. AS 43.23.015(a) is amended to read:

5 (a) The commissioner shall adopt regulations under the Administrative Procedure Act
6 (AS 44.62) for determining the eligibility of individuals for permanent fund dividends. The
7 commissioner may require an individual to provide proof of eligibility, and the commissioner
8 may use other information available from other state departments or agencies to determine the
9 eligibility of an individual. However, the residency of an individual's spouse may not be the
10 only factor relied upon by the commissioner in determining the residency of the individual.

11 * Sec. 2. This Act is retroactive to January 1, 1992.

12 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

LEGISLATIVE TELECONFERENCE NETWORK

COPY

testimony AGENDA

1



SIGN-IN SHEET

SPONSOR: Anchorage Caucus

SUBJECT: Town Meeting

START/END TIME: 8-5

DATE: 1-18-92

PLEASE PRINT

	NAME/REPRESENTING	ADDRESS	PHONE #	TESTIFY	OBSERVE
1	Ken Hinriats	3842 W 82nd Apt A	248-5927	X	
2	USBA Jim Utter	5236 W 73rd	243-7816	X	
3	Jack Doyle FOOD BANK	1320 E 68th #112	349-3663	X	
4	Alaska Sports Authority			X	
5	Scott Hawkins AEDC	550 W 7th #1130	258-2700	X	
6	Tom BEHAN <i>key contact</i>	5039 Knightsway 99509	339-5435	X	
7	Lynn Zeller PFD ✓	HC 80 77 Norton Ct	688-1644	X	
8	Torvald Gravenmeyer PFD ✓	21500 LEMON # F EAFB <i>116 outside interests</i>	753-4337	Y	
9	KRISTEN JACKSON PFD ✓	21473 Citrus HG EAFB 99506	753-3320	X	
10	Pat Abney	5800 E 142nd 99516	345-1335	Y	
11	Ron Duncan	2550 Denali	265-5206	Y	
12	LEAH LEE / Bootstraps	5530 E Northern Lights #15 <i>9950</i>	337-9639	Y	
13	JACK NEWELL	8200 6427 Cheviigny St	243-1648	Y	
14	AK AVIATION HERITAGE TED SPENCER	4721 Aircraft M	248-5325	Y	
15	Christine Fowler PFD ✓	2527 W 43rd Ave 99517	243-7113	X	
16	Christopher Fowler PFD ✓	3527 W 43rd 99517	243-7113	X	
17	Joyce HERR 8200 PFD ✓	7390 J St apt A EAFB 99506	753-3448	Y	
18	Martha Baker PFD ✓	3910 Gardner # 3	337-3010	Y	

CHECK VOTER REG

LEGISLATIVE TELECONFERENCE NETWORK

COPY

testimony
AGENDA

2



SIGN-IN SHEET

SPONSOR: Anchorage Caucus

SUBJECT: Town Meeting

START/END TIME: 8-5 DATE: 1-18-92

PLEASE PRINT

	NAME/REPRESENTING	ADDRESS	PHONE #	TESTIFY	OBSERVE
1	Lillian Wilder	SALVATION ARMY 1509 S BRAGAN OLDER ALASKA PROGRAM	279 7658	✓	
2	Lois Ann Reeder	Susitna Valley Assoc		✓	
3	CLIFFEAMES ^{MT. View}	ACE mental health lands		✓	
4	Delori's Martinez ^{PFD}	check voter list	428- 3655	✓	
5	Lori Pape = anti AHPC = commit AHPC	a lot of an extras Stewart St. - const. hall	333 5635	✓	
6	Charles & McKee	7800 De Barr ^E		✓	
7	S. Salmick			✓	
8	Ray Clements	6800 Louise Ct Anc	346 2064	✓	
9	Jim CANN ^{powerlines}	107 Stewart SE Anc	333 7137	✓	
10	Jerry McCutcheon	anc		✓	
11	Dorothy Cox	PO Box 212092 99521	333- 5724	✓	
12	Angela Salerno ^{scribble}	1727 WICKERSHAM D 99507	561- 7970	✓	
13	Joe Whittaker	1023 1/2 E 11 Anch AK 99501	276-5279	✓	
14		"Earth" - went to to give away			
15					
16					
17					
18					

LEGISLATIVE TELECONFERENCE NETWORK

12					
13	M				
14	Mike O'Callaghan	Suits from Tech election 1540 med Fra anti-Rep from party		✓	
15	Robert Rowen MD	615 E 82 nd Ave	3447775	✓	
16					
17					
18					

1	Vera Gatzaway	OPAG-325 E 3 RD	276-1059	✓	
2	DAVID MALTMAN	Gov's Council @ 134	272-2500	✓	
3	MARILYNN S. SCOTT	AARP PO Box 112827 Anch 99511	345-1698	✓	
4	Bonnie Winters	1147 W 31st Ave Ste 302 Anch 99505	274-1555		
5	David Schwantes pro-education	✓ 8148 E. 4TH AVE. Anch. 99514 early funding, right-to-choose	333-1327	✓	
6	LINDA Julliard				
7	Roger Head	Birch Park Development (Hilltop Inc.) 7631 C-FIELD ST Anch 99516	346-1576	✓	
8	CHARLES LIPPI	pro SB 35 - land use TT ✓ 2203 McHINLEY AVE	248-4770	✓	
9	Carol Jensen	8451 Greenhill Way Anch	344-7078	✓	
10	TIM MORGAN	2601 W 24 TH # 2 Anch	342-1038	✓	
11	L.J. Brennan Linn. kid care clinic care	✓ 1006 G ST.	274-7808	✓	
12	Diane DiSanto	5630 Radcliffe PILMASU	272-0352	✓	
13	TERRY RURRELL	3716 Wesleyan	3-2774	✓	
14					
15	Denise Yancey	ASFA			
16					
17					
18					

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3 2 7

SENATE BILL NO. 327

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY SENATORS CRAFT and Pourchot

Introduced: 1/13/92
Referred: STA, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to qualifications for permanent fund dividends, to dividend applications,
2 and to recovery of an improperly paid dividend; and providing for an effective date."

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

4 * Section 1. AS 43.23.005(c) is amended to read:

5 (c) A parent, guardian, or other authorized representative may claim a permanent fund
6 dividend on behalf of an unemancipated minor or on behalf of a disabled or an incompetent
7 individual who is eligible to receive a payment under this section. A minor who is too young
8 to establish eligibility for a dividend for a year under (a)(2) or (3) of this section is eligible
9 for the dividend if on the date of application

10 (1) the minor is a state resident; and

11 (2) at least one of the minor's custodial parents or guardians is eligible for
12 a dividend for that year, or the minor is in the custody of the state.

13 * Sec. 2. AS 43.23.015(b) is amended to read:

14 (b) The department shall prescribe and furnish an application form for claiming a

1 permanent fund dividend. The application must include notice of the penalties provided for
2 under AS 43.23.035 and contain a statement of eligibility and a certification of residency. [IN
3 SUBSTANTIALLY THE FOLLOWING FORM:

4 I CERTIFY THAT

5 () I AM A STATE RESIDENT ON THE DATE OF THIS APPLICATION, I HAVE
6 BEEN A STATE RESIDENT FOR AT LEAST 12 MONTHS IMMEDIATELY
7 PRECEDING APRIL 1 OF THE CURRENT DIVIDEND YEAR, AND I HAVE BEEN
8 PHYSICALLY PRESENT IN THE STATE OF ALASKA AT SOME TIME DURING
9 THE PERIOD BEGINNING JULY 1 TWO YEARS BEFORE THE DATE OF
10 APPLICATION AND ENDING ON THE DATE OF THIS APPLICATION UNLESS
11 THIS REQUIREMENT HAS BEEN WAIVED UNDER AS 43.23.005(f); OR

12 () (NAME), THE INDIVIDUAL ON WHOSE BEHALF I AM APPLYING, IS A
13 STATE RESIDENT ON THE DATE OF THIS APPLICATION, HAS BEEN A STATE
14 RESIDENT FOR AT LEAST 12 MONTHS IMMEDIATELY PRECEDING APRIL 1 OF
15 THE CURRENT DIVIDEND YEAR, AND HAS BEEN PHYSICALLY PRESENT IN
16 THE STATE OF ALASKA AT SOME TIME DURING THE PERIOD BEGINNING
17 JULY 1 TWO YEARS BEFORE THE DATE OF APPLICATION AND ENDING ON
18 THE DATE OF THIS APPLICATION UNLESS THIS REQUIREMENT HAS BEEN
19 WAIVED UNDER AS 43.23.005(f).

20 I UNDERSTAND THAT A FALSE CLAIM OF ELIGIBILITY TO OBTAIN A
21 PERMANENT FUND DIVIDEND FOR MYSELF OR FOR ANOTHER IS A
22 CRIMINAL OFFENSE, THAT IF CONVICTED I WILL FORFEIT FUTURE
23 DIVIDENDS, AND THAT I MUST REPAY ALL DIVIDENDS THAT HAVE BEEN
24 PAID TO ME. I UNDERSTAND THAT IF I WILFULLY MISREPRESENT,
25 EXERCISE GROSS NEGLIGENCE, OR RECKLESSLY DISREGARD A MATERIAL
26 FACT REGARDING MY ELIGIBILITY FOR A PERMANENT FUND DIVIDEND I
27 WILL FORFEIT THE DIVIDEND, BE SUBJECT TO A CIVIL FINE OF UP TO \$5,000.
28 AND LOSE MY ELIGIBILITY FOR THE NEXT FIVE DIVIDENDS. I UNDERSTAND
29 THAT THESE PENALTIES ARE IN ADDITION TO ANY CRIMINAL PENALTIES
30 IMPOSED.
31

(SIGNATURE OF INDIVIDUAL,
PARENT, GUARDIAN, OR OTHER
AUTHORIZED REPRESENTATIVE)]

* Sec. 3. AS 43.23.035(b) is amended to read:

(b) If the commissioner determines that a permanent fund dividend should not have been claimed by or paid to an individual, the commissioner may use all collection procedures or remedies available for collection of taxes under this title to recover the payment of a permanent fund dividend that was improperly made. Unless the dividend is forfeited under (a) of this section, a [A] notice of an improperly paid dividend must be sent to the individual within two [10] years after the improper payment. If notice is not sent within the two-year [10-YEAR] period, proceedings may not be commenced in court for recovery of the improper payment.

* Sec. 4. AS 43.23.095(8) is amended to read:

(8) "state resident" means, notwithstanding AS 01.10.055, an individual who is not claiming or accepting the benefits of residency in any other state, and is either physically present in the state or [WITH THE INTENT TO REMAIN PERMANENTLY IN THE STATE OR, IF THE INDIVIDUAL IS NOT PHYSICALLY PRESENT IN THE STATE, INTENDS TO RETURN TO THE STATE AND] is absent only for any of the following reasons:

(A) vocational, professional, or other specific education for which a comparable program was not reasonably available in the state;

(B) secondary or postsecondary education;

(C) military service; *deprive - by the state*

(D) medical treatment;

(E) service in Congress;

(F) other reasons which the commissioner may establish by regulation; or

(G) service in the Peace Corps;

* Sec. 5. Notwithstanding permanent fund dividend application procedures or deadlines applicable by law or regulation to dividends for 1982 - 1992, a person who qualifies for one or more dividends for those years solely because of the amendment to AS 43.23.095(8) in sec. 4 of this Act may, by May 1, 1993, apply for the dividend or dividends. The Department of Revenue shall prepare a form for applications under this section.

* Sec. 6. Section 4 of this Act is retroactive to January 1, 1982.

- 1 * Sec. 7. Sections 4 - 6 of this Act take effect immediately under AS 01.10.070(c).
- 2 * Sec. 8. Sections 1 - 3 of this Act take effect January 1, 1993.

— retroactive regulation - Jan. '82
if law was "illegal" then it
would seem reg. was invalid...
perhaps should re-open applications
period on ~~auto~~ retro basis —

Revision Date: January 29, 1992
 Title: An Act relating to qualifica-
tions for permanent fund dividends
 Sponsor: Craft
 Requestor: State Affairs

Agency Affected: Revenue
 BRU: Permanent Fund Dividend Division
 Components: Permanent Fund Dividend
Division
 COMPONENT SERIAL NO. 9 8 1

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None.

ANALYSIS: See attached.

Prepared By: Thomas C. Williams
 Division: Permanent Fund Dividend Division

Phone: 465-2323
 Date: January 29, 1992

Approved by Commissioner: James Reynolds
 Agency: Revenue

Date: 1/29/92

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

ALASKA DEPARTMENT OF REVENUE
PERMANENT FUND DIVIDEND DIVISION
CS SB 327 ANALYSIS
As of January 29, 1992

This bill would require the Permanent Fund Dividend Division to send notices to all applicants who filed from an out-of-state address notifying them that if a child was born to them during the eligibility period, that the child may be eligible to receive that year's dividend.

The division would prepare and mail amended forms for potentially eligible children under this provision. The division would incur most of these costs in FY92. However, the division expects to be able to absorb these costs as well as any related marginal processing cost with the current FY92 and FY93 budgets.

Printing Costs

15,000 envelopes and stationary	\$ 0.3
500 applications	0.2

Postage Costs

15,000 notification letters @ \$0.29	4.3
500 applications @ \$0.29	<u>0.2</u>

Total Contractual Costs \$ 5.0

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 327

Revision Date: _____
Title: An Act relating to qualifica-
tions for permanent fund dividends
Sponsor: Craft
Requestor: State Affairs

Agency Affected: Revenue
BRU: Permanent Fund Dividend Division
Components: Permanent Fund Dividend
Division
COMPONENT SERIAL NO. 9 8 1

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
OPERATING						
PERSONAL SERVICES	200.7	100.4				
TRAVEL						
CONTRACTUAL	179.4	31.9				
SUPPLIES	26.0					
EQUIPMENT						
LANDS & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	415.3	132.3	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER	415.3	132.3				
TOTAL	415.3	132.3	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None.

ANALYSIS: See attached.

Prepared By: Thomas C. Williams
Division: Permanent Fund Dividend Division

Phone: 465-2323
Date: January 24, 1992

Approved by Commissioner: [Signature]
Agency: Revenue

Date: 1/24/92

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

ALASKA DEPARTMENT OF REVENUE
 PERMANENT FUND DIVIDEND DIVISION
SB 327 ANALYSIS

As of January 24, 1992

Assumptions:

1. There would be 10,000 people applying for every year from 1982-1992.

Cost Summary:

1. Personal Services

	<u>FY 93</u>	<u>FY 94</u>
9 non-permanent Document Processor I, R7 @ \$1,935/mo. for 3 months including salary and benefits.	\$ 34.8	\$ 17.4
12 non-permanent Data Processing Clerk I, R8 @ \$2,043/mo. for 3 months including salary and benefits.	49.0	24.5
10 PFT PFD Specialist I, R13 @ \$3,545/month for 3 months to work reviews.	70.9	35.5
4 PFT PFD Specialist I, R13 @ \$3,545/month for 3 months to work informal conference appeals.	28.4	14.2
2 PFT PFD Specialist II, R16 @ \$4,401/month for 3 months to work formal hearing appeals.	<u>17.6</u>	<u>8.8</u>
<u>Total Personal Services</u>	<u>200.7</u>	<u>100.4</u>

2. Contractual Services

A. Printing Costs

PFD Applications, 110,000	= \$ 27.5
Receipt Batch Cards, 110,000	= 6.6
Information Request Letters, 82,500	= 3.0
Review Contact Letters, 82,500	= 3.0
Appeal Forms, 20,000	= <u>1.0</u>

<u>Total Printing Costs</u>	41.1	-0-
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B. Postage Costs

110,000 applications X .29	= 31.9
110,000 receipt cards X .19	= 20.9
110,000 warrants X .29 (FY94 only)	= 31.9
82,500 Info. Request Letters X .29	= 23.9
82,500 Review Contact Letters X .29	= 23.9
20,000 Appeal forms X .29	= <u>5.8</u>

<u>Total Postage</u>	<u>106.4</u>	<u>31.9</u>
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<u>Total Contractual Expenses</u>	<u>179.4</u>	<u>31.9</u>
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3. Supplies

Envelopes	20.0	
Microfilm Supplies	<u>6.0</u>	
<u>Total Supplies</u>	<u>26.0</u>	<u>-0-</u>

TOTAL COST	<u>\$415.3</u>	<u>\$132.3</u>
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ALASKA DEPARTMENT OF REVENUE
PERMANENT FUND DIVIDEND DIVISION
RECOMMENDED AMENDMENTS TO PROPOSED CSSB 327 (7-LS1663/D)
As of January 29, 1992

The Department recommends the Committee:

1. in Section 4, page 2, line 12, following "at least," substitute the calendar year for the phrase "one year" and on line 16, insert calendar between "two" and "years.";
2. In Section 6, page 3, line 5, insert the word "calendar" between "previous" and "year".

0497K

7-LS1663D ✓

Cook

11/18/92

CS FOR SENATE BILL NO. 327 ()

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): SENATORS CRAFT, Pourchot

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to permanent fund dividends; and providing for an effective date."

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

3 * Section 1. INTENT. The change to the definition of residency in sec. 13 of this Act only clarifies
4 what the legislature has always intended the definition to be.

5 * Sec. 2. AS 34.45.370 is amended by adding a new subsection to read:

6 (c) A permanent fund dividend that is received by the state as abandoned property shall
7 be deposited into the dividend fund established under AS 43.23.045 and may be expended or
8 distributed according to regulations adopted by the commissioner of revenue.

9 * Sec. 3. AS 37.05.180 is amended to read:

10 Sec. 37.05.180. TWO-YEAR LIMITATION ON PAYMENT OF WARRANTS. A [NO]
11 warrant upon the state treasury may not be [IS] paid unless presented at the office of the
12 commissioner of revenue within two years of the date of its issuance. A warrant [ALL
13 WARRANTS] not presented within that time is [ARE] considered paid and money held at the
14 expiration of that time in a special fund or account for the payment of the warrant shall be

1 transferred to the general fund, except where transfer is prohibited by the federal government for
 2 state participation in a federal program or the warrant represents payment of a permanent
 3 fund dividend. Money held for the payment of a permanent fund dividend warrant shall
 4 be retained in or transferred to the dividend fund established under AS 43.23.045 and may
 5 be expended or distributed according to regulations adopted by the commissioner of
 6 revenue.

7 * Sec. 4. AS 43.23.005(a) is amended to read:

8 (a) An individual is eligible to receive one permanent fund dividend each year in an
 9 amount to be determined under AS 43.23.025 if

10 (1) the individual applies to the department;

11 (2) [, AND IF (1)] on the date of application the individual is a state resident;

12 (3) [(2)] the individual was a state resident for [A PERIOD OF] at least one year ^{the calendar}

13 [12 CONSECUTIVE MONTHS] immediately preceding January 1 [APRIL 1] of the current
 14 dividend year; [AND]

15 (4) [(3)] the individual has been physically present in the state at some time
 16 during the prior [PERIOD BEGINNING JULY 1] two years before the current dividend year;
 17 and

18 (5) the individual is

19 (A) a citizen of the United States;

20 (B) an alien lawfully admitted for permanent residence in the United
 21 States;

22 (C) an alien with refugee status under federal law; or

23 (D) an alien that has been granted asylum under federal law [DATE
 24 OF APPLICATION AND ENDING ON THE DATE OF APPLICATION].

25 * Sec. 5. AS 43.23.005(c) is amended to read:

26 (c) A parent, guardian, or other authorized representative may claim a permanent fund
 27 dividend on behalf of an unemancipated minor or on behalf of a disabled or an incompetent
 28 individual who is eligible to receive a payment under this section. Notwithstanding (a)(3) and
 29 (4) of this section, a minor who is under two years of age on January 1 of the current
 30 dividend year is eligible for the dividend if on the date of application at least one of the
 31 minor's custodial parents or guardians is eligible for a dividend for that year, or the minor

1 is in the custody of the state.

2 * Sec. 6. AS 43.23.005(d) is amended to read:

3 (d) Notwithstanding the provisions of (a) - (c) of this section, an individual who has been
4 convicted of a felony is not eligible for a permanent fund dividend for a year when, during all
5 or part of the ~~previous year~~ [FISCAL YEAR ENDING JUNE 30 OF THE CURRENT YEAR],
6 as a result of the conviction, the individual is incarcerated. [THIS SUBSECTION APPLIES
7 WHETHER OR NOT THE INDIVIDUAL HAS APPLIED FOR THE DIVIDEND.]

8 * Sec. 7. AS 43.23.005(f) is amended to read:

9 (f) In a time of national military emergency, the commissioner may waive the
10 requirement of ~~(a)(4)~~ [(a)(3)] of this section for an individual absent from the state under military
11 orders while serving in the armed forces of the United States, or for the spouse and dependents
12 of that individual.

13 * Sec. 8. AS 43.23.015(a) is amended to read:

14 (a) The commissioner shall adopt regulations under the Administrative Procedure Act
15 (AS 44.62) for determining the eligibility of individuals for permanent fund dividends. The
16 commissioner may require an individual to provide proof of eligibility, and the commissioner
17 may use other information available from other state departments or agencies to determine the
18 eligibility of an individual. The commissioner shall consider all relevant circumstances in
19 determining the eligibility of an individual. However, the residency of an individual's
20 spouse may not be the only factor relied upon by the commissioner in determining the
21 residency of the individual.

22 * Sec. 9. AS 43.23.015(b) is amended to read:

23 (b) The department shall prescribe and furnish an application form for claiming a
24 permanent fund dividend. The application must include notice of the penalties provided for
25 under AS 43.23.035 and contain a statement of eligibility and a certification of residency. [IN
26 SUBSTANTIALLY THE FOLLOWING FORM:

27 I CERTIFY THAT

28 () I AM A STATE RESIDENT ON THE DATE OF THIS APPLICATION, I HAVE
29 BEEN A STATE RESIDENT FOR AT LEAST 12 MONTHS IMMEDIATELY
30 PRECEDING APRIL 1 OF THE CURRENT DIVIDEND YEAR, AND I HAVE BEEN
31 PHYSICALLY PRESENT IN THE STATE OF ALASKA AT SOME TIME DURING

1 THE PERIOD BEGINNING JULY 1 TWO YEARS BEFORE THE DATE OF
 2 APPLICATION AND ENDING ON THE DATE OF THIS APPLICATION UNLESS
 3 THIS REQUIREMENT HAS BEEN WAIVED UNDER AS 43.23.005(f); OR

4 () (NAME), THE INDIVIDUAL ON WHOSE BEHALF I AM APPLYING, IS A
 5 STATE RESIDENT ON THE DATE OF THIS APPLICATION, HAS BEEN A STATE
 6 RESIDENT FOR AT LEAST 12 MONTHS IMMEDIATELY PRECEDING APRIL 1 OF
 7 THE CURRENT DIVIDEND YEAR, AND HAS BEEN PHYSICALLY PRESENT IN
 8 THE STATE OF ALASKA AT SOME TIME DURING THE PERIOD BEGINNING
 9 JULY 1 TWO YEARS BEFORE THE DATE OF APPLICATION AND ENDING ON
 10 THE DATE OF THIS APPLICATION UNLESS THIS REQUIREMENT HAS BEEN
 11 WAIVED UNDER AS 43.23.005(f).

12 I UNDERSTAND THAT A FALSE CLAIM OF ELIGIBILITY TO OBTAIN A
 13 PERMANENT FUND DIVIDEND FOR MYSELF OR FOR ANOTHER IS A
 14 CRIMINAL OFFENSE, THAT IF CONVICTED I WILL FORFEIT FUTURE
 15 DIVIDENDS, AND THAT I MUST REPAY ALL DIVIDENDS THAT HAVE BEEN
 16 PAID TO ME. I UNDERSTAND THAT IF I WILFULLY MISREPRESENT,
 17 EXERCISE GROSS NEGLIGENCE, OR RECKLESSLY DISREGARD A MATERIAL
 18 FACT REGARDING MY ELIGIBILITY FOR A PERMANENT FUND DIVIDEND I
 19 WILL FORFEIT THE DIVIDEND, BE SUBJECT TO A CIVIL FINE OF UP TO \$5,000,
 20 AND LOSE MY ELIGIBILITY FOR THE NEXT FIVE DIVIDENDS. I UNDERSTAND
 21 THAT THESE PENALTIES ARE IN ADDITION TO ANY CRIMINAL PENALTIES
 22 IMPOSED.

23 _____
 24 (SIGNATURE OF INDIVIDUAL,
 25 PARENT, GUARDIAN, OR OTHER
 26 AUTHORIZED REPRESENTATIVE)]

27 * Sec. 10. AS 43.23.035(b) is amended to read:

28 (b) If the commissioner determines that a permanent fund dividend should not have been
 29 claimed by or paid to an individual, the commissioner may use all collection procedures or
 30 remedies available for collection of taxes under this title to recover the payment of a permanent
 31 fund dividend that was improperly made. A notice of an improperly paid dividend must be sent

1 to the individual within

2 (1) three years after the improper payment is sent; or

3 (2) six years after the improper payment is sent if the commissioner
4 determines that the individual exercised gross negligence or recklessly disregarded a
5 material fact in connection with a false statement made in an application [10 YEARS
6 AFTER THE IMPROPER PAYMENT. IF NOTICE IS NOT SENT WITHIN THE 10-YEAR
7 PERIOD, PROCEEDINGS MAY NOT BE COMMENCED IN COURT FOR RECOVERY OF
8 THE IMPROPER PAYMENT].

9 * Sec. 11. AS 43.23.035 is amended by adding a new subsection to read:

10 (d) If notice is not sent within the time required under (b) of this section, administrative
11 or judicial proceedings may not be commenced for recovery of an improperly paid dividend. The
12 time limitations of (b) of this section do not apply if a dividend is forfeited under (a) of this
13 section or if it is more probable than not that an individual has committed a crime in connection
14 with a false statement made in an application.

15 * Sec. 12. AS 43.23.055 is amended to read:

16 Sec. 43.23.055. DUTIES OF THE DEPARTMENT. The department shall

17 (1) annually pay permanent fund dividends from the dividend fund;

18 (2) adopt regulations under the Administrative Procedure Act (AS 44.62) that
19 establish procedures and time limits for claiming a permanent fund dividend; the department shall
20 set the time limit for applications for permanent fund dividends so that the number of eligible
21 applicants is determined by October 1 of the year for which the dividend is declared and
22 [PERMANENT FUND] dividends for a year are paid by December 31 of that year [BEFORE
23 APRIL 30 OF THE YEAR FOLLOWING THAT YEAR];

24 (3) adopt regulations under the Administrative Procedure Act (AS 44.62) that
25 establish procedures and time limits for an individual upon emancipation or upon reaching
26 majority to apply for permanent fund dividends not received during minority because the parent,
27 guardian, or other authorized representative did not apply on behalf of the individual;

28 (4) assist residents of the state, particularly in rural areas, who because of
29 language, disability, or inaccessibility to public transportation need assistance to establish
30 eligibility and to apply for permanent fund dividends;

31 (5) annually determine, in cooperation with the Department of Corrections, the