ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8633 HOUSE JUDICIARY

HJR

2

CS FOR HOUSE JOINT RESOLUTION NO. 2(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES GREEN, Navarre

A RESOLUTION

Proposing amendments to the Constitution of the State of Alaska relating to redistricting and to the length of a regular session, and establishing a unicameral legislature; and providing for an effective date for each amendment.

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

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

SECTION 1. LEGISLATIVE POWER; MEMBERSHIP. The legislative power of the State is vested in a legislature consisting of a senate [WITH A MEMBERSHIP OF TWENTY AND A HOUSE OF REPRESENTATIVES] with a membership of <u>sixty</u> [FORTY].

* **Sec. 2.** Article II, sec. 2, Constitution of the State of Alaska, is amended to read:

SECTION 2. MEMBERS' QUALIFICATIONS. A <u>senator</u> [MEMBER OF THE LEGISLATURE] shall be a qualified voter who has been a resident of Alaska for at least three years and of the district from which elected for at least one year, immediately preceding [HIS] filing for office. A senator shall be at least twenty-five years of age [AND A REPRESENTATIVE AT LEAST TWENTY-ONE YEARS OF AGE].

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* **Sec. 4.** Article II, sec. 7, Constitution of the State of Alaska, is amended to read:

SECTION 7. SALARY AND EXPENSES. Senators [LEGISLATORS] shall receive annual salaries. They may receive a per diem allowance for expenses while in session and are entitled to travel expenses going to and from sessions. The presiding officer [PRESIDING OFFICERS] may receive additional compensation.

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SECTION 8. REGULAR SESSIONS. The senate [LEGISLATURE] shall convene in regular session each year on the fourth Monday in January, but the month and day may be changed by law. The senate [LEGISLATURE] shall adjourn from regular session no later than ninety [ONE HUNDRED TWENTY] consecutive calendar days from the date it convenes except that a regular session may be extended once for up to ten consecutive calendar days. An extension of the regular session requires the affirmative vote of at least two-thirds of the senate membership [OF EACH HOUSE OF THE LEGISLATURE]. The senate [LEGISLATURE] shall adopt as part of the [UNIFORM] rules of procedure deadlines for scheduling session work not inconsistent with provisions controlling the length of the session.

* **Sec. 6.** Article II, sec. 12, Constitution of the State of Alaska, is amended to read:

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least two-thirds of its members. The senate [EACH] shall keep a journal of its proceedings. A majority of the membership [OF EACH HOUSE] constitutes a quorum to do business, but a smaller number may adjourn from day to day and may compel attendance of absent members. The senate [LEGISLATURE] shall regulate lobbying.

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* **Sec. 12.** Article III, sec. 17, Constitution of the State of Alaska, is amended to read:

SECTION 17. CONVENING SENATE [LEGISLATURE]. Whenever the governor considers it in the public interest, the governor [HE] may convene the senate [LEGISLATURE, EITHER HOUSE, OR THE TWO HOUSES] in [JOINT] session.

* **Sec. 13.** Article III, sec. 19, Constitution of the State of Alaska, is amended to read:

SECTION 19. MILITARY AUTHORITY. The governor is commander-in-chief of the armed forces of the State. The governor [HE] may call out these forces to execute the laws, suppress or prevent insurrection or lawless violence, or repel invasion. The governor, as provided by law, shall appoint all general and flag officers of the armed forces of the State, subject to confirmation by at least a majority of the members of the senate [LEGISLATURE IN JOINT SESSION]. The governor [HE] shall appoint and commission all other officers.

* **Sec. 14.** Article III, sec. 20, Constitution of the State of Alaska, is amended to read:

SECTION 20. MARTIAL LAW. The governor may proclaim martial law when the public safety requires it in case of rebellion or actual or imminent invasion. Martial law shall not continue for longer than twenty days without the approval of **at least** a majority of the **senate** members [OF THE LEGISLATURE IN JOINT SESSION].

* **Sec. 15.** Article III, sec. 23, Constitution of the State of Alaska, is amended to read:

SECTION 23. REORGANIZATION. The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which **the governor** [HE] considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. The **senate** [LEGISLATURE] shall have sixty days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution concurred in by a majority of the members [IN JOINT SESSION], these orders become effective at a date thereafter to be designated by the governor.

* **Sec. 16.** Article III, sec. 25, Constitution of the State of Alaska, is amended to read:

SECTION 25. DEPARTMENT HEADS. The head of each principal department shall be a single executive unless otherwise provided by law. **The head of each principal department** [HE] shall be appointed by the governor, subject to confirmation by **at east** a majority of the **senate** members [OF THE LEGISLATURE IN JOINT SESSION], and shall serve at the pleasure of the governor, except as otherwise provided in this article with respect to the **lieutenant governor** [SECRETARY OF STATE]. The heads of all principal departments shall be citizens of the United States.

* **Sec. 17.** Article III, sec. 26, Constitution of the State of Alaska, is amended to read:

SECTION 26. BOARDS AND COMMISSIONS. When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by **at least** a majority of the **senate** members [OF THE LEGISLATURE IN JOINT SESSION], and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer

when authorized by law, but the appointment shall be subject to the approval of the governor.

* **Sec. 18.** Article IV, sec. 10, Constitution of the State of Alaska, is amended to read:

SECTION 10. COMMISSION ON JUDICIAL CONDUCT. The Commission on Judicial Conduct shall consist of nine members, as follows: three persons who are justices or judges of state courts, elected by the justices and judges of state courts; three members who have practiced law in this state for ten years, appointed by the governor from nominations made by the governing body of the organized bar and subject to confirmation by **at least** a majority of the **senate** members [OF THE LEGISLATURE IN JOINT SESSION]; and three persons who are not judges, retired judges, or members of the state bar, appointed by the governor and subject to confirmation by **at least** a majority of the **senate** members [OF THE LEGISLATURE IN JOINT SESSION]. In addition to being subject to impeachment under Section 12 of this article, a justice or judge may be disqualified from acting as such and may be suspended, removed from office, retired, or censured by the supreme court upon the recommendation of the commission. The powers and duties of the commission and the bases for judicial disqualification shall be established by law.

* **Sec. 19.** Article IV, sec. 15, Constitution of the State of Alaska, is amended to read:

SECTION 15. RULE-MAKING POWER. The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules may be changed by the **senate** [LEGISLATURE] by **at least** two-thirds vote of the members [ELECTED TO EACH HOUSE].

* **Sec. 20.** Article VI, sec. 1, Constitution of the State of Alaska, is amended to read:

SECTION 1. ELECTION DISTRICTS. **One member** [MEMBERS] of the **senate** [HOUSE OF REPRESENTATIVES] shall be elected by the qualified voters of **each of sixty** [THE RESPECTIVE] election districts. [UNTIL REAPPORTIONMENT, ELECTION DISTRICTS AND THE NUMBER OF REPRESENTATIVES TO BE ELECTED FROM EACH DISTRICT SHALL BE AS SET FORTH IN SECTION 1 OF ARTICLE XIV].

* **Sec. 21.** Article VI, sec. 6, Constitution of the State of Alaska, is amended to read:

SECTION 6. REDISTRICTING. The governor may **only** [FURTHER] redistrict **the senate immediately following the decennial census of the United States** by changing the size and area of election districts, subject to the limitations of this article. Each new district so created shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area. Each shall contain a population at least equal to the quotient obtained by dividing the total civilian population by **sixty** [FORTY]. Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries wherever possible. **At the first election held under a new redistricting plan thirty senate members shall be elected to two-year terms and thirty shall be elected to four-year terms set by the governor in the redistricting plan.**

* **Sec. 22.** Article VI, sec. 8, Constitution of the State of Alaska is amended to read:

SECTION 8. **REDISTRICTING** [REAPPORTIONMENT] BOARD. The governor shall appoint a **redistricting** [REAPPORTIONMENT] board to act in an advisory capacity [TO HIM]. It shall consist of five members, none of whom may be public employees or officials. At least one member each shall be appointed from the Southeastern, Southcentral, Central, and Northwestern **areas of the state** [SENATE DISTRICTS]. Appointments shall be made without regard to political affiliation. Board members shall be compensated.

* **Sec. 23.** Article VII, sec. 3, Constitution of the State of Alaska, is amended to read:

SECTION 3. BOARD OF REGENTS OF UNIVERSITY. The University of Alaska shall be governed by a board of regents. The regents shall be appointed by the governor, subject to confirmation by **at least** a majority of the **senate** members [OF THE LEGISLATURE IN JOINT SESSION]. The board shall, in accordance with law, formulate policy and appoint the president of the university. **The president** [HE] shall be the executive officer of the board.

* **Sec. 24.** Article IX, sec. 17(c), Constitution of the State of Alaska, is amended to read:

(c) An appropriation from the budget reserve fund may be made for any public purpose upon affirmative vote of **at least** three-fourths of the **senate** members [OF EACH HOUSE OF THE LEGISLATURE].

* **Sec. 25.** Article X, sec. 12, Constitution of the State of Alaska, is amended to read:

SECTION 12. BOUNDARIES. A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the **senate** [LEGISLATURE] during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by **at least** a majority of the **senate** members [OF EACH HOUSE]. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

* **Sec. 26.** Article XIII, sec. 1, Constitution of the State of Alaska, is amended to read:

SECTION 1. AMENDMENTS. Amendments to this constitution may be proposed by **at least** a two-thirds vote [OF EACH HOUSE] of the **senate membership** [LEGISLATURE]. The lieutenant governor shall prepare a ballot title and proposition summarizing each proposed amendment, and shall place them on the ballot for the next general election. If a majority of the votes cast on the proposition favor the amendment, it shall be adopted. Unless otherwise provided in the amendment, it becomes effective thirty days after the certification of the election returns by the lieutenant governor.

* **Sec. 27.** Article XV, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 29. TRANSITION TO UNICAMERAL LEGISLATURE. The following provisions shall be followed in the transition from a bicameral to a unicameral legislature provided for under the amendments approved by the voters in 1996:

(1) the senate shall first meet as a unicameral legislature during the Twenty-First Alaska State Legislature and shall continue to meet as a unicameral legislature thereafter;

(2) the term of a senate member elected or appointed to office before the 1998 general election terminates on the convening of the First Session of the Twenty-First Alaska State Legislature;

(3) notwithstanding the provision in Article VI, Section 6, Constitution of the State of Alaska, that redistricting occur only after a decennial census, no later than January 1, 1998, the governor shall redistrict the legislature in accordance with all other provisions of Article VI, Constitution of the State of Alaska, to provide for a unicameral legislature consisting of sixty members elected from sixty districts based upon the total population of the State as determined by the most recent decennial federal census;

(4) at the 1998 general election, thirty members of the senate shall be elected to four-year terms, and thirty members shall be elected to two-year terms, set by the governor in the redistricting plan adopted under (3) of this section.

* **Sec. 28.** Article II, sec. 10, article VI, secs. 2, 3, 4, 5, and 7, and article XIV, Constitution of the State of Alaska, are repealed.

* **Sec. 29.** Section 27 of this resolution takes effect January 1, 1997.

* **Sec. 30.** Sections 1 - 26 and sec. 28 of this resolution take effect January 1, 1998.

* **Sec. 31.** The amendments proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

NO.
BILL VERSION: CS HJR 2
PUBLISH DATE:

Revision Date:
Title: "Proposing amendments to the Constitution of the State of Alaska relating to..."
Sponsor: Representative Green
Requestor: House Judiciary

Department Affected: Legislative Affairs Agency
BRU: Legislative Council
Component: Session Expenses
Salaries & Allowances
COMPONENT SERIAL NO:

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	0.0	-1,140.0	-1,140.5	-1,140.5	-1,140.5	-1,140.5
TRAVEL	0.0	-75.0	-75.0	-75.0	-75.0	-75.0
CONTRACTUAL	0.0	-240.0	-240.0	-240.0	-240.0	-240.0
SUPPLIES	0.0	-30.0	-30.0	-30.0	-30.0	-30.0
EQUIPMENT	0.0	-15.0	-15.0	-15.0	-15.0	-15.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	-1,500.0	-1,500.5	-1,500.5	-1,500.5	-1,500.5
CAPITAL	0.0	0	0	0	0	0
REVENUE FUND SOURCE	0.0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	-1,500.0	-1,500.5	-1,500.5	-1,500.5	-1,500.5
FEDERAL FUNDS						
OTHER FUND SOURCE						
TOTAL	0.0	-1,500.0	-1,500.5	-1,500.5	-1,500.5	-1,500.5

POSITIONS:

FULL-TIME	0.0	0	0	0	0	0
PART-TIME	0.0	0	0	0	0	0
TEMPORARY	0.0	0	0	0	0	0

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary)

HJR 2 proposes amendments to the constitution establishing a unicameral legislature and limiting the session to 90 days. 90 day sessions would commence January 1998. The Legislature would first meet as a unicameral Legislature during the 21st Legislature in 1999. Presiding Officers receive $500/year more than other Legislators. A unicameral Legislature would have only one Presiding Officer thereby decreasing the annual cost by $500. The daily cost of a legislative session is $ 50,000. A 90 day session would decrease the total cost of a regular session by $1,500,000.

Prepared By: Karla Schofield, Deputy Director Karla Schofield Phone: 465-3852
Division: Administrative Services Date: 1/18/96

Approved By: Pamela A. Varni, Executive Director Pamela A. Varni
Agency: Legislative Affairs Agency Date: 1/18/96

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

9-LS0180\A.1
Cook
1/11/96

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE FINKELSTEIN

TO: HJR 2

Page 1, line 3, after "**legislature**":

Insert "**and a senate salary commission**"

Page 2, line 12, after "EXPENSES.":

Insert "(a)"

Page 2, after line 15:

Insert a new resolution section to read:

"* **Sec. 5.** Article II, sec. 7, Constitution of the State of Alaska, is amended by adding a new subsection to read:

(b) A senate salary commission composed of five members appointed by the governor to four-year terms is established in the executive branch of State government. A commission member may not be employed by the State while in office. A commission member may not hold an elected State office while serving on the commission and for one year thereafter. The commission may consider any proposed change to the salaries, per diem, expense allowances, benefits, or other compensation for senators. It may present proposed changes to the senate during the first ten days of any regular session. A change may be disapproved within forty-five days after it is presented by a resolution concurred in by at least a majority of the senate members. Unless it is disapproved, the change takes effect at the beginning of the next regular session."

Renumber the following resolution sections accordingly.

Page 9, line 12:

Delete "Section 27"

Insert "Section 28"

Page 9, line 13:

Delete "1 - 26 and 28"

Insert "1 - 27 and 29"

9-LS0180\C
Cook
9/21/95

CS FOR HOUSE JOINT RESOLUTION NO. 2( )

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NINETEENTH LEGISLATURE - SECOND SESSION

BY

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Referred:

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SECTION 17. CONVENING **SENATE** [LEGISLATURE]. Whenever the governor considers it in the public interest, **the governor** [HE] may convene the **senate** [LEGISLATURE, EITHER HOUSE, OR THE TWO HOUSES] in [JOINT] session.

* **Sec. 13.** Article III, sec. 19, Constitution of the State of Alaska, is amended to read:

SECTION 19. MILITARY AUTHORITY. The governor is commander-in-chief of the armed forces of the State. **The governor** [HE] may call out these forces to execute the laws, suppress or prevent insurrection or lawless violence, or repel invasion. The governor, as provided by law, shall appoint all general and flag officers of the armed forces of the State, subject to confirmation by **at least** a majority of the members of the **senate** [LEGISLATURE IN JOINT SESSION]. **The governor** [HE] shall appoint and commission all other officers.

* **Sec. 14.** Article III, sec. 20, Constitution of the State of Alaska, is amended to read:

SECTION 20. MARTIAL LAW. The governor may proclaim martial law when the public safety requires it in case of rebellion or actual or imminent invasion. Martial

law shall not continue for longer than twenty days without the approval of **at least** a majority of the **senate** members [OF THE LEGISLATURE IN JOINT SESSION].

*** Sec. 15.** Article III, sec. 23, Constitution of the State of Alaska, is amended to read:

SECTION 23. REORGANIZATION. The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which **the governor** [HE] considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. The **senate** [LEGISLATURE] shall have sixty days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution concurred in by a majority of the members [IN JOINT SESSION], these orders become effective at a date thereafter to be designated by the governor.

*** Sec. 16.** Article III, sec. 25, Constitution of the State of Alaska, is amended to read:

SECTION 25. DEPARTMENT HEADS. The head of each principal department shall be a single executive unless otherwise provided by law. **The head of each principal department** [HE] shall be appointed by the governor, subject to confirmation by **at least** a majority of the **senate** members [OF THE LEGISLATURE IN JOINT SESSION], and shall serve at the pleasure of the governor, except as otherwise provided in this article with respect to the **lieutenant governor** [SECRETARY OF STATE]. The heads of all principal departments shall be citizens of the United States.

*** Sec. 17.** Article III, sec. 26, Constitution of the State of Alaska, is amended to read:

SECTION 26. BOARDS AND COMMISSIONS. When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by **at least** a majority of the **senate** members [OF THE LEGISLATURE IN JOINT SESSION], and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.

*** Sec. 18.** Article IV, sec. 10, Constitution of the State of Alaska, is amended to read:

SECTION 10. COMMISSION ON JUDICIAL CONDUCT. The Commission on Judicial Conduct shall consist of nine members, as follows: three persons who are justices or judges of state courts, elected by the justices and judges of state courts; three

members who have practiced law in this state for ten years, appointed by the governor from nominations made by the governing body of the organized bar and subject to confirmation by **at least** a majority of the **senate** members [OF THE LEGISLATURE IN JOINT SESSION]; and three persons who are not judges, retired judges, or members of the state bar, appointed by the governor and subject to confirmation by **at least** a majority of the **senate** members [OF THE LEGISLATURE IN JOINT SESSION]. In addition to being subject to impeachment under Section 12 of this article, a justice or judge may be disqualified from acting as such and may be suspended, removed from office, retired, or censured by the supreme court upon the recommendation of the commission. The powers and duties of the commission and the bases for judicial disqualification shall be established by law.

*** Sec. 19.** Article IV, sec. 15, Constitution of the State of Alaska, is amended to read:

SECTION 15. RULE-MAKING POWER. The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules may be changed by the **senate** [LEGISLATURE] by **at least** two-thirds vote of the members [ELECTED TO EACH HOUSE].

*** Sec. 20.** Article VI, sec. 1, Constitution of the State of Alaska, is amended to read:

SECTION 1. ELECTION DISTRICTS. **One member** [MEMBERS] of the **senate** [HOUSE OF REPRESENTATIVES] shall be elected by the qualified voters of **each of sixty** [THE RESPECTIVE] election districts. [UNTIL REAPPORTIONMENT, ELECTION DISTRICTS AND THE NUMBER OF REPRESENTATIVES TO BE ELECTED FROM EACH DISTRICT SHALL BE AS SET FORTH IN SECTION 1 OF ARTICLE XIV].

*** Sec. 21.** Article VI, sec. 6, Constitution of the State of Alaska, is amended to read:

SECTION 6. REDISTRICTING. The governor may **only** [FURTHER] redistrict **the senate immediately following the decennial census of the United States** by changing the size and area of election districts, subject to the limitations of this article. Each new district so created shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area. Each shall contain a population at least equal to the quotient obtained by dividing the total

civilian population by sixty [FORTY]. Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries wherever possible. **At the first election held under a new redistricting plan thirty senate members shall be elected to two-year terms and thirty shall be elected to four-year terms set by the governor in the redistricting plan.**

* **Sec. 22.** Article VI, sec. 8, Constitution of the State of Alaska is amended to read:

SECTION 8. REDISTRICTING [REAPPORTIONMENT] BOARD. The governor shall appoint a redistricting [REAPPORTIONMENT] board to act in an advisory capacity [TO HIM]. It shall consist of five members, none of whom may be public employees or officials. At least one member each shall be appointed from the Southeastern, Southcentral, Central, and Northwestern areas of the state [SENATE DISTRICTS]. Appointments shall be made without regard to political affiliation. Board members shall be compensated.

* **Sec. 23.** Article VII, sec. 3, Constitution of the State of Alaska, is amended to read:

SECTION 3. BOARD OF REGENTS OF UNIVERSITY. The University of Alaska shall be governed by a board of regents. The regents shall be appointed by the governor, subject to confirmation by at least a majority of the senate members [OF THE LEGISLATURE IN JOINT SESSION]. The board shall, in accordance with law, formulate policy and appoint the president of the university. The president [HE] shall be the executive officer of the board.

* **Sec. 24.** Article IX, sec. 17(c), Constitution of the State of Alaska, is amended to read:

(c) An appropriation from the budget reserve fund may be made for any public purpose upon affirmative vote of at least three-fourths of the senate members [OF EACH HOUSE OF THE LEGISLATURE].

* **Sec. 25.** Article X, sec. 12, Constitution of the State of Alaska, is amended to read:

SECTION 12. BOUNDARIES. A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the senate [LEGISLATURE] during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in

by at least a majority of the senate members [OF EACH HOUSE]. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

* **Sec. 26.** Article XIII, sec. 1, Constitution of the State of Alaska, is amended to read:

SECTION 1. AMENDMENTS. Amendments to this constitution may be proposed by at least a two-thirds vote [OF EACH HOUSE] of the senate membership [LEGISLATURE]. The lieutenant governor shall prepare a ballot title and proposition summarizing each proposed amendment, and shall place them on the ballot for the next general election. If a majority of the votes cast on the proposition favor the amendment, it shall be adopted. Unless otherwise provided in the amendment, it becomes effective thirty days after the certification of the election returns by the lieutenant governor.

* **Sec. 27.** Article XV, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 29. TRANSITION TO UNICAMERAL LEGISLATURE. The following provisions shall be followed in the transition from a bicameral to a unicameral legislature provided for under the amendments approved by the voters in 1996:

(1) the senate shall first meet as a unicameral legislature during the Twenty-First Alaska State Legislature and shall continue to meet as a unicameral legislature thereafter;

(2) the term of a senate member elected or appointed to office before the 1998 general election terminates on the convening of the First Session of the Twenty-First Alaska State Legislature;

(3) notwithstanding the provision in Article VI, Section 6, Constitution of the State of Alaska, that redistricting occur only after a decennial census, no later than January 1, 1998, the governor shall redistrict the legislature in accordance with all other provisions of Article VI, Constitution of the State of Alaska, to provide for a unicameral legislature consisting of sixty members elected from sixty districts based upon the total population of the State as determined by the most recent decennial federal census;

(4) at the 1998 general election, thirty members of the senate shall be elected to four-year terms, and thirty members shall be elected to two-year terms, set by the governor in the redistricting plan adopted under (3) of this section.

* **Sec. 28.** Article II, sec. 10, article VI, secs. 2, 3, 4, 5, and 7, and article XIV, Constitution of the State of Alaska, are repealed.

* **Sec. 29.** Section 27 of this resolution takes effect January 1, 1997.

* **Sec. 30.** Sections 1 - 26 and sec. 28 of this resolution take effect January 1, 1998.

* **Sec. 31.** The amendments proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

OFFICE OF THE GOVERNOR

Division of Elections
P.O. Box 110017
Juneau, Alaska 99811-0017
PHONE (907) 465-4611

Memo

To: Representative Joe Green

From: David G. Koivuniemi
Acting Director of Elections

Subject: HJR 2 Unicameral Legislature

Date: May 4, 1995

The Division of Elections is not taking a position on the subject matter of HJR 2 at this time, but we are concerned with it as currently written. I spoke to Jeff Logan of your office and he assures me that our concerns will be reviewed during the interim.

As the resolution is drafted, it requires reapportionment (or redistricting) of the state into 60 senate seats by January 1, 1997 (section 27). Work on the redistricting would have to begin January 1, 1996 (section 29). The constitutional amendments creating the unicameral legislature will not appear on the ballot until November 1996. All of the work to redistrict the state would have to take place before the election was held to authorize the change. It would have to be completed within a month of the passage of the amendments. If the amendments failed, a tremendous amount of work and money would have been spent for no reason.

We suggest that section 29 be changed to provide that the implementation section of the resolution take effect **January 1, 1997** and the redistricting in section 27 be completed no later than **January 1, 1998.**

HJR

5

Amendment by Finkelstein
to CSHJR5(SUD)

P. 1 Line 9

Delete "twelve"
Insert "eight"

(

P 1 Line 10

After ~~Delete~~ ~~"Eighteen."~~ "in the" (first reference)

Insert "either body of"

9-LS0226\M
Cook
2/13/95

CS FOR HOUSE JOINT RESOLUTION NO. 5(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES THERRIAULT, Rokeberg, Porter, Green, Bunde

A RESOLUTION

Proposing amendments to the Constitution of the State of Alaska relating to terms of legislators.

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

*** Section 1.** Article II, sec. 3, Constitution of the State of Alaska, is amended to read:

SECTION 3. ELECTION AND TERMS. (a) Legislators shall be elected at general elections. Their terms begin on the fourth Monday of the January following election unless otherwise provided by law. The term of representatives shall be two years, and the term of senators, four years. One-half of the senators shall be elected every two years. A person may not serve consecutively during more than twelve regular sessions in the legislature. Thereafter, the person may not again serve in the legislature as a result of election or appointment to fill a vacancy until at least two consecutive full regular sessions have elapsed during which the person has not served.

*** Sec. 2.** Article II, sec. 3, Constitution of the State of Alaska, is amended by adding new subsections to read:

(b) For purposes of applying the tenure limit under (a) of this section, periods served in the legislature during the interim between sessions or during special sessions

shall not be considered. Unless a member of one house resigns and is appointed to office in the other house, periods served in the legislature as a result of appointment to fill a vacancy shall not be considered for purposes of determining whether the tenure limit has been reached.

(c) Notwithstanding (a) of this section, a person may complete a four-year senate term to which elected if the person has served consecutively during no more than ten regular sessions in the legislature immediately before the beginning of the senate term.

* **Sec. 3.** Article XV, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 29. APPLICATION OF 1996 TENURE LIMIT AMENDMENT. Regular sessions served in the legislature before the convening of the First Regular Session of the Twentieth Alaska State Legislature shall not be considered for purposes of applying the tenure limit added by the 1996 amendment to Section 3 of Article II.

* **Sec. 4.** The amendments proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

9-LS0226\K
Cook
2/9/95

CS FOR HOUSE JOINT RESOLUTION NO. 5(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
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9-LS0226\G.1 ✓
Cook
2/9/95

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHJR 5(STA)

Page 1, line 9:

After "consecutively"

Insert "during"

Delete "full"

Page 2, line 2:

Delete "Periods"

Insert "Unless a member of one house resigns and is appointed to office in the other house, periods"

JAN 25 95 WED 14:20 REG 1 DIV OF ELECTIONS PAN AM SEATTLE

Bill Version: CSHJR 5(STA)

FISCAL NOTE

(H) Publish Date: 2/3/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

AMENDED

Revision Date: _____

Department Affected: Office of the Governor

Title: Amendment to the Constitution RE: Terms of Legislators

BRU: Division of Elections

Component: General and Primary Elections

Sponsor: Representative Therriault

Requestor: _____

COMPONENT SERIAL NO. 22

EXPENDITURES/REVENUES:

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	2.2*	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	2.2*	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE:	0	0	0	0	0	0
FUNDING:						
1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	2.2*	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	2.2*	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 (FY95) impact: 0

ANALYSIS: (Attach a separate page if necessary.) *This figure covers cost of inclusion of information about this issue in the Official Elections Pamphlet as required by AS 15.58, and programming for counting of votes cast on the measure. However, only 4 measures can be printed on a single ballot card. Should this measure require printing an additional ballot card, the fiscal impact would be $3.4.

Prepared by: David Kovuniemi, Acting Director — Phone: 465-4611

Division: Division of Elections — Date: 1-25-95

Approved by Commissioner: Lt Governor Fran Ulmer

Agency: Office of the Lt Governor — Date: 1-25-95

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Rev 12/93

COMMITTEE COPY

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House Of Representatives

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House District 33

CS HJR 5 (STA) Proposing amendments to the Constitution of the State of Alaska relating to terms of legislators

SPONSOR: Rep. Gene Therriault

SPONSOR STATEMENT:

CS HJR 5 (STA) proposes to limit terms by limiting the number of regular legislative sessions a person may serve. The resolution proposes that a person may not serve consecutively more than twelve full regular sessions in the legislature. A person may not again serve in the legislature as a result of election or appointment to fill a vacancy until at least two consecutive regular sessions have elapsed. Also, for the purposes of tabulating the number of sessions served, special sessions shall not be counted nor shall time served as the result of appointment to fill a vacancy.

Alaskan voters have recently demonstrated their overwhelming desire for congressional term limits with 1994's ballot measure 4, passing with over 62% of the votes. Alaskans have also expressed their support for term limits on the municipal level with many communities adopting some form of term limits for local elected officials. HJR 5 will now give voters the chance to change the state constitution and limit terms of state legislators.

Term limits are a positive legislative reform, guaranteeing a flow of new legislators with new ideas. The popularity of term limits demonstrates that career politicians are not desirable. Term limits will also level the playing field for challengers facing long-time incumbents whose power is oftentimes derived primarily from seniority.

Placing a constitutional amendment limiting the terms of state legislators on the ballot is a measure that is long overdue.

CS HJR 5 (STA) Proposing amendments to the Constitution of the State of Alaska relating to terms of legislators

SPONSOR: Rep. Gene Therriault

Sectional Analysis:

Section 1: Amends Article II, section 3, Constitution of the State of Alaska limiting a person from serving consecutively more than twelve full regular sessions in the legislature. A person may not again serve in the legislature as a result of election or appointment until at least two consecutive full regular sessions have elapsed.

Section 2: Exempts periods served during the interim, between sessions or during special sessions from being considered when calculating the term limit. Also, periods served as a result of appointment to fill a vacancy shall not be considered when determining whether the tenure limit has been reached.

Section 3: Exempts regular sessions served in the legislature before the start of the Twentieth Legislature from being considered when calculating whether tenure limit has been reached.

Section 4: Places the proposed amendments on the ballot at the next general election.

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House District 23

MEMORANDUM

TO: Representative Jeannette James, Chair
House State Affairs Committee

FROM: Representative Gene Therriault

DATE: January 25, 1995

SUBJECT: Scheduling of HJR 5

I respectfully request House Joint Resolution 5, "Proposing amendments to the Constitution of the State of Alaska relating to terms of legislators" be scheduled for a hearing in the House State Affairs Committee.

Attached you will find a "blank" CS (work draft #9-LS0226\F, 1/24/95) that I am submitting for your consideration as a possible State Affairs Committee Substitute. After prefiling HJR 5, I decided terms should be limited in relation to regular sessions as opposed to calendar years as HJR 5 originally proposed. The work draft proposes that a person may not serve consecutively more than twelve full regular sessions in the legislature. A person may not again serve in the legislature as a result of election or appointment to fill a vacancy until at least two consecutive regular sessions have elapsed. Also, for the purposes of the tenure limit, the draft excludes periods served in the legislature during the interim between sessions, during special sessions, or as a result of appointment to fill a vacancy.

Attachments include:

1. proposed work draft
2. sponsor statement
3. sectional analysis
4. Division of Elections' fiscal note

I appreciate your consideration of my request.

attachments (4)

this 2 2
no teleconf

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House District 33

Work Draft 9-LS0226\F 1/24/95

CS HJR 5 ( ) Proposing amendments to the Constitution of the State of Alaska relating to terms of legislators

SPONSOR: Rep. Gene Therriault

SPONSOR STATEMENT:

The "blank" CS (work draft #9-LS0226\F, 1/24/95) proposes to limit terms in relation to regular sessions as opposed to calendar years of HJR 5 as originally prefiled. The work draft proposes that a person may not serve consecutively more than twelve full regular sessions in the legislature. A person may not again serve in the legislature as a result of election or appointment to fill a vacancy until at least two consecutive regular sessions have elapsed. Also, for the purposes of tabulating the number of sessions served, special sessions shall not be counted nor shall time served as the result of appointment to fill a vacancy.

Alaskan voters have recently demonstrated their overwhelming desire for congressional term limits with 1994's ballot measure 4, passing with over 62% of the votes. Alaskans have also expressed their support for term limits on the municipal level with many communities adopting some form of term limits for local elected officials. HJR 5 will now give voters the chance to change the state constitution and limit terms of state legislators.

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Placing a constitutional amendment limiting the terms of state legislators on the ballot is a measure that is long overdue.

Work Draft 9-LS0226\F 1/24/95

CS HJR 5 ( ) Proposing amendments to the Constitution of the State of Alaska relating to terms of legislators

SPONSOR: Rep. Gene Therriault

Sectional Analysis:

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Section 3: Exempts regular sessions served in the legislature before the start of the Twentieth Legislature from being considered when calculating whether tenure limit has been reached.

Section 4: Places the proposed amendments on the ballot at the next general election.

HJR

9

Alaska State Legislature

REPRESENTATIVE
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House of Representatives
House District 34

SPONSOR STATEMENT

3-10-95

HJR 9

Requesting the Governor to file suit against the U.S. and others over POW/MIA's from Alaska

There is continuing controversy concerning the presence of American servicemen, who were listed as Prisoners of War or Missing in Action and may be being held against their will in the Southeast Asian nations of Vietnam, Laos, and Kampuchea (formerly Cambodia).

The United States government has stated that all of our Prisoners of War have been returned from Vietnam. A top secret Vietnamese report, dated 1972, by General Tran Von Kwang, Deputy Chief of Staff for the North Vietnamese Army, reported that in September of 1972 Hanoi held 1,205 American prisoners. Only 591 American Prisoners of War have been released under the 1973 Peace Settlement.

There are two missing and unaccounted for servicemen in Southeast Asia from Alaska.

I request that the Alaska State Legislature hereby require the Governor of the state of Alaska, on behalf of the people of this state, to file in the United States Supreme Court a cause of action agaist the government of the United States. Defendents in this suit would include the Department of Defense and the intelligence agencies, the ambassadors or other public ministers and consuls of the governments of Vietnam, Laos, Kampuchea, Russia, and China, alleging violation of civil rights of the people of Alaska. Especially, alleging the violation of the right to life, liberty and the pursuit of happiness of the following named citizens of the State of Alaska.

Thomas E. Anderson, U.S.M.C. Spenard and Howard M. Koslosky U.S.N. Anchorage.

No. 1

Bill Version: CSHJR 9 (MIL/V)

(H) Publish Date: 3/22/95

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date:
Title: "Requesting the governor to file suit in the United States Supreme Court..."
Sponsor: Representative James
Requester: Representative James

Dept. Affected: Department of Law
BRU: Legal Services
Component: Operations

COMPONENT SERIAL NO. 0093

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	xxxxx	xxxxx	xxxxx	xxxxx	xxxxx	xxxxx
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	xxxxx	xxxxx	xxxxx	xxxxx	xxxxx	xxxxx
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL						

Estimate of any current year (FY95) cost: $ 0.0

POSITIONS

FULL-TIME	xxxxx	xxxxx	xxxxx	xxxxx	xxxxx	xxxxx
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

HJR 9 requests the governor to file suit in the United States Supreme Court against the United States government alleging violations of the civil rights of Americans listed as prisoners of war or missing in action in Southeast Asia. The resolution further requests that the suit demand that the Department of Defense, the intelligence agencies, and the governments of Vietnam, Laos, Kampuchea, Russia, North Korea, and China be ordered to turn over all documents concerning Americans listed as POWs or MIAs as a result of the Vietnam War. It is a purpose of the resolution that the lawsuit is not intended to solicit a ruling or an opinion definitively declaring the POW/MIA issue moot, but rather that it is intended to mandate that the fate or location of all Americans listed as POWs or MIAs be determined as missing beyond a reasonable doubt and on an individual basis. The resolution also requests that other states to join in the suit.

The Department of Law has no comment to offer concerning the merits of the resolution. However, we do note that if the intent of the resolution is carried out it will be necessary to hire outside counsel skilled in

Prepared by: Richard T. Pegues, Director — Phone: 465-3672
Division: Administrative Services Division — Date: 3/17/95

Approved by Commissioner: Bruce M. Botelho, Attorney General — Date: 3/17/95
Agency: Department of Law

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STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HJR 9

ANALYSIS CONTINUATION:

U.S. Supreme Court proceedings. Outside counsel would be needed to advise the state concerning preparation of the suit, requirements of federal and international jurisdiction, to provide liaison with the National Association of Attorneys General and the other states, and to represent the state in formal proceedings before the U.S. Supreme Court. At this early juncture we cannot determine what costs might be required. We caution, however, that the U.S. Supreme Court costs could eventually reach $50,000 or more.

February 1,1995

AN OPEN REQUEST TO ALL MEMBERS OF THE ALASKA STATE LEGISLATURE:

Reference: House Joint Resolution No. 9

I am submitting the enclosed documents as testimony in support of passage of House Joint Resolution NO. 9.

I am a Vietnam veteran and have been very involved in the POW/MIA issue. This is a disturbing and emotional issue for me as I am sure it is for the other thousands of veterans in Alaska. My one primary goal is to verfify and help repatriate any American servicemen held against their will by a foreign power.

Please take the time to read these documents. With the current political situation at the national level, every day is becoming all the more crucial.

I have other supporting documents and video tapes that I can make available to you if you wish.

Respectfully;

Jack Hetherton, Jr.

Jack Hetherton, Jr.
P.O. Box 2376
Soldotna, Alaska 99669
(907) 262-5455

VFW [illegible]
[illegible] #10046
SOLDOTNA

EXCERPTS FROM:

United States Senate
An Examination of U.S. Policy Toward POW/MIAs

By the U.S. Senate Committee on Foreign Relations Republican Staff
Thursday, May 23, 1991

(Part I; THE AEF AND WORLD WAR I):
August 20, 1921, a formal agreement between the Soviet Union and the United States, the "Riga Agreement," was concluded...Among the conditions for U.S. aid to the Soviets was....The United States expected the repatriation of approximately 20 U.S. citizens; but, in fact, more than 100 Americans were repatriated as a result of this agreement.

As Herbert Hoover wrote in his autobiography: The provision for release of American prisoners was suggested by Secretary Hughes, who informed me that the Department knew that there were about 20 of them. More than a hundred American prisoners in Russian dungeons were released on Sept 1, (1921).

Even so, reports continued to be received by the Department of State that more Americans were still held in Russia. The discrepancy between the official information in the hands of the U.S. government..20 Americans held, and the actual number of more than one hundred released..gave the U.S. Government its first taste of negotiating for Americans held against their will by Communists.

(World War II):
World War II was a great military victory for the United States Armed Forces. In both the European and the Pacific theaters, the enemy unconditionally surrendered. However, despite the total victory in Europe by Allied forces, thousands and thousands of U.S. soldiers..perhaps as many as 20,000..were never repatriated from prisoner of war (POW) camps, prisons and forced labor and concentration camps.

The daughter of one U.S. Army officer..Major Wirt Thompson..was never told that in 1955 a German POW repatriated from the Soviet concentration camp system reported to the United States Government that while he was in prison, he met her father. The German repatriate told American officials that Thompson told him that he had been imprisoned at Budenskaya prison near Moscow, and also in the Tayshet labor camp after World War II. Not only was Thompson"s daughter "overwhelmed" when when she found out early in 1991 that this information existed, but she wondered how her family could have been told by the United States government in 1944 that Thompson had been killed in action, body not recovered.

(Korean War):
Unlike the result in World War II, Allied forces did not achieve a military victory in Korea. The Korean War ended at the negotiating table between Communist North Korean representatives and United Nations representatives. With regard to POW repatriation, the North Koreans initially demanded an "all-for-all" prisoner exchange. The United States was reluctant to agree to this formula based on its World War II experience with the Yalta agreement and mandatory repatriation, knowing that thousands of those forced to return to the Soviet Union were either shot or interned in slave labor camps, where most of them died. After two long years of negotiations, the North Koreans agreed to the principle of voluntary or "non-forcible" repatriation." This agrement stated that each side would release only those prisoners who wished to return to their respective countries.
Operation BIG SWITCH was the name given to the largest and final exchange of prisoners between the North Koreans and the U.N. forces, which occured over a one-month period from August 5, 1953 to September 6, 1953. Chinese and North Korean POWs werre returned to North Korea, and U.S. and other U.N. troops were returned to South Korea. Approximately 14,200 Communist Chinese POWs elected not to return to the Peoples Republic of China; while 21 American POWs elected to stay with the Communist forces, and likely went to China. These 21 Americans are defectors and obviously are not considered as repatriated U.S. POWs. However, U.S. government documents state that the U.S. government knew that nearly one thousand U.S. POWs..and an undetermined number of some 8,000U.S. MIAs..were still held captive after Operation BIG SWITCH and were not repatriated at the end of the Korean War. These U.S. POWs were never repatriated. Three days after the start of operation BIG SWITCH, the New York Times reported that Gen. James A. Van Fleet, retired commander of the United States Eigth Army in Korea, estimated tonight that a large percentage of the 8,000 American soldiers listed as missing in Korea were still alive.
A report by ;the U.N. Combined Command for Reconnaissance Activity, Korea, five days into operation BIG SWITCH, stated: "Figures show that the total number of MIAs, plus known captives, less those to be repatriated, leaves a balance of 8,000 unaccounted for."

(Vietnam War)
The war widely known as the Vietnam War was the second war fought by the Communist forces in Vietnam and in Southeast Asia. The Vietnamese forces, after defeating the French, fought the Second Indochina war against the United States and the U.S.-backed forces. In the final analysis, however, this war was a political and moral defeat for the United States.
As a result, the United States was forced at the Paris Peace Conference to negotiate its withdrawal from Southeast Asia from a military and political position. Internal divisions in the United States and mounting political pressure to extricate from the war, exacerbated this weak negotiating position. As a result, the United States, as in World War I, World War II, and the Korean War, found itself, once again, unable to guarantee the reptriation of all U.S. POWs and MIAs who were alive and held captive.

The United States' chief negotiator a the Paris Peace Conference, Henry Kissinger, admitted as much in his book, Years of Upheavel, published in 1982. Kissinger wrote: Equally frustrating were our discussions of the American soldiers and airmen who were prisoners of war or missing in action. We knew of at least eighty instances in which an American serviceman had been captured

alive and subsequently disappeared. The evidence consisted of either voice communications from the ground in advance of capture or photographs and names published by the Communists.

Operation HOMECOMING, the name given to the last repatriation of U.S. POWs by the North Vietnamese began February 12, 1973, and ended March 29, 1973. A grand total of 591 United States servicemen were repatriated.

However, news reports and other documentation stated that the United States Government knowingly left men..perhaps thousands of men..in the captivity of Communist forces in Southeast Asia.

On Jasnuary 27, 1973, an agreement to end the war and restore peace in Vietnam was signed in Paris, France. Signatories to this agreement were the United States, North Vietnam, South Vietnam, and the South Vietnam Provisional Government(PRG). This agreement consisted of a preamble, and nine chapters, covering 23 Articles and four protocols. The Paris accord stated that the return of prisoners of war, would be carried out simultaneously with and completed not later than the same day as the troop withdrawl.

The United States did not receive the list of American POWs the whom the North Vietnamese admitted they were holding in captivity until after the peace accords were signed. Sinificantly, the list included only nine Americans captured in Laos. While these men were captured in Laos, they were not prisoners of the Pathet Lao, but were handed over to, and held by, the North Vietnamese after their capture. In fact, it was widely known that the Pathet Lao were holding many other U.S. POWs. On March 25, one news report stated: U.S. sources believe that a substantial number of the missing(in Laos)..perhaps as many as 100..still may be alive. These conclusions are based inspections of crash sites by search teams and on intelligence reports.

The absence of names on the U.S. POW list handed over by the North Vietnamese of Americans captured in Laos and held by the Pathet Lao was one of the great blunders of the Paris Peace Accord negotiations and caused great confusion and emotional duress among family members of missing and captured personnel.

The Department of Defense (DOD) has been gathering reports on live sightings of American prisoners since the United States became involved in the war in Southeast Asia. Live sighting reports are defined as first-hand eye-witness accounts of a person or persons whom the winess believes to be an American POW or American POWs seen in captivity in Southeast Asia. The DOD states that it has received in excess of 1,400 first-hand live-sighting reports since the end of the Second Indochina War(1955-1975).

United States Senate

WASHINGTON, DC 20510

January 24, 1995

The Honorable William J. Clinton
President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

We are writing to request that you not open diplomatic liaison offices with the Socialist Republic of Vietnam (SRV) without first giving the Congress the opportunity to review the information on POWs and MIAs required within 45 days under Section 1034 of Public Law 103-337.

As you know, the Secretary of Defense is required under Section 1034 to provide us with a complete listing by name of all missing and otherwise unaccounted for U.S personnel about whom it is possible that Vietnamese and Laotian officials can produce additional information or remains. This information was required by November 17, 1994. However, the Department of Defense subsequently requested an extension to February 17, 1995 to which we did not object. We now understand that there is a possibility the Department of Defense may not fully comply with this requirement by February 17th.

We are, therefore, concerned with Assistant Secretary of State Winston Lord's announcement on January 12, 1995 that U.S. and SRV diplomatic liaison offices in Hanoi and Washington would be opened "within a few weeks." While we are aware that an agreement on this matter was initialed in December between Vietnam and the United States, we trust that you will not allow this agreement to take effect without first fulfilling the straightforward requirement contained in Section 1034 of Public Law 103-337. We wish to emphasize that we would be extremely concerned if any level of diplomatic relations was established with Vietnam before the 104th Congress has had the opportunity to review the information required under Section 1034.

During the Congressional debate on lifting the trade embargo against Vietnam last year, there was sharp division on whether Vietnamese officials are being fully forthcoming on the POW/MIA issue (a 14 vote difference in the House on the Smith amendment, and a 16 vote difference in the Senate on the Dole/Smith amendment). Since that time, we understand that Vietnamese

officials have refused, as recently as last October, to further discuss U.S. concerns about relevant documents from Russian archives. We further understand that they have continued to withhold key politburo and Ministry of Defense records in Hanoi.

Finally, we have been made aware that a detailed account of POW/MIA information being withheld by Vietnamese officials was recently disclosed to the press by a former DIA contract agent. Given these revelations, we believe most members of the new 104th Congress would be concerned about the level of cooperation we are receiving from Vietnamese officials. We also believe that these disclosures, and the apparent Vietnamese unwillingness to provide key information, underscores the need for your Administration to fully comply with Section 1034 of Public Law 103-337 before proceeding on the diplomatic front with Vietnam.

We thank you for your assistance on this matter.

Sincerely,

BOB SMITH, USS
Member, Committee on
Armed Services

JESSE HELMS, USS
Chairman, Committee on
Foreign Relations

STROM THURMOND, USS
Chairman, Committee on
Armed Services

ARLEN SPECTER, USS
Chairman, Select Committee
on Intelligence

CRAIG THOMAS, USS
Chairman, Subcommittee on
East Asian and Pacific Affairs

OLYMPIA J. SNOWE, USS
Chairman, Subcommittee on
International Operations

BENJAMIN A. GILMAN, MC
Chairman, Committee on
International Relations

DOUG BEREUTER, MC
Chairman, International
Relations Subcommittee on
Asia and the Pacific

ROBERT K. DORNAN
Chairman, National Security
Subcommittee on Military Personnel

United States Senate

WASHINGTON, DC 20510-2102

January 26, 1995

Dear Mr. President:

Last May the United States and Vietnam announced that liaison offices would be opened in Washington and Hanoi. We understand that these offices will be opened at the end of this week, with the signing in Hanoi of agreements on diplomatic properties, claims and frozen assets.

Since 1991 the United States and Vietnam have made much progress on the POW/MIA issue. Your decision in February 1994 to lift the trade embargo contributed to even greater cooperation on this issue. We believe that the opening of liaison offices will bring us closer to a resolution not only of the POW/MIA issue but also to other issues including human rights that stand in the way of normal relations between the United States and Vietnam.

Sincerely,

John McCain

John F. Kerry

Christopher Bond

Paul Simon

Chuck Robb

Alan K. Simpson

Mark O. Hatfield

Frank H. Murkowski

J. Bennett Johnston

J. Robert Kerrey

The President
The White House

P.O.Box 3-2977
Fairbanks, Alaska 99703
26 February, 1995

The Honorable Jeannette James
Alaska State Legislature
State Capitol
Juneau, Alaska 99802-1182

Dear Mrs. James:

Thank you for sponsoring House Joint Resolution No. 9, in support of our Prisoners of War and Missing in Action from the war in Southeast Asia. So far, twelve states have already passed similar resolutions, and sixteen others have one under consideration.

As you know, the Interior Alaska Veterans Committee, with representatives from all the major veterans service organizations, is following the progress of HJR 9 with special interest, and several members have already communicated their support to the Legislature. The Committee will be tracking the Resolution through the House and Senate, and will keep advised of hearings through the Legislative Information Office. The records on our POW/MIA's must be opened, and the government's policy of abandonment for convenience must be changed.

There are several excellent references on POW/MIA's, particularly

"The Men We Left Behind", by Mark Sauter & Jim Sanders, National Press Books, 1993

"Moscow Bound", by John M.G.Brown (a former Alaskan), Veteran Press, 1993

"An Examination of U.S. Policy Toward POW/MIAs", by U.S. Senate Committee on Foreign Relations, Minority Staff, 1991

There are also several documentaries on video cassette; probably the best summary of the issue is "Americans Abandoned", by American Defense Institute, 1992. There should be a copy of it in Representative Therriault's office (from 1994 - HJR 51), or I could send you mine. It runs about 58 minutes, and is tentatively scheduled to air next month on KJNP.

In further support of HJR 9, copies of selected pages from the listed books are attached:

Moscow Bound
Pages 8 - 9: Origin of U.S. policy on American prisoners/hostages.

Pages 900-901: Excerpts from the "1205 Report".

The Men We Left Behind

Pages 326 - 327: Confirmation of Lt. Gen. Kwang's "1205 Report" and related North Vietnamese policy considerations.

Pages 328 - 329: POW files shredded that had been requested by U.S. Senate.

Page 330 : The crux of the issue, and hope.

Please let me know if you would like any additional information, and how we in the Interior can help expedite approval of HJR 9.

Thank you.

Sincerely,

Gary C. Tyndall

Gary C. Tyndall

Attachments: As stated

INTRODUCTION

"YE SHALL KNOW THE TRUTH
AND THE TRUTH WILL MAKE YOU FREE"

(Motto cut in stone at CIA Headquarters, Langley, Virginia)

It has long remained official US policy to refuse public payment of ransom to Communist nations holding American prisoners of war (POWs) or civilians as hostages. This policy evolved from Soviet conduct with U.S. POWs and missing in action (MIAs) of the 1918-1920 American Intervention in Russia, the Allied response to Lenin's withdrawal of Russia from WW I, after the 1917 Bolshevik Revolution. Subsequent Soviet actions in retaining thousands of missing U.S. POWs of WW II, Korea and Vietnam for intelligence purposes, and as forced- labor were dictated by Russian national interests in what became a death-struggle between Soviet Communism and western democratic Capitalism, led by the United States. This example was followed by subsequent Soviet-surrogate regimes in eastern Europe, Communist China, North Korea, Cuba, Vietnam and Laos. The announced ending of the Cold War may ultimately reveal the fate of many of these lost American POWs and could result in the return of survivors to the United States.

During the Revolutionary War of 1775 to 1783, American prisoners of war had been held in appalling conditions on British prison ships or in dungeons and many American POWs, denied the most basic necessities and care, died in British captivity. This contributed to the great bitterness felt in the newly-free nation towards British-American loyalists, who were subsequently mistreated and expelled from their communities in the 13 former colonies. During the American Civil War, from 1861-1865, both Union and Confederate prisoners of war were mistreated, starved and even murdered by their guards, but at the end of that war the survivors were released. As the victors, U.S. authorities subsequently conducted investigations of Confederate war crimes against Union prisoners of war, and carried out reprisal executions.

Official American policy toward military and civilian hostages seized by a foreign state, for use in diplomatic or monetary blackmail, may be said to descend from U.S. reaction to the Barbary pirates of North Africa illegally seizing American prisoners and boasting of it. At first, from 1795 to 1801, large amounts of money were paid by the United States for protection against the pirates and as ransom, but under President Thomas Jefferson, the U.S. went to

Origins of U.S. policy on prisoners

war against Tripoli from 1801 to 1805, and subsequently against Algeria. After this, the seizing of American sailors on the high seas by Great Britain led to the War of 1812. These attitudes reflected more than two centuries of American experience at frontier Indian wars, conducted by descendents of European immigrants on the margins a vast continent, in which the often rude and unlettered settlers were actually outnumbered by the indigenous inhabitants and sometimes, as at the time of the 1675-1678 Narragansett, or King Phillip's War, were in danger of being driven into the sea by the natives. In one Indian war after another that followed, from the 1600's to the late 1800's, known American captives had been ransomed whenever possible, or tracked down and liberated by the regular army or volunteer citizen- scouts, if they could be found.

Subsequent experiences in America's minor foreign wars of the late 19th century, in Cuba and the Philippines, did not call for implementation of a different policy. The natural American reaction to public knowledge of U.S. prisoners being held hostage was expressed by President Theodore Roosevelt during the turn of the century era when he quoted a West African proverb: "Speak softly and carry a big stick." Roosevelt believed in using the threat of American military force to carry out U.S. foreign policies. In it's youth and vigor as a new nation that had achieved world power status by the early 20th century, America had bypassed some hard-learned lessons which had resulted in the subtleties of European and Asian diplomacy regarding prisoners of war and hostages. These experiences extended back over two millenniums, from the time of the Persians, Greeks, Romans and Muslims, and Europe had since gone through other evolutions in the treatment of war prisoners from the Dark and Middle ages, through the Renaissance.

The Russian Revolution and subsequent Bolshevik triumph in the civil war resulted in a return to a bygone age in which all war prisoners became hostages, to be secretly held for future use. Since the time of Czar Ivan the Terrible, who created the Oprichnina political police in 1565, state- imposed terror had been a fact of life in Russia. Carrying a dog's head and broom, representing their authority to sweep away traitors, thousands of these agents, dressed in black and riding black horses, roamed Russia in the 1570's, administering death sentences under authority of the Czar. Secret confinement, torture and execution of suspects became commonplace in Russia. This traditional oppression of the landed peasants and city dwellers was continued by Czar Peter the Great and his Romanov successors up until the time of Nicholas II. Under the Communists after 1918, the state terror apparatus was enormously expanded to levels of persecution and mass-death never equaled, before or since, in human history. The American prisoners of war, from the fabled and far-away continent of emigrant dreams,

thousands of files about American POWs and MIAs, which contained numerous refugee live-sighting reports of Americans in captivity long after the war, and years of hand-written notes and comments from investigators. The mass-shredding was conducted by Brigadier General Thomas Needham, commander of "Joint Task Force Full Accounting", a Navy Commander identified as Dale Hayes and an 'unidentified CIA officer. The destruction of these documents made the task of analyzing which of the POWs and MIAs may have survived in captivity for years, more difficult, and appeared to be an effort to destroy critical evidence that could be used to prove criminal negligence on the part of DIA and JCRC analysts who had for decades been responsible for resolving the fate of over 2,500 missing American servicemen. It is noteworthy that the United States Ambassador to Thailand at this time was David Lambertson, who as a Deputy Assistant Secretary of State, six years before, had denied to the author in a meeting at the Department of State, that any evidence existed concerning American POWs who remained in Communist control after Operation Homecoming in 1973, or that any POW/MIAs had survived in captivity years after the war's end.

On April 9th, the Russian member of the US-Russian Commission on POWs, General Volkogonov, claimed that there was no evidence of any American prisoners of war alive in Russia, but Ambassador Malcolm Toon said that some Russians were hampering efforts to account for missing U.S. soldiers, and reported that he had given the Russians details on the shootdowns of ten U.S. aircraft. He was quoted by the press as saying: "We cannot understand why the Russian government cannot give definitive information about the shootdowns, or whether there were any survivors.[9] The Clinton Administration announced on the same day that General John Vessey would travel to Hanoi again on a fact-finding mission, and that the President would make no decision on relaxing U.S. pressure on Vietnam until he felt convinced that Hanoi was actually cooperating on resolving the fate of American MIAs. It was reported that the International Monetary Fund would decide in late April whether to resume lending to Vietnam, a move supported by France, Germany and Japan.[10] Meanwhile, American business interests, led by major oil companies, kept up pressure for normalization of relations with Vietnam's Communist government, irregardless of the fate of U.S. prisoners. At this point a major story on the missing Americans again brought the issue to national prominence.

The New York Times published a report on April 12th, revealing that a top-secret report on U.S. POWs, written by General Tran Van Quang, Deputy Chief of Staff of the North Vietnamese Army, on September 12, 1972 had been uncovered in the archives of the Soviet Communist party in Moscow, which stated that there were:

" 1,205 AMERICAN PRISONERS OF WAR LOCATED IN THE PRISONS OF NORTH VIETNAM- THIS IS A BIG NUMBER. OFFICIALLY, UNTIL NOW, WE PUBLISHED A LIST OF ONLY 368 PRISONERS OF WAR, THE REST WE HAVE NOT REVEALED. THE GOVERNMENT OF THE U.S.A KNOWS THIS WELL, BUT IT DOES NOT KNOW THE EXACT NUMBER OF PRISONERS OF WAR, AND CAN ONLY MAKE GUESSES BASED ON ITS LOSSES. THAT IS WHY WE ARE KEEPING THE NUMBER OF PRISONERS OF WAR SECRET, IN ACCORDANCE WITH THE POLITBURO'S INSTRUCTIONS." The U.S. POWs were held in 11 North Vietnamese prisons in the fall of 1972 before the Paris peace agreement was signed. Since more Americans were captured between September 1972 and February 1973 and a total of 591 American POWs were released, the figures indicated that some 700 American POWs were secretly withheld by Hanoi after Operation Homecoming in 1973. (This number closely conforms to the author's estimates for two U.S. Senate investigations of 1990-1993, based on the research for this book. It would not include those Americans already transported to the USSR (or China) from 1965- September 1972, and would not necessarily include all those held in Laos, South Vietnam or Cambodia at that time.)

Consisting of both a Russian translation of Tran Van Quang's report marked "top secret" in Russian, and a summary of it by the Soviet Army Intelligence, the document was found in February 1993 by Stephen J. Morris, an Australian researcher for the Harvard Center for International Affairs and the Russian Research Center at Harvard University, who stated he had first showed it to senior White House officials of the Clinton Administration in February. According to the New York Times, copies of it were subsequently circulated among U.S. Government officials, and on the first page of the summary are handwritten instructions for a 'brief note...on the prisoners of war,' to be sent to the Soviet Politburo. The newspaper reported that General Quang said in the report that the American POWs could only be freed as part of an overall peace settlement, and they could be "used as leverage to obtain compensation for the devastation caused by the war." Members of the U.S.-Russian Commission on POWs said that the document was authentic and some experts were quoted by the newspaper as calling it a "smoking gun." The Russian newspaper Izvestia had reported on April 10th that the document on the U.S. POWs and other recently declassified files had been a topic of a closed meeting of the Commission.

The New York Times said that a report on the Soviet document was provided to President Clinton just before the Vancouver summit with Boris Yeltsin, and quoted an unnamed Clinton Administration official saying of the report of the document, 'We are pursuing it very seriously but are not in a position to evaluate it." The spokesman said that the researcher had informed the Government of the discovery but 'he would not give us the document,' that former Ambassador Malcolm Toon had been requested to follow up on the

And Le Dinh had told the DIA in early 1980 that about 700 Americans continued to be held hostage after Homecoming. DIA admitted Le Dinh had "access to PW/MIA information within this ministry [North Vietnam's Ministry of Defense]." DIA also knew the report out of the Soviet archive closely correlated to Le Dinh's debriefing.

The Le Dinh and Russian reports agree on the number and location of Americans not repatriated. The Russian report indicates more than 600 extra POWs were being held on September 15, 1972. Counting those Americans lost after that date, the number matches the Le Dinh figure of 'about 700' U.S. prisoners captured but not repatriated at the end of the war. In addition, both Le Dinh and the Russian document indicate there are more Vietnamese POW camps than known by the U.S. Le Dinh said there were 12 Vietnamese POW camps by the end of the war, with the Russian document putting the number at 11.

Most importantly, Le Dinh and the Russian document agreed on the motives behind Hanoi's POW policy. One Pentagon POW expert told the authors that the Soviet report alone cannot prove the number of Americans retained by Hanoi. But it does appear to be conclusive evidence of Hanoi's policy of secretly retaining U.S. POWs. This is the critical message of the Soviet document.

Le Dinh and the Russian report agree on the following policy issues:

- The categorization of American POWs. Both the Russian and Le Dinh reports say Americans were placed into various categories, with one of them being "progressives," or those who accepted communism and/or Vietnam's views on the war. Both sources imply the Vietnamese had a plan to withhold POWs from wealthy families. Le Dinh called them "the sons of rich families," and the Russian document referred to them as the "products of rich families."
- Both reports agree on the Vietnamese motive for retaining American POWs. The Russian document quotes the Vietnamese as saying they would hold U.S. POWs for political "concessions" and to obtain U.S. war reparations. According to the Russian report, the Vietnamese general wrote:

> "Nixon must compensate North Vietnam for the great damage inflicted on it by this destructive war."

- According to the Le Dinh report, he said "the SRV (Vietnam) retained a 'strategic asset' of over 700 American prisoners that could be used to force the U.S. to pay reparations."

A close reading of the general's documents indicates that two North Vietnamese Politburo decisions made in March and April 1972 caused dissention within the Communist Party. "Both of these [Politburo] decisions touch on the questions of exploiting these American POWs captured in time of war. This disturbs the public opinion of the whole world and the USA. There are various thoughts on the question of American POWs . . . but even among us there is a group of comrades whose opinions differ from the opinion of the Politburo."

The Politburo had decided to use American POWs as a counterbalance to the vastly superior U.S. military and industrial power—in other words, as hostages to manipulate the Nixon Administration. This decision was apparently questioned or actively opposed by elements within Hanoi's ruling elite who were strong enough to make the Politburo defend its decision.

The general's report was a clear message to the dissenters to get in line with the Politburo decision:

> . . . The question of American POWs has great significance for the resolution of the South Vietnamese problem. . . . We intend to resolve the question of American POWs in the following manner: 1. The government of the USA must demonstrate concessions, in other words, a cease fire and the removal [of] Nguyen Van Thieu, and then both sides can begin discussing the question of repatriating POWs to the Nixon government. 2. . . . we can free some more pilots from the number who are progressively inclined. Nixon should not hinder the return of these pilots to their homeland and not undertake any disciplinary measures toward them. 3. Nixon must compensate North Vietnam for the great damage inflicted on it by this destructive war. . . . If we take a path of concession toward Americans and liberate POWs we would be at a great loss.

Lieutenant General Tran Van Quang in this report accurately outlined the strategy that was followed by the North Vietnamese. Within a week of the report's appearance, three American pilots were released, and the North Vietnamese did warn the U.S. not to take "any disciplinary measures toward them." And they did demand reparations—as we have shown, it had in fact been an essential part of their negotiating posture since 1968.

But North Vietnam would concede their number one point at the bargaining table that same month—the removal of South Vietnam's President Thieu. This made even more important the use of American POW hostages as leverage in the final negotiating stages and the implementation of the Paris Agreement.

The United States was forced to place $3 25 billion on the table in advance of any POW release just to get the repatriations started—but the North Vietnamese held back the majority of the POWs to ensure the actual delivery of promised "reconstruction" aid. As we have seen, however, the money wasn't delivered and the hostages were not returned.

As of this writing, there is still not enough evidence in to make a final determination about the accuracy of the Soviet document. But one thing can be said for sure: the DIA is not telling the truth when it says the report's numbers are totally inconsistent with the facts.

In reality, the reports give numbers that closely match the number of POW/MIAs that many Pentagon experts believed Hanoi possessed during the war.

A former Director of the DIA, retired Lieutenant General Eugene F. Tighe, recently said what the DIA already knew: "We had a list [of POWs in 1973] that was really significantly larger than those who came back . . . we had been expecting a lot more people. It was terribly shocking. Finally, we are getting proof of what we said—the numbers [in the Soviet report] don't surprise me at all."

The Shredding Party

Perhaps it was just a coincidence. But soon after the DIA found out about the Soviet POW report, Pentagon POW/MIA officials quietly ran thousands of POW files though a refrigerator-sized shredder at the U.S. Embassy in Bangkok, the military later admitted. By the time the U.S. Ambassador to Thailand learned of the shredding, which took place during March 25 through 27, 1993, it was too late. The original files of the Joint Casualty Resolution Center, the agency which looked for U.S. POWs during the war, were gone.

Major General Thomas Needham, Commander of Hawaii's Joint Task Force Full Accounting, reportedly claimed the shredding was simply a "consolidation" of records. But POW experts said otherwise.

While copies of the shredded reports themselves existed elsewhere, the hand-written notes and additions to the files in Thailand were irreplaceable. "They were basically informational notes and memoranda—the meat of actual investigations," retired Major George Petrie was quoted as saying. The major, a former POW investigator, said the DoD may have destroyed the original files to "simplify case files as much as possible, declare them [the POWs] dead and move on."[13]

Senator Bob Smith complained about the shredding, which apparently involved files the Senate POW committee had requested but never received. So the Pentagon was forced to initiate an "investigation," conducted by none other than the office of the Commander-in-Chief, Pacific Command, an office closely tied to the fortunes of Joint Task Force Full Accounting.

While POW activists hoped for a fair investigation, it didn't really matter. Documents requested by the Senate, and by the authors of this book, and by many POW family members—documents that hundreds of American citizens would gladly have removed from the government's hands if there had been a need to "consolidate" them for reasons of saving space—had been shredded. And there was really nothing anyone could do about it.

issue. And bringing the boys home from Vietnam might help him deal with the fact that he never went to war there.

Clinton certainly claims commitment to the issue. In a prepared statement released April 2, 1993 he said:

> I truly believe that the power of the Presidency could resolve this issue. As the Chief Executive Officer of all federal agencies, the President should not just state that the resolution of this issue is a "national priority"; he should make it the national priority, and direct that all agencies to cooperate and resolve it [sic]. Before I would normalize relations or provide assistance to any of the countries [sic] involved, they would be required to open their files and actively assist in solving this issue. I firmly believe that America should never leave its warriors on the battlefield. This is not a political issue; it is a moral test of those values and traits that made America great.

But there are certainly plenty of people in the bureaucracy urging the President to stick with the status quo. There are certainly many reasons to avoid pushing the POW issue. And making the return of America's POWs truly the "highest national priority" wouldn't be easy.

"See, that's not the issue," Perot said. "The issue is they're our men, they went into combat for us, we left them, we owe it to them to bring them home. It won't look pretty back here, but we can build a consensus here that it's the right thing to do."[2]

Perhaps. But many who know the POW issue best have lost faith that the U.S. government will ever willingly do what is needed to bring the prisoners home.

With no faith left in their government, many POW/MIA family members and activists have belief only in a justice far beyond the petty political concerns of Washington, D.C.

They place their faith in a promise much stronger than the long-abandoned pledges of successive Presidents. They rely on the words of *Jeremiah 31: 16-17:*

> Thus saith the Lord; Refrain thy voice from weeping, and thine eyes from tears; for thy work shall be rewarded, saith the Lord: and they shall come again from the land of the enemy; and there is hope in thine end, saith the Lord, that thy children shall come again to their own border.

Endnotes

Chapter 1

1) Nov. 23, 1979, memo for the Chairman, JCS, Library of Congress POW/MIA Microform reel no. 55. Hereafter referred to as "reel."
2) *Ibid.*
3) Garwood deposition to the Senate Select Committee on POW/MIA Affairs. Hereafter referred to as "Garwood deposition." All information concerning Garwood is from the deposition unless otherwise noted.
4) Pentagon's "Uncorrelated Information Relating to Missing Americans in Southeast Asia." Volume 15, page 434. Hereafter referred to only by volume, (vol.), and page, (p.), numbers.
5) Vol. 15, p. 434.
6) Vol. 7, pp. 311-313.
7) June 30, 1975, speech as quoted in *National Review*, Aug. 21, 1981.
8) Jan. 1969 memo RM-5729-1-ARPA, "Prisoners of War in Indochina."
9) Jan. 9, 1990, DIA Memo, "Possible American Stay-Behinds in Vietnam."
10) *New York Times*, March 25, 1993, p. A-4.
11) Oct. 25, 1988, Pentagon intelligence report IIR 6 024 0006 89.

Chapter 2

1) 15 April, 1976 State Department telegram, "Subject: Information on French POWs."
2) See 20 June, 8 April 1976 State telegram "Subject: Repatriation of French Remains from North Vietnam and Information on French POWs." Also 4 March 1976 State Department telegram "Subject: Repatriation of French Remains from North Vietnam."
3) Jan. 1969 Rand memo RM-5729-1-ARPA, "Prisoners of War in Indochina" by Anita Lauve Nutt, and statement of Anita Lauve to House Select Committee on Missing Persons in S.E.A. 7 April 1976 as reprinted in "Americans in Southeast Asia: The POW/MIA Issue" William Hoondika, New World Books, NY 1986.
4) *Newsweek*, Jan. 4, 1965, p. 24.
5) May 19, 1976 Department of State telegram, "Subject: More Information on French POW/MIA."
6) Vol. 10, p. 250.
7) 5 June 1971 State Department telegram, "Subject: Repatriation of French PW in 1954."
8) 24 February 1972 DIA memo, "Subject: Debrief of Moroccan Personnel Recently Returned from North Vietnam."
9) 25 March 1981 State Department telegram, "Subject: POW/MIA Affairs/Former French Servicemen." 8 April 1981 State Department telegram "Subject: POW/MIA Affairs: Former French Servicemen."
10) From Isle of Tracy Diary.
11) 22 April 1982 State Dept. telegram "Subject: POW/MIA Affairs: Report of Possible Americans in Vietnam."

Chapter 3

1) "Treatment and Indoctrination of U.S. Prisoners Held by the Viet Minh." November 1954. USAF Technical Memorandum OERL-TM-54-1.
2) Undated INSCOM record, from FOIA.
3) June 17 1955 Pentagon record from the Defense Advisory Committee on Prisoners of War. "Recovery of Unrepatriated Prisoners of War."
4) *Ibid.*
5) Gulterson remembers the title "On Limited War." In Kissinger's 1957 book *Nuclear Weapons and Foreign Policy*, Chapter 5 is entitled, "What Price Difference? The Problems of Limited War." This appears to be the declassified version of the paper Gulterson remembers.
6) Henry Kissinger, *Nuclear Weapons and Foreign Policy* (New York, 1957). Southeast Asia, Indochina and South Vietnam were all mentioned as potential points of conflict.

Chapter 4

1) Vol. 7, p. 361.
2) As quoted by Bobby Garwood.
3) As quoted by a Top Secret Soviet document (Dec. 1, 1972, Top Secret Report for the Central Committee of the Communist Party of the Soviet Union. Hereafter the "Dec. 1, 1972, Soviet Report.")
4) *Ibid.*
5) *Ibid.*
6) Uncorrelated Info. Vol. 7, page 333.
7) IIR 317/09165-78.

Chapter 5

1) June 24-25 1992 hearings of the Senate Select Committee on POW/MIA Affairs.

HJR

30

STATE OF ALASKA

1995 LEGISLATIVE SESSION

NO. 1

Bill Version: CSSB 30

(H) Publish Date: 3/22/95

FISCAL NOTE

REQUEST:

Revision Date: _____ Affected Agency: _____

Title: Amend US Constitution to limit Federal Courts — BRU: _____

Sponsor: Representative Vezey — Components: _____

Requestor: World Trade St/Fed Rel. _____

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 2000	FY 2001
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	-0-					
CAPITAL	-0-					
REVENUE	-0-					

FUNDING: (THOUSANDS OF DOLLARS)

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

POSITIONS:

Full-Time	-0-					
Part-Time						
Temporary						

Estimated FY 95 Impact: -0-

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

Prepared By: World Trade and State/Federal Relations Date: 3/20/95

Division: _____ Phone: _____

Approved By: Dr. Tamara L Barnes

Agency: Director, World Trade/Fed. Relations Date: 3/20/95

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The Madison Forum

17 East Glenwood Lane - St. Louis, Missouri 63122

February 8, 1994

Mandates! Directives! That's all we seem to hear from our federal brethren in Washington, D.C. States have recognized the burden these mandates and directives have created at the state level. Unlike the feds the states can't print money to cover their debts. Patrick Henry put it this way, "(Y)our rich, smug, fine, fat, federal officers - the number of collectors of taxes and excises - will outnumber anything from the states. Who can cope with the excise man and the tax man?"

But when an order to levy taxes is mandated by a federal court, how are you to respond to such an order? How do states begin to question or even reject the orders of the federal courts when even the United States Supreme Court upholds as constitutional a lower federal court order to levy a direct tax increase upon the citizens of a city? How do you respond to what we believe is a violation of not only the Constitution of that state, but as we also believe the Constitution of the United States?

With this in mind Missouri State Senator Walt Mueller and I visited a federal judge in his office, and in the capacity of an elected state official and as a private citizen posed that very question. We were notified that such action was part of an ongoing case and as such, he would not discuss it. We were then directed to leave. This action by the judge was not unexpected, but it was felt that his orders needed to be questioned. We felt it was a legitimate question to pose inasmuch as the Constitution of the United States is quite clear in that the judiciary has never been granted the power to tax.

When a federal judge claims that he cannot discuss judicial directives which violate the constitution of a state with a member of the legislative branch of government, something is drastically wrong. So what does one do when the judiciary mandates direct taxes and Congress refuses to challenge the federal court's usurpation of Article I powers as they pertain to taxation? Our answer is to rein in the power that the judiciary has usurped by asking other states to join our call for an amendment to the Constitution that will put a stop to this judicial grab for power. Action must be taken now. We need your help and active support of this proposed amendment.

Sincerely,

John R. Stoeffler
Chairman, The Madison Forum

The Madison Forum

17 East Glenwood Lane - St. Louis, Missouri 63122

March 1995

As each of you consider our request to join the growing number of states which are calling upon Congress to submit to the states an amendment to the United States Constitution that would limit the power of the federal judiciary to levy or increase taxes, we ask you to consider the implications of federal court intervention in state budgets should a balanced budget amendment become a reality. A number of individuals have.

Former United States Senator John C. Danforth stated in February of 1994, "A balanced-budget amendment would be a disaster if federal courts were able to increase taxes or cut spending."

United States Senator Paul Simon stated these same concerns as early as 1992 when he noted that the Supreme Court could issue a court order requiring Congress to bring the budget into balance. "I don't think that will happen in the immediate future. I'm not sure but that 30 or 40 years from now the court might not be in a position to order Congress to comply." Suppose the courts themselves did in fact become the agents of enforcement.

Judge Robert H. Bork did not feel that such an initiative is impossible. Judge Bork cited Missouri vs. Jenkins which affirmed the power of the court to oversee fiscal policy calling such actions "a dismal prospect."

United States Senator Robert Byrd shared his concern over the potential for federal court mischief in determining fiscal policy. "It would . . .bring the judicial branch into the equation, and to that extent our representative democracy would become less of a representative democracy."

Syndicated columnist James J. Kilpatrick stated his concern over the federal courts propensity to usurp Congress' power of the purse. "In recent years federal judges have not hesitated to order states and localities to raise taxes in order to carry out judicial decrees. Judges have turned themselves into school superintendents, prison wardens and state legislatures. Who or what would restrain them in the matter of declaring ways to achieve a balanced budget? My own distrust is massive."

Former United States Senator Tom Eagleton stated in a commentary which appeared in the St. Louis Post Dispatch on February 2, 1994 "The proposed (balanced budget amendment) means either too much or too little -- take your pick. Only the

area of mandated taxation which we believe will inevitably become a widespread reality.

Let us at the state level show the leadership needed by calling upon the Congress to submit to the states for consideration an amendment that would limit the power of the federal courts from levying or increasing taxes. It is the right thing to do. The time to act is now!

Sincerely,

Walter H. Mueller, Jr.
Missouri State Senator
REPUBLICAN

Bill Skaggs
Missouri State Representative
DEMOCRAT

Enclosures

The Case For A Constitutional Amendment To Limit The Power To Tax Which Has Been Assumed By The Federal Courts

By John R. Stoeffler

Alexander Bickel in his book *The Least Dangerous Branch* makes the following observation regarding those who embrace what he calls the utility of benevolent illusions and the justification for creating them. Such individuals, he wrote, believe that, " The people of a democracy must be mercifully soothed when they find themselves ruled, to whatever extent, by the nine (justices) of the Supreme Court. (They) know what the people imagine. (The people) imagine that they rule themselves, and they imagine Marbury v. Madison. To the extent that this is not so, some explanation perhaps may be found or even made up. It would be no sin. It has been done before.

"But", Mr. Bickel notes, "this is very dangerous. What is even more ominous, (is) the illusion (thus created) may engulf its maker and breed, as it has occasionally done, (a) free-ranging "activist" government by the judiciary. Such government is incompatible on principle with democratic institutions." *1.*

The United States Supreme Court and other federal courts do in fact pose a threat to representative government. All too often their rulings and decrees are attempts at judicial illusion; and all too often they succeed. Rulings and decrees from the courts today seem more often to reflect the social, economic and moral views of what the editorial board of the *St. Louis Post Dispatch* and the American Civil Liberties Union believe America should be than the unequivocal and uncompromising guidelines for a democratic republic which were clearly spelled out by the founding fathers in the United States Constitution. Such rulings and decrees only enhance the political power of the courts while diminishing those of the people through their duly elected representatives in the legislative branch of government.

As I see it there are three sources of power which control government; these are the power to legislate, the power of the sword and the

power of the purse. These are **political powers.** In any democratically elected government these political powers must remain in the hands of that branch closest to the people, the legislative branch of government, if representative government is to survive.

In addressing the Missouri General Assembly in 1982 Robert T. Donnelly, then Chief Justice stated, "I profoundly respect the United States Supreme Court as an institution. However, even the United States Supreme Court should not be permitted to wield power it was never given. The greed for power has surfaced from time-to-time in all civilizations. The uniqueness of our present concern is that the disease has cropped out among the judges, where one would least expect it." *2.* This power grab, if left unchallenged, can only lead to a substantial lessening of those ties which bind our republican form of government, and the potential for the establishment of a judicial oligarchy which, despite any assurances to the contrary, will be anything but benign.

I stated earlier that there are three sources of **political** power which I believe control government; and while the subject of my talk deals with the power to tax which the federal courts have seized and what action needs to be done to address it, I feel it is also necessary to discuss ways in which the judiciary has reached into those two other areas of legislative power to support my contention that a pattern of judicial activism and usurpation is not only alive, but a real and growing threat to representative government.

First let me discuss the usurpation of legislative power by the federal judiciary.

In 1717 Bishop Hoadly stated, "(W)hoever hath an absolute authority to interpret any written or spoken laws it is he who is truly the lawgiver, to all intents and purposes, and not the person who first wrote them." *3.* Today, the federal judiciary has taken upon itself the power to legislate by interpretation. Justice Holmes noted this in his 1930 dissent in *Baldwin v. Missouri*, he stated, "I have not yet adequately expressed the more than anxiety that I feel at the ever increasing scope given to the Fourteenth Amendment in cutting down what I believe to be the constitutional rights of the States...I cannot believe that the Amendment was intended to give us carte blanche to embody our economic and moral beliefs in its prohibitions." *4.* He could have been echoing the thoughts of Alexander Hamilton in *Federalist 78* when he wrote, "It can be of no weight to say that the courts, on the pretense of repugnancy, may substitute their own pleasure to the constitutional intent of the legislature." Courts today, however, make no pretense concerning their

[illegible] economic views and continue to claim the sole constitutional right to interpret the constitution in order to achieve such views and objectives. Alexander Bickel's observations led him to write that the judiciary sees itself as having an intellect and judgment superior to elected officials. Elected officials, he claimed, are viewed as, "(S)pokesmen for the expedient short-run solutions while judges (have) a greater capacity to deal with principles of long run importance. Courts," he continued, "have certain capacities for dealing with matters of principle that legislatures and executives do not possess. Judges have, or should have, the leisure, the training and the insulation to follow the ways of the scholar in pursuing the ends of government." *5.* To support their claim to a constitutional right to make law they refer back to John Marshall's often cited opinion in the case of *Marbury v. Madison*, however they neglect the fact that by John Marshall's own admission his "assertions of judicial supremacy were mere *orbiter dicta*, i.e. private expressions of opinion that did not form a part of the decision, the *ratio descidendi*, of the case." *6.* More recently the United States Supreme Court, in the 1958 case of *Cooper v. Aaron*, declared its decisions to be, "(T)he supreme law of the land...and of binding effect upon (all) the States." *7.* Such self-serving declarations bring to mind these words of Abraham Lincoln from his first inaugural address, "If the policy of the government upon vital questions affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court...the people will have ceased to be their own ruler, having to that extent practically resigned their government into the hands of that eminent tribunal." *8.*

"The Constitution", writes Joseph Sobran, " was meant to assure us that every act of the federal government would be clearly traceable to a general heading: coining money, declaring war, providing postal service and a few other broad yet well-defined powers. It didn't leave much room for discretionary authority." *9.* Today, however, the courts make law by judicial decree. Said Benjamin Cardozo in his book, *The Nature of The Judicial Process*, "I take judge made law as one of the existing realities of life." *10.* Judicial opinions then become the law of the land with no legislative input or stamp of approval from those who should be the guardians of our republic...the Congress of The United States. Shouldn't we expect the Congress to step in and invoke their power to reign in the federal judiciary's appellate powers as spelled out under Article III? I think we should. But, based on the record, if we plan on counting on those procrastinating and pontificating Pontious Pilates of politics to stand up for us, we had better

think again. Consider this observation by Federal Judge Arthur Stanley, Jr., "I've been called on to do things that I felt properly should have fallen within the legislative field. I have a sneaking impression that Congress deliberately creates situations to avoid making decisions itself." *11.*

At this point let me suggest to those who may be thinking that the solution to Congress' inaction is to elect a particular brand of politician or party to office. I wish it were that simple. Sure, we can change parties in the White House or in the United States Congress but political victories are meaningless if an activist Court will nullify any law it deems to be "unconstitutional" with arguments which, however ingenious, have no relation to the Constitution.

To many, the most blatant example of ongoing legislative activism by the federal judiciary is the ever increasing use by the courts of the Fourteenth Amendment to excise the Bill of Rights. It was the 1925 case of *Gitlow v. The People Of New York* which, for many, stands as the landmark case in which the Supreme Court accomplished this. The Court stated, "(W)e...assume that freedom of speech and of the press--which are protected by the First Amendment from abridgment by Congress--are among the fundamental "liberties" protected by the Fourteenth Amendment". *12.* You may recall that the Bill of Rights as written was to apply to the federal government not the states. This is because the founding fathers had a deep and abiding fear of a strong central government. Although this may have been the founding fathers' intent it has not inhibited the federal judiciary today as they continue, through subjective rulings and decrees, to amend the United States Constitution whenever they deem it necessary to conform to their own economic or moral view of what they believe America should be.

One of the more notorious examples of judicial legislating is the Court's insistence that the First Amendment's wording grants to the court the authority to declare that the term "separation of church and state" is a constitutional imperative. Using this logic the Courts have removed any vestige of God from the classroom. You may agree with this or you may not, but it is not the right of any court to use the Fourteenth Amendment to temporarily set aside any part of the Bill of Rights in pursuit of a pragmatic philosophical objective. The founding fathers provided a method for change, it is called the amendment process, a part of the Constitution the judiciary ignores when it suits their purpose. And while all this is taking place, members of Congress, who have sworn to protect and defend the Constitution from all enemies foreign and domestic, sit upon their collective hands

claiming that it is not their place to challenge the courts, inasmuch as they view them as the ultimate arbiters of Constitutional intent. Oh, really? They would do well to harken to the words of President Andrew Jackson, one known to not mince words when it came to the Court. On July 10, 1832 he stated, "Each public officer who takes an oath to support the Constitution swears that he will support it as he understands it, and not as it is understood by others. The (judiciary's) authority must not (be) permitted to control the Congress or the Executive when acting in their legislative capacities, **but to have only such influence as the force of their reasoning may deserve."** *13.* (emphasis mine)

As to the power of the sword. Article I, Section 8 of the Constitution grants to Congress alone the authority, or power "to raise and support armies'; 'to provide and maintain a Navy'; and 'To make Rules for the Government and Regulation of the land and naval forces.'" In *Federalist 78* Alexander Hamilton addressed colonists' concerns over a strong federal judiciary. "The judiciary", he proclaimed, " has no influence over either the sword or the purse". That was the intent of the Founding Fathers, but today, whatever the courts want is a constitutional imperative while everything they choose to oppose is unconstitutional.

Recently the federal judiciary has begun to take upon itself the responsibility for our nation's defense readiness. While nowhere under Article III will one find such power granted to the courts this has not deterred them for even a millisecond. Having taken unto themselves the power to legislate by decree they have now begun a quest to acquire the political power of the sword to achieve subjective goals.

In an Associated Press report of Tuesday, October 19, 1993 it was noted that the Supreme Court agreed to decide whether states and communities hard hit by cuts in defense spending may challenge military base closings in court. The justices indicated that they would review a federal appeals court ruling which let local officials and union members try to overturn the government's decision to close the Philadelphia Naval Shipyard. Lawsuits, the report continued, over individual base closings would upset the process Congress adopted for making such **politically difficult decisions**. While the loss of jobs is a tragedy it is not the responsibility of the courts to interfere with political decisions made by Congress as they carry out the responsibilities delegated to them under Article I, Section 8 of the Constitution. The responsibility for our nation's defense rests with the legislative branch of government alone, and nowhere in the Constitution is

Congress authorized in any manner to delegate this power, in any form, to the judicial branch of government; yet Congress gives its blessing to the judiciary to act on its behalf by an implied silent assent.

Another example. The courts are challenging the right of the military to set rules and regulations by restricting homosexuals from serving in the armed forces of the United States.

On January 28, 1993 United States District Judge Terry J. Hatter, Jr., in the case of *Meinhold v. United States*, otherwise known as the "Gay Sailor's Case", held that the military's policy of excluding homosexuals was "unconstitutional" claiming that it violated equal protection laws, but his remarks indicated that it was he who was ignoring not only the Constitution but factual testimony as well. For example, in paragraph 5 of his opinion Judge Hatter stated, "In determining whether the policy is rationally related, the Court cannot merely defer to the "military judgment" as the rationale for the policy--the Court must consider the factual basis underlying the "military judgment." *14.* Still, when facts were presented Judge Hatter ignored them. Judge Hatter also chose to ignore a 1953 Supreme Court opinion in the case of *Orloff v. Willoughby*. In the Court's opinion the justices noted that, "(J)udges are not given the task of running the Army." *15.* Judge Hatter also chose to ignore the more recent 1983 Supreme Court case of *Chappel v Wallace*. Here the Supreme Court noted that, "The complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force are essentially professional military judgments, subject always to civilian control of the Legislative and Executive Branches." *16.* But that was then, and this is now. Congress should make it clear to the judiciary that they have trespassed into Article I powers and that they are directed to remove themselves forthwith. Unfortunately the silence from Capitol Hill is deafening.

In a letter to me Congressman Jim Talent, R-MO stated, "This decision, *Meinhold v United States*, is only one of many in a growing trend by the U.S. court system to extend its power well beyond the intentions of the framers of our Constitution." My question to Congressman Talent, and all members of a laissez faire Congress is, "You have recognized the challenge. You have articulated the challenge. When will you exercise your constitutional responsibilities and address this challenge?"

Today the Supreme Court of the United States and various inferior courts throughout the land have invaded another political area which belongs to the people alone. I refer to the principle espoused by the early colonists, to

wit, there shall be no taxation without representation. In a commentary I penned for the March 5, 1992 edition of the *St. Louis Post Dispatch*, entitled "When Judges Subvert The Constitution", I addressed the abuse of judicial power in the area of court ordered taxation. I pointed out then that, "The framers of the Constitution specifically limited the power to tax and vested such power to lay and collect taxes in the legislature...No exceptions to this view were ever expressed" *17.* or, I hasten to add, implied. Earlier I quoted these words of Bishop Hoadly, "(W)hoever hath an absolute authority to interpret any written or spoken laws it is he who is truly the lawgiver." I would suggest to you that whoever controls the purse strings ultimately controls power, the ability of a government to function and the direction it shall go. Alexander Hamilton put it another way in Federalist 79 when he stated, "In the general course of human nature, *a power over a man's subsistence amounts to a power over his will.*" Of the three sources of political power to which I have referred, the power of the purse is the most critical for the power to tax is not only the power to build, but in the wrong hands it can be an instrument of destruction, and the power of total control.

When did the federal judiciary take upon itself the power tax? In November 1982, Missouri voters approved a referendum (Proposition C) which directed local school officials to reduce their operating levies by an amount equal to fifty percent of the revenues local school districts would receive under a one-cent increase in the state sales tax. *18.* On July 5, 1983 the federal district court enjoined the voter approved roll back of real estate taxes. (*Liddell v Board of Educ.*, supra, 567F. Supp at 1056) and directed the Board of Education to use this money to fund the quality education programs necessary to restore the St. Louis schools to their AAA status. The U.S. Court of Appeals for the Eighth District sustained the district court's injunction of the roll back on what it termed "Equitable grounds". The court claimed that it had **"broad equitable powers to remedy...evils...(including) a narrowly defined power to order increases in local tax levies on real estate."** *19.* (emphasis mine) In a dissenting opinion Judge John R. Gibson noted that, "The Court need not and should not go this far. The taxing power of the states is primarily vested in their legislatures, deriving their authority from the people." *20.* Judge Bowman concurred with Judge Gibson's opinion and stated, "I join in Judge John R. Gibson's well-reasoned dissent....and the singular inappropriateness in our Constitutional system of a federal court's ordering state and local taxing authorities to impose specific tax increases." *21.* There are those who choose not to call this example a tax increase, but it

nothing less when citizens are denied monies they voted for themselves. I was taught in school that taxation without representation as practiced in the late 1700s was wrong. The question is, if it was wrong then why is it right today? And, if it is wrong, where are our elected representatives to right this wrong? There is more.

In September of 1987 Judge Russell G. Clark of the District Court entered an order approving extensive Kansas City Missouri School District capital improvement projects and a far-reaching magnet schools plan. In order to fund this order Judge Clark ordered a surtax of 1.5% added to Missouri's State Income Tax for all persons and entities receiving income for work done, services rendered, and income received from activities within the KCMSD and further ordered the tax levy for the KCMSD to be raised from $2.05 to $4.00 per $100 of assessed valuation. *22.* On appeal the Eighth Circuit reversed the "Judicially imposed income tax surcharge, holding that **the trial court invaded the province of the legislature in ordering this surcharge**,(emphasis mine) and that the order (was) beyond the power of the district court as outlined in Specified Supreme Court and Eighth Circuit precedent". *23.* On the other hand the Court of Appeals affirmed the District Court's $1.95 levy increase in effect until the end of the 1991 - 92 fiscal year,... then authorized the Kansas City School Board to obtain from the trial court each year ad infinitum, and without voter approval, a "reasonable" levy (tax) increase over and above the $1.95 levy (tax) to fund desegregation expenses ordered by the courts." *24.* In 1988 The United States Supreme Court upheld the lower federal court's order imposing a property tax increase claiming that the order did, "satisfy equitable and **constitutional principles** governing the District Court's power." *25.* (emphasis mine)

In a dissenting opinion, however, Supreme Court Justice Kennedy stated that, "The premise of the Court's analysis is infirm." He continued , "The question is whether a district court possesses a power to tax under federal law, either directly or **through delegation**." (emphasis mine) Justice Kennedy points out that, "The description of the judicial power nowhere includes the word 'tax' or anything that resembles it."; *26.* but this constitutional fact did not deter the Supreme Court from upholding the lower court's order or "authorization" to increase property taxes in Kansas City, Missouri.

Such power to allocate or reallocate funds by an unaccountable judiciary denies elected officials the necessary tools to properly and responsibly represent and provide for those who have freely elected them. An unelected and unaccountable judiciary, sitting miles from the people affected,

has no true interest in them, only subjective goals cloaked in robes of Trojan horse legalese. As Justice Kennedy notes in his dissenting opinion, "Perhaps it is good educational policy to provide a school district with the items included in the KCMSD capital improvement plan....(B)ut these items are part of legitimate **political** debate over educational and spending priorities, not the Constitution's conunand of racial equity." *27.*

This decision "authorizing" a tax increase represents "the first in which a lower federal court has in fact upheld taxation to fund a remedial decree". *28.* As Justice Kennedy noted, "...rules of taxation that override state political strictures not themselves subject to any constitutional infirmity raise serious question of federal authority." This decision, "a first" according to Justice Kennedy, sets a *stare decisis*, or precedent, which will at some time in the future affect all states, and the fact that Congress remains silent on this issue lends credibility to the claim by the courts that they do in fact have the power to tax. In his book, *The Tempting of America*, Judge Robert Bork spelled out his view of the responsibilities of the legislative vis-a-vis the judicial branch of government. He wrote, "Where the law stops, the legislator may move on to create more; but where the law stops, the judge must stop." *29.* Here let me add that the only change a court may make is to change the period at the end of the law to an exclamation point!

In a column of October 18, 1993 columnist Charley Reese made this observation about government, " (T)he men who signed the Declaration of Independence and who wrote the Constitution recognized that government--any government--was the potential enemy of individual freedom. They held high the value of governments with limited powers and limited jurisdiction, bound tightly by constitutions, which they viewed as **contracts between the people and their governments**. (emphasis mine) Today", he continues, "there is virtually zilch talk about freedom or principles of good government. It's all about social and economic issues." *30.* Again Justice Kennedy, "**This assertion of judicial power is one of the most sensitive of policy areas, that involving taxation, (it) begins a process that over time could threaten fundamental alteration of the form of government our *Constitution embodies." 31.*** (emphasis mine) In his farewell remarks to the new nation President George Washington warned, "Let there be no change by usurpation; for through this, in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed". James Madison also noted, "I believe there are more instances of the abridgment of freedom of the people by gradual and silent encroachments of those in power,

than by violent and sudden usurpations *32.* In a recent commentary columnist Thomas Sowell wrote, "History shows many great nations and civilizations declining and falling, but we may be the first to destroy ourselves from within.". *33.*

In 1982 Judge Robert T. Donnelly addressed the Missouri General Assembly. In his remarks he stated, "History tells us that the Framers (of the Constitution), in establishing a federal government, were influenced by the teachings of Locke, Rousseau, and others, and by the social concept they espoused. This concept would recognize a continuing right in the people to call their agents, even the United States Supreme Court, to account. It would assure that the people, and not an agency of government, will determine the direction of their lives. If, in fact, the United States Supreme Court is exercising powers without the consent of the governed - the people - then the rights it purports to secure in their name are counterfeit - its benevolence a fraud." *34.*

Again let me pose the question. Where were our elected officials while all this was taking place? Where are they today? Do they even have an opinion? In May of 1992 I traveled to Washington and visited with a number of members of Congress, among them Congressman Henry Hyde (R-IL). In his office I discussed my concern; his response, "While I'm sympathetic to your concern, on this issue frankly Congress just doesn't give a damn." Today we have a Congress that won't balance the budget, a Congress in which many members were unable or unwilling to balance their own personal checkbooks until their irresponsible and culpable behavior was exposed and a Congress which has shown a willingness to turn over to an un-elected judiciary the most sacred of trusts, the authority to tax. So who is to rein in the judiciary if not the legislative branch of government? The people? Think again!

Today the American people are under the illusion that they are being constitutionally governed, without even understanding what that means. Sure, they and members of Congress will tell you that they have read the Constitution, but without knowledge of prior intent they will never understand its true meaning. "Government", writes columnist Walter Williams, "is about coercion. Limiting government is the single most important instrument for guaranteeing liberty. We're working on the third generation which has had little in the way of education about what our Constitution means and why it was written. Thus, they fall easy prey to charlatans, quacks and hustlers." *35.*

In 1982 Judge Donnelly attempted to persuade the General Assembly to petition Congress to rein in the federal judiciary. His admonishment to do so fell upon deaf ears; but as time passes we all see things in a different light.

In 1993 the Missouri General Assembly passed a resolution calling upon Congress to submit to the states an amendment to the Constitution which would curb the taxing powers of the judiciary. It reads, "**Neither the Supreme Court nor any inferior court of the United States shall have the power to instruct or order a state or political subdivision thereof, or an official of such state or political subdivision, to levy or increase taxes.**" *36.* Credit for the success in passing this resolution is due primarily to the tireless and persistent efforts of State Senator Walt Mueller (R-Kirkwood) and those of Representative Bill Skaggs (D-Kansas City).

Gordon Crovitz, writing in *The Wall Street Journal* noted, "No legal principal carves illegitimate rulings in stone." *37.* If this be true, as I believe it to be, then no unconstitutional ruling, opinion or declaration can be wrapped in robes of declared constitutional legitimacy and become the law of the land unless the misinformed, uninformed or those who know better do not act to stop it. Inasmuch as Congress chooses to ignore the unconstitutional actions of the Court, I believe it is now up to the state legislatures to call the Supreme Court of The United States to account by calling for an amendment to the United States Constitution which will rein in the federal judiciary's usurpation of the taxing powers which belong to the people alone through their elected representatives.

In November of 1993 Senator Mueller asked me to chair a group we call The Madison Forum. In that capacity Senator Mueller, Representative Skaggs and I have contacted the majority and minority leaders in both the upper and lower chambers of every state legislature seeking support for passage in their state of a resolution identical to the one which was passed by the Missouri General Assembly in 1993. But the passing of this resolution in Missouri is just a first step on what will be a long and arduous journey. When the legislatures of thirty three additional states pass this resolution it will assume the form of a petition to Congress. Congress will then be forced to submit to the states for consideration an amendment to the United States Constitution which will curb the power to tax which the judiciary has assumed.

It has been said that Benjamin Franklin, coming out of the constitutional convention, was approached by a woman who asked him, "What kind of government have you given us?" His reply, "A Republic, madam, if you can keep it."

Senator Mueller, Representative Skaggs and I and others who feel as we do will continue to work to see that the federal judiciary and the Supreme

Court are brought to account for their unconstitutional actions. It is our intention to insure that this government will remain the Republic to which Benjamin Franklin referred. A Republic for which thousands have given their last great measure of personal sacrifice. A Republic in which the inseparable twins, liberty and freedom will not, like sand, slip through our fingers.

We intend to share with others these self evident truths which the founding fathers embraced knowing full well this is the only way to insure that this Republic will remain a government of the people, by the people and for the people. So help us God.

END

John R. Stoeffler - Chairman
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FOOTNOTES

1. Alexander M. Bickel, The Least Dangerous Branch, Yale University Press (2nd Edition), Pg 92 - 93

2. Chief Justice Robert T. Donnelly, The State of The Judiciary in Missouri, 1982 Journal of The Senate, pg 82

3. Robert Bork quoting Bishop Hoadly in The Tempting of America, The Free Press, pg 176

4. Baldwin v Missouri, 281 U.S. 586.595 (1930) (J. Holmes dissenting opinion)

5. Cited in The Tempting of America, Robert H. Bork, The Free Press, pg 151

6. Congressman Robert K. Dornan and Csaba Vedlik, Jr., Judicial Supremacy: The Supreme Court On Trial, Nordland Series In Contemporary American Social Problems, 1980, pg 85

7. Cooper v Aaron, (358 U.S. 1) 78 S. Ct. 1401, pg 1410

8. Cited in Haines, Judicial Supremacy, pg 333, and Corwin, Court Over Constitution, pg 71

9. Joseph Sobran writing in The Conservative Chronicle, 11-11-92, pg 17

10. Benjamin N. Cardozo, The Nature of The Judicial Process. (New Haven: Yale University Press, 1921) pg 10

11. Judge Arthur Stanley Jr., Quoted in The Kansas City Star, 3-1-92, pg B-2

12. Gitlow v The People of New York, (268 U.S. 652) 45 S. Ct., pg 630

13. Cited in Haines, Judicial Supremacy, pg 333, and Edwin S. Corwin, Court Over Constitution pg 71

14. Judge Hatter Citing Pruitt v Chaney, 963 F 2d at 1166 - 67

15. Orloff v Willoughby, (345 U.S. 83) 73 S. Ct., pg 540

16. Chappel v Wallace, (462 U.S. 296) 103 S. Ct., pg 2366

17. John R. Stoeffler, When Judges Subvert The Constitution, St. Louis Post Dispatch, Commentary Page, 3-5-92

18. Mo. Rev. Stat. 164.013 (Supp. 1983)

19. 731 Federal Reporter 2d Series, pg 1320

20. ibid, pg 1332

21. ibid, pg 1333

22. Brief for Amici Curie, State of Missouri v Kalima Jenkins, Court No. 88-1150, June 1989

23. ibid

24. ibid

25. Missouri v Jenkins, 110 S. Ct. 1651 (1990)

26. ibid

27. ibid

28. ibid

29. Robert H. Bork, The Tempting Of America, The Free Press, pg 151

30. Charley Reese writing in The Conservative Chronicle, 11-3-93, pg 18

31. Missouri v Jenkins, 110 S. Ct. 1651, 1990

32. David Robertson, Debates And Other Proceedings Of The Convention Of Virginia, Richmond, 1805, pg 87

33. Thomas Sowell writing in The Conservative Chronicle, 12-15-93, pg 21

34. Chief Justice Robert T. Donnelly, The State of The Judiciary In Missouri, 1982 Journal of The Senate, pg 81

35. Walter Williams writing in The Conservative Chronicle, 12-8-93, pg 15

36. House Substitute for Senate Concurrent Resolution NO. 9, Journal of the House, 5-5-93, pg 1846 and House Substitute for Senate Concurrent Resolution No. 9, Final vote 5-10-93, (passed 118 "ayes" to 30 "noes") pg 2091

37. Grodon Crovitz writing in The Wall Street Journal, 7-10-91, pg A-11

I have read your *The Case For A Constitutional Amendment* and congratulate you on a job well done. It is extremely well documented and very forceful. I wish you well.

As you know, you are taking on a daunting task in trying to educate the people in this matter. The Court, without any authority, has literally taken over a substantial portion of social policy in the nation. It has done this by telling the people that "the Constitution requires it." Felix Frankfurter wrote to President Franklin Roosevelt, "People have been taught to believe that when the Supreme Court speaks it is not they who speak but the Constitution, whereas, of course...it is they who speak and not the Constitution. And I verily believe that that is what the country needs most to understand."

Letter to John R. Stoeffler
From The Honorable Robert T. Donnelly
Chief Justice of Missouri
1973 - 1975 1981 - 1982

Alaska State Legislature

House of Representatives

Official Business

State Capitol
Juneau, Alaska 99801-1182
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House Majority Leader

SPONSOR STATEMENT

The purpose of HJR-30 is to petition the Congress of the United states to prepare and present to the legislatures of all the states an amendment to the Constitution of the United States. This amendment would prohibit the Supreme Court or any inferior court of the United States, from ordering a state or political subdivision of a state to levy or increase taxes.

The resolution comes as a request from the office of Representative Bill Skaggs, from the state of Missouri. This effort was brought about by a court case in Missouri, whereby the Supreme Court mandated the city of Kansas City to charge a tax to fund desegregation expenses ordered by the courts.

Presently there are ten states which have introduced a similar resolution.

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MEMORANDUM March 7, 1995

SUBJECT: Amendment to the United States Constitution (HJR 30)

TO: Representative Al Vezey
House Majority Leader

FROM: Tamara Brandt Cook
Director

HJR 30 requests the United States Congress to propose an amendment to the Constitution to prohibit federal courts from ordering states or political subdivisions to impose or increase taxes. Under Article V of the U.S. Constitution Congress may propose amendments. Additionally, upon application of the legislatures of two thirds of the states, Congress is required to call a convention for the purpose of considering amendments. This latter method has never been used and there is considerable debate about whether a convention may be limited to consideration of only a specific amendment or whether, having called a convention, any amendment may be considered. Because of this uncertainty, I have not in this resolution included a request that a convention be called for the limited purpose of considering a specific amendment relating to court ordered taxation.

TBC:glc
95-197.glc

Enclosure