

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9221 HOUSE JUDICIARY

130

NORTHSTAR DELAY

DON'T BLAME THE PENDING LAWSUIT; THE DEAL WAS RISKY FROM THE START

By Daily News editorial staff

The vilification in some quarters of those who have sued to block BP's Northstar oil field deal is way premature and possibly unwarranted.

The harm wrought by BP's shutdown of its Anchorage-based manufacturing work for the Northstar project -- workers being sent home without paychecks; local firms losing business -- is regrettable.

But it could be that the two plaintiffs, Clyde Baxley and the Republican Moderate Party, are doing a public service by putting the deal to a legal test. Time will tell. If the deal can't withstand legal scrutiny, it shouldn't be consummated.

Surely we want to follow the law, even if it means financial hardships or delays in the dollars that will flow whenever the field comes into production.

Those screaming the loudest about the lawsuit are understandably those who stand the most to gain from the project. But Alaskans ought to stop and think about what's really going on here.

The lawsuit can't have taken a sophisticated company like BP by surprise. It's a fact of life that controversial decisions involving public resources go under a legal microscope. The arguments made in the lawsuit were aired long before BP's deal with the state was concluded.

In fact, BP's initial response was that it would continue taking the steps needed to bring the Northstar field into production without delay.

BP now says that it expects the lawsuit to fail but that prudent business practices dictate halting module construction until the legal questions are settled.

If BP truly is confident the Northstar deal will survive legal scrutiny, then its shutdown looks suspiciously like politically inspired posturing. Either that, or BP realizes the lawsuit raises some potentially valid legal questions.

Whatever the case, it's in everybody's interest to have the legal uncertainty cleared away as quickly as possible. If the deal is legal, let development go ahead with all deliberate speed. If the deal broke state rules, let's start over and ensure Northstar's oil comes to market as quickly as the law allows.

But the architects of this Northstar deal can't say they hadn't been warned.

Indeed, this new delay calls into question the rationale for the special deal BP got. Remember, BP freely admitted it did not need state concessions to develop Northstar. BP agreed from the start that Northstar was not a marginal field. BP simply refused to do business on the terms embodied in the state leases it acquired after buying the field from Amerada Hess Corp. and Shell Oil.

When BP took that hard-line stand, critics said the state should instead take back the leases and re-bid them. BP and its defenders said doing so would create a legal mess, delay

development and jeopardize local jobs.

Well, guess what: Alaska did what BP wanted and we've got a legal mess, development is delayed and local jobs are jeopardized.

It's easy to understand why BP -- or any firm -- would rather not risk hundreds of millions of dollars until legal uncertainties are conclusively resolved. But those uncertainties are inherent in the unprecedented deal BP demanded.

As the action shifts to court, it's encouraging to hear that BP has not totally suspended the project. Engineering work and government permit applications will continue.

Meanwhile, Alaskans on both sides of the Northstar dispute are left hoping the court system will do everything in its power to ensure a speedy resolution of the case.

JUD Committee
re HCR 11

B-2 Wednesday, February 26, 1997 ★

Anchorage Daily News

Knowles asks judge to toss suit over Northstar

By STAN JONES
Daily News reporter

Gov. Tony Knowles is asking a judge to throw out a lawsuit that seeks to overturn a deal he cut with British Petroleum to change lease terms at the company's Northstar oil field.

The state argued in court papers filed Tuesday that the people behind the lawsuit — former Democratic legislative candidate Clyde Baxley and a group called the Republican Moderate Party — don't have legal standing to sue over the Northstar bill, which passed the Legislature last spring.

"The people who filed this suit

are not directly affected by the Northstar legislation," Attorney General Bruce Botelho said in a written statement Tuesday. "Under Alaska law, citizen-taxpayers lack standing to bring an action if their rights are not directly affected."

Jody Brion, a lawyer for Baxley and the Republican Moderates, dismissed Knowles' move as a "procedural dodge."

"If this whole deal with BP is constitutional and everything is legitimate, why are they afraid to have the case judged on its merits?" Brion said.

When Brion and his law partner filed the suit, they said Baxley and

the Republican Moderates were going to court "for the common good of the state of Alaska."

"If there is an illegal act of government that effects revenue, then a citizen does and should have standing to challenge unconstitutional acts by the representatives who purport to represent them," Brion said Tuesday. "The public-policy implications of accepting the state's arguments are just absurd. It insulates government from accountability to the citizens."

In the Northstar bill, Knowles and the legislators agreed to give up the state's 89 percent profit share at Northstar, a 145-million barrel off-

shore field near Prudhoe Bay. In return, BP Exploration (Alaska) Inc. agreed to give the state more of the field's oil and made nonbinding promises to hire Alaska residents and companies to work there. The state estimated at the time it would lose \$9 million in revenue because of the lease changes. It has since revised its estimate to a \$7 million gain.

Baxley and the Republican Moderates sued in January to overturn the law, claiming it was unconstitutional or illegal on several counts, including the local-hire provisions.

Earlier this month, BP ordered a shutdown to work in the Port of An-

chorage area on facilities being fabricated for shipment to the Northstar field, though other Northstar-related work will continue. The oil company said it didn't want to continue with the fabrication work, which was costing up to \$500,000 a day, with the lawsuit hanging over the project.

In Tuesday's statement, Knowles asserted, as he has before, that he's confident the state will win the case on substance.

"Frivolous lawsuits such as this are in no one's interest," Knowles said. "I'm hoping the courts agree and dismiss this case so we can get back to work."

FEB-27-97 THU 2:58

P. 04

Alaska State Legislature



House of Representatives
House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

MEMORANDUM

Date: February 26, 1997
To: Jack Chenoweth, Legislative Legal
From: Lisa Kirsch, House Judiciary Committee
Re: Amendment to HCR 11

Please amend working draft 0-LS0615\B as follows:

p.2, line 16 Delete "would ask" and insert "has asked" after "the state"

We passed this out of committee with this amendment, so please send this amendment in final form.

Thanks for your help.

0-LS0615B
Chenoweth
2/26/97

CS FOR HOUSE CONCURRENT RESOLUTION NO. 11() ^{JUD}

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVE PHILLIPS

A RESOLUTION

1 Urging the Attorney General of the State of Alaska to use every appropriate
2 resource and due diligence to defend the state's interests in the civil action filed
3 against the state challenging the 1996 revision of the Northstar unit leases, and
4 respectfully requesting the Superior Court of the State of Alaska to give
5 expeditious consideration to the matter.

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

7 WHEREAS a majority of Alaskans support safe and responsible oil development in
8 the state and the jobs it creates for Alaskans; and

9 WHEREAS development of other oil fields in Alaska has resulted in thousands of jobs
10 throughout this state and the United States; and

11 WHEREAS Prudhoe Bay production is declining by approximately 10 percent a year;
12 and

13 WHEREAS Alaskans recognize that oil production from the North Slope is declining
14 and new development is needed to create new jobs in the state and to bring additional revenue
15 to the state; and

1 **WHEREAS**, the commissioner of natural resources negotiated revisions to existing
 2 Northstar unit leases between the state and BP Exploration (Alaska), Inc.; the lease revisions
 3 have the effect of expediting the development of the Northstar field and ensure oil production
 4 under a new payment system; and

5 **WHEREAS**, last year, the legislature overwhelmingly approved legislation, ch. 139,
 6 SLA 1996, authorizing the commissioner of natural resources to revise the Northstar unit oil
 7 and gas leases; and

8 **WHEREAS** the legislature and British Petroleum, the lessee's parent company, have
 9 acknowledged the importance of a strong commitment to Alaska-hire, Alaska-build, and
 10 Alaska-buy in the development of the Northstar field; and

11 **WHEREAS** British Petroleum, honoring its voluntary commitments, has already hired
 12 many residents and companies holding state business licenses; and

13 **WHEREAS** a civil action was recently filed in the superior court challenging the 1996
 14 revisions of the Northstar unit leases; and

15 **WHEREAS**, in response to dislocations arising from the filing of the court challenge,
 16 the Attorney General has publicly commented that the state ^{has asked} would-ask the court to expedite
 17 consideration and resolution of the litigation; and

18 **WHEREAS** the legislature recognizes the grave effects this challenge to the revisions
 19 of the Northstar leases are having on the development of the Northstar field;

20 **BE IT RESOLVED** that the Alaska State Legislature urges the Attorney General of
 21 the State of Alaska to use every appropriate resource and due diligence to defend the state's
 22 interests in this civil action challenging the 1996 amendment of the Northstar unit leases; and
 23 be it

24 **FURTHER RESOLVED** that the legislature respectfully requests the Superior Court
 25 in which this litigation is filed and scheduled for hearing to expedite consideration of the
 26 pending litigation.

← added

delete this ??

HCR
11

THIS SUMMARIZES
THE CLAIMS
IN THE
NORTHSTAR
CASE

CAUSES OF ACTION IN THE CIVIL ACTION AGAINST THE STATE

*other net profit
leases can be
requested -
only is in the
Cuddeback Unit*

1) **Uniform Application Clause (Page 4 line 100 - Page 5 lines 101-103)** - Revised HB 548 violates the Uniform Application Clause of the Alaska Constitution in that only the Northstar unit leases held by BP are addressed and that it demonstrates a privileged status for BP in the use of natural resources subject to the disposition of the State.

*there was
ample
public
notice -
ad nauseam*

2) **Public Notice (Page 5 lines 118-121)** - This lack of notice by the State to other net profit lease holders and to the public at large is in violation of Article 7, Section 10 of the Alaska Constitution which requires public notice of any disposal or lease of state lands or interests therein.

3) **Privileges and Immunities Clause (Page 7 lines 150-151)** - Since the local hire provisions are both unconstitutional and unseverable from the remainder of the legislation, the entire modified Northstar lease is invalid.

?
4) **Violation of the Rule against Material Amendments (Page 7 lines 163-164)** - The changes made to the net profit share violated competitive bidding statutes and law which prohibit material amendments to competitively bid contracts.

MEMORANDUM

Date: February 26, 1997

To: Joe Green

From: Lisa Kirsch

Re: TODAY'S HEARING OF HCR 11

*(Northstar
oil/gas leases)*

Gail Phillips will be here at 1 p.m. to make her sponsor statement. I will put this HCR first on the agenda. We have a work draft (see attached) for the necessary amendments that counsel for the State on the Northstar case requested (see attached copy of yesterday's memo, if you haven't already read it.)

Mike Heatwold asked if you would be so kind as to move to adopt the work draft so that version is before the committee.

Gail may also suggest that the committee delete the paragraph on page two, lines 15-17, apparently for similar reasons.

MEMORANDUM

Date: February 25, 1997

To: Joe Green

From: Lisa Kirsch

Re: HCR 11

As you are no doubt aware, this litigation stemmed from last year's HB 548 which allowed for the amendment of certain oil and gas leases between Alaska and BP.

The plaintiffs, as the "Republican Moderate Party," claim to be public interest litigants. If they pass the test for a public interest litigant, the plaintiffs would be exempt from paying the defendant's attorney fees if they lose, and would be entitled to **full, reasonable fees** if they win the case. Under Civil Rule 82, the prevailing party is usually entitled to a **percentage** of their fees from the opposing party, but **not actual fees**. The one exception would be an award of actual fees when you can show bad faith conduct--a standard rarely met).

The one thought I had when reading this HCR was that it seems to ask the court to treat this HCR as a motion for expedited consideration. I talked to the AAGs litigating this case about whether the legislature can make such a motion. The AAGs said that this HCR could backfire because the plaintiffs could argue that it is an effort by the legislature to direct the court to make a particular ruling. The AAGs said the court might resist such a directive as well which could prejudice the State's case.

In particular, the AAGs would like to delete the last line of the HCR because it seems to direct the court to rule in the State's favor. The other problematic section is the one referring to BP's commitment to local hire. A mandatory local hire provision is unconstitutional (both privileges and immunities and commerce clause under US Constitution). Instead they suggest we amend to insert "voluntary" in front of the word "commitments" (line 11, p.2) and delete "to fulfill its obligations" (p.2, line 12) since the State is arguing that the local hire provision is voluntary only and **not** an obligation.

OLD MEMO

These AAGs cannot testify regarding pending litigation. They would need Bruce's okay to make an exception and he is in D.C. I told Mike Heatwold about these problems and he was going to run the proposed amendments by Gail.

Jeff Landry re: HCR 11

Commitment a vol commitment
Commit BP to make
IF oblig - then legis.

before

Alaska hire - inherently

▷ priv & minorities ▷ US Const
commerce clause

so long as voluntary OK

HJR

1

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HJR1

Revision Date (Note if correction) _____	Dept. Affected <u>Office of the Governor</u>
Title <u>Const. Amend. Relating to the duration</u>	BRU <u>Elective Operations</u>
of a regular session _____	Component <u>General and Primary</u>
Sponsor <u>Representative Rokeberg</u>	
Requester <u>House State Affairs Committee</u>	Component Serial No. <u>#22</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual	3.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	3.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	3.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	3.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by \$56.0.

Prepared by <u>Gail Fenwick</u>	Phone <u>465-3935</u>
Division <u>Division of Elections</u>	Date <u>3/2/98</u>
Approved by C <u>Lt. Governor Fran Ulmer</u>	Date <u>3/2/98</u>
Agency <u>Office of the Lieutenant Governor</u>	

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ALASKA STATE LEGISLATURE

House of Representatives

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Representative Norman Rokeberg

SPONSOR STATEMENT REPRESENTATIVES NORMAN ROKEBERG AND JERRY SANDERS HOUSE JOINT RESOLUTION 1

Proposing an amendment to the Constitution of the State of Alaska relating to the duration of a regular session

House Joint Resolution 1 proposed an amendment to Alaska's Constitution that would limit regular legislative sessions to 90 consecutive calendar days. If this resolution passes, the proposed constitutional amendment would be presented to the voters at the 1998 general election. The voters would then decide the fate of this proposal.

Ninety days is more than enough time for the Legislature to complete its business. In an era of decreasing budgets, reducing the session by thirty days would save state funds. As an example, the amount expended for session per diem would decrease by some \$298,600. According to the fiscal note, personal services costs would be reduced by over \$1 million, as staff hired for session-only service would be kept on for a shorter period of time. Therefore, approximately \$1.5 million in savings would be realized by a shorter session.

Prior to 1984, the Legislature had no time limit on the number of days it could remain in session. The voters approved the present 120-day limit on November 6, 1984. Since that time, it has been amply proven that the Alaska Legislature can operate within a time limit. It is now time to shorten that session limit so that the business of the people can be addressed in a reasonable manner within a reasonable time limit.

Some have expressed concern that limiting the session to 90 days would limit the opportunity to review the Spring Revenue Forecast and make the necessary budget decisions. Alaska's Constitution currently provides that the Legislature convene on the **fourth Monday in January** but gives the Legislature the right to change that convening date by law. This date has been changed to the **second Monday of January** except after a gubernatorial election. A later start date, such as the one mentioned in the Constitution, would take care of some of the problems concerning Spring budget forecasts.

If Alaskans truly want a citizen-legislature, a 90-day session limit would assist in this goal. Currently, some that were elected to office have to give up their previous businesses in order to accomplish the business of the state. A wider pool of candidates would be attracted by a short legislative session. With a shorter session limit, a legislator could spend more time in their districts listening to their constituents, working at their chosen non-legislative profession, and just being home.

Your positive consideration of this measure would be appreciated.

ED2:3/3/98

ALASKA STATE LEGISLATURE

House of Representatives

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Representative Norman Rokeberg

SECTIONAL ANALYSIS HOUSE JOINT RESOLUTION 1

By Representatives Norman Rokeberg, Jerry Sanders and Vic Kohring

Section 1. Provides an amendment to the Constitution of the State of Alaska limiting legislative sessions to 90 consecutive calendar days.

Section 2. Instructs that this proposed amendment be placed before Alaskan voters for consideration at the next general election.

1997 LEGISLATIVE SESSION CALENDAR

*Legislature meets throughout the year

STATES	DATES	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
ALABAMA	Feb. 4-May 19													
ALASKA	Jan. 13-May 13													
ARIZONA	Jan. 13-April 26													
ARKANSAS	Jan. 13-mid-March													
CALIFORNIA	Jan. 6-mid-Sept.													
COLORADO	Jan. 8-May 8													
CONNECTICUT	Jan. 8-June 4													
DELAWARE	Jan. 14-June 30													
FLORIDA	March 4-May 2													
GEORGIA	Jan. 13-late March													
HAWAII	Jan. 15-early May													
IDAHO	Jan. 5-late March													
ILLINOIS	Jan. 8*													
INDIANA	Jan. 7-April 29													
IOWA	Jan. 13-late April													
KANSAS	Jan. 13-late May													
KENTUCKY	No regular session Organizational session Jan. 7													
LOUISIANA	March 31-June 23													
MAINE	Dec. 4, 1996-June 18													
MARYLAND	Jan. 1-April 7													
MASSACHUSETTS	Jan. 1*													
MICHIGAN	Jan. 15*													
MINNESOTA	Jan. 7-May 19													
MISSISSIPPI	Jan. 7-April 7													
MISSOURI	Jan. 3-May 30													
MONTANA	Jan. 6-mid-April													
NEBRASKA	Jan. 8-early June													
NEVADA	Jan. 20-early July													
NEW HAMPSHIRE	Jan. 8-mid-June													
NEW JERSEY	Jan. 14*													
NEW MEXICO	Jan. 21-March 22													
NEW YORK	Jan. 8*													
NORTH CAROLINA	Jan. 29-mid-July													
NORTH DAKOTA	Jan. 7-mid-April													
OHIO	Jan. 6*													
OKLAHOMA	Feb. 2-May 30 Organizational session Jan. 7													
OREGON	Jan. 13-late June													
PENNSYLVANIA	Jan. 7*													
RHODE ISLAND	Jan. 7-early July													
SOUTH CAROLINA	Jan. 14-June 5													
SOUTH DAKOTA	Jan. 14-mid-March													
TENNESSEE	Feb. 3-late May Organizational session Jan. 14													
TEXAS	Jan. 14-June 2													
UTAH	Jan. 20-March 5													
VERMONT	Jan. 8-late May													
VIRGINIA	Jan. 8-Feb. 22													
WASHINGTON	Jan. 13-April 27													
WEST VIRGINIA	Feb. 12-April 12 Organizational session Jan. 8													
WISCONSIN	Jan. 6*													
WYOMING	Jan. 14-March 10													
PUERTO RICO	Jan. 13-May 30 Reconvenes Sept.-Oct.													
DISTRICT OF COLUMBIA	Jan. 2*													

 National Conference of State Legislatures

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THIS SESSION, CALL NCSL FOR ANSWERS TO YOUR QUESTIONS!

National Conference of State Legislatures
1996 LEGISLATIVE REGULAR SESSION CALENDAR
as of May 28, 1996

State	Regular Session		Comments
	Convenes	Adjourns	
Alabama	Feb-06	May-20	
Alaska	Jan-08	May-07	
Arizona	Jan-08	Apr-20	
Arkansas	No regular session		
California	Jan-03	Aug-31	
Colorado	Jan-10	May-08	
Connecticut	Feb-07	May-08	
Delaware	Jan-09	Jun-30	
Florida	Mar-05	May-04	
Georgia	Jan-08	Mar-18	
Hawaii	Jan-17	Apr-29	
Idaho	Jan-09	Mar-15	
Illinois	Jan-10	*	
Indiana	Jan-08	Mar-08	
Iowa	Jan-08	May-01	
Kansas	Jan-08	May-06	
Kentucky	Jan-01	Apr-15	
Louisiana	Apr-29	Jun-12	
Maine	Jan-03	Apr-04	
Maryland	Jan-10	Apr-08	
Massachusetts	Jan-03	Jul-31	
Michigan	Jan-10	*	
Minnesota	Jan-16	Apr-04	
Mississippi	Jan-02	Apr-19	
Missouri	Jan-03	May-17	
Montana	No regular session		
Nebraska	Jan-08	Apr-18	
Nevada	No regular session		
New Hampshire	Jan-03	Jul-01	
New Jersey	Jan-09	*	
New Mexico	Jan-16	Feb-15	
New York	Jan-03	*	
North Carolina	May-13	Jun-21	
North Dakota	No regular session		
Ohio	Jan-01	*	
Oklahoma	Feb-05	May-31	
Oregon	No regular session		
Pennsylvania	Jan-09	*	
Rhode Island	Jan-02	May-29	
South Carolina	Jan-09	Jun-06	
South Dakota	Jan-09	Mar-11	
Tennessee	Jan-09	Apr-26	
Texas	No regular session		
Utah	Jan-15	Feb-28	
Vermont	Jan-03	May-03	
Virginia	Jan-10	Mar-11	
Washington	Jan-08	Mar-07	
West Virginia	Jan-10	Mar-15	extended session by 6 days
Wisconsin	Jan-09	*	
Wyoming	Feb-19	Mar-15	
Puerto Rico	Jan-08	Jun-30	session extended from April 30 to June 30 by joint resolution
District of Columbia	Jan-03	*	

* Legislature meets throughout the year.

Highlighting indicates that the state has finished its regular session for 1996.

National Conference of State Legislatures
1997 LEGISLATIVE REGULAR SESSION CALENDAR
as of November 1996

State	Regular Session		Comments
	Convenes	Adjourns	
Alabama	Feb-04	May-19	
Alaska	Jan-13	May-13	
Arizona	Jan-13	Apr-26	
Arkansas	Jan-13	mid Mar	
California	Jan-08	mid Sept	Organizational session begins December 2, 1996
Colorado	Jan-08	May-08	
Connecticut	Jan-08	Jun-04	
Delaware	Jan-14	Jun-30	
Florida	Mar-04	May-02	Organizational session begins November 19, 1996
Georgia	Jan-13	late-Mar	
Hawaii	Jan-15	early May	
Idaho	Jan-08	late Mar	
Illinois	Jan-08	*	
Indiana	Jan-07	Apr-29	Organizational session begins November 19, 1996
Iowa	Jan-13	late Apr	
Kansas	Jan-13	late May	Organizational session begins December 2, 1996
Kentucky	No Regular Session		Organizational session begins January 7, 1997
Louisiana	Mar-31	Jun-23	
Maine	Dec-04-96	Jun-18	
Maryland	Jan-01	Apr-07	
Massachusetts	Jan-01	*	
Michigan	Jan-15	*	
Minnesota	Jan-07	May-19	
Mississippi	Jan-07	Apr-03	
Missouri	Jan-08	May-30	
Montana	Jan-08	mid Apr	
Nebraska	Jan-08	early Jun	
Nevada	Jan-20	early July	
New Hampshire	Jan-08	mid Jun	Organizational session begins December 3, 1996
New Jersey	Jan-14	*	
New Mexico	Jan-21	Mar-22	
New York	Jan-08	*	
North Carolina	Jan-29	mid July	
North Dakota	Jan-07	mid Apr	Organizational session December 1996
Ohio	Jan-08	*	
Oklahoma	Feb-02	May-30	Organizational session begins January 7, 1997
Oregon	Jan-13	late Jun	
Pennsylvania	Jan-07	*	
Rhode Island	Jan-07	early July	
South Carolina	Jan-14	Jun-05	Organizational session is held following election certification
South Dakota	Jan-14	mid Mar	
Tennessee	Feb-03	late May	Organizational session begins January 14, 1997
Texas	Jan-14	Jun-02	
Utah	Jan-20	Mar-05	Orientation session November 22, 1996
Vermont	Jan-08	late May	
Virginia	Jan-08	Feb-22	
Washington	Jan-13	Apr-27	
West Virginia	Feb-12	Apr-12	Organizational session begins January 8, 1997
Wisconsin	Jan-08	*	
Wyoming	Jan-14	Mar-10	
Puerto Rico	Jan-13	May-30	Second portion of session runs Sept-Oct.
District of Columbia	Jan-02	*	

* Legislature meets throughout the year.

May 9, 1997

Vo

The Anchorage Times

Publisher: BILL J. ALLEN

"Believing in Alaskans, putting Alaska first"

Editors: DENNIS FRADLEY, PAUL JENKINS, WILLIAM J. TOBIN

The Anchorage Times Commentary in this segment of the Anchorage Daily News does not represent the views of the Daily News. It is written and published under an agreement with former owners of The Times, in the interests of preserving a diversity of viewpoints in the community.

Too darned long

WITH THE end of the 1997 legislative session in sight, let's suggest again that it's time to make a fundamental change in the way Alaska lawmakers do their business.

We're not talking about the conduct or results of this session. We are not criticizing legislators, individually or collectively.

The change that's needed is in the system itself.

Simply put, the state's annual legislative sessions last too long.

As things now stand, lawmakers meet for four months every year.

For one-third of every year, the principal focus of government is on events happening in the state House and Senate. The workings of the bureaucracy may go on, albeit with some considerable distractions from the Capitol, but the attention of the top administration leaders — the commissioners, their deputies and various department heads — is riveted on what is happening in the Legislature.

Once adjournment is reached, each department of the government spends the next three months dealing with implementation of any new laws that affect their respective operations, and struggling with financial changes caused by budget cuts and changes in line-item appropriations.

And during the final one-third of the year the administration — all the departments, commissioners, deputy commissioners and workers down the line — must concentrate on planning for the next session, preparing new bills for introduction, working on the next budget, and generally gearing up to do battle all over again.

It's a wonder anything gets done.

THERE IS a solution.

By statute or by constitutional amendment, it should be mandated that the Legislature handle the state budget process on a two-year cycle — rather than dealing with appropriations annually.

Every other year, legislators should meet for a short session — 45 days at the maximum — to consider only a biennial budget. No other legislation would be considered, other than that required to address items that are judged to be absolute emergencies.

On the alternate years, the legislators would meet to consider general legislation — no budget work at all. Without the need to deal with budgets and funding, the work of this session would not require lawmakers to be in Juneau for four months of the year.

Maybe, under this scenario, they could get the work done in 60 days. Certainly 90 would be sufficient, under any circumstances.

The grim need for legislators to be in Juneau for a third of the year would be eliminated. And the administration would have much more time to concentrate on the job of running the state.

This is not rocket science. This is not plowing new fields in government. Any number of states now operate, very successfully, in

Alaska's Constitution

A CITIZEN'S GUIDE

Third Edition • 1992

Alaska Legislative Research Agency • Gordon S. Harrison

additional \$500 per year. Also, legislators may claim \$65 per day for each day spent on legislative business during the interim.

Section 8. Regular Sessions

The 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 legislature shall adjourn from regular session no later than 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 membership of each house of the legislature. The 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.

The first sentence of this section provides for annual sessions of the legislature. The majority of states have annual sessions, and in those where the constitution provides for biennial sessions (a session every two years), a special session during the "off" year is common. The ability to meet annually, in order to keep abreast of current developments and administrative activity, is generally considered necessary for a legislature to be an effective policy-making body and to avoid being dominated by the executive branch.

The legislature has changed the beginning of the regular session to the second Monday in January at 10:00 a.m., except following a gubernatorial election year, when it is the third Monday in January at 10:00 a.m. (AS 24.25.090). The later date following a gubernatorial election gives a new governor an extra week to prepare for the opening of the session.

The second sentence establishes a limit of 120 days after convening for each regular session (with one ten-day extension if agreed to by two-thirds of each house). This limit was imposed by a constitutional amendment ratified by the voters in 1984. Until that time, the constitution did not limit the length of sessions. The framers of the constitution adopted the progressive view that the legislature should not be rushed in its deliberations, as the business of modern state government is too complex to be transacted in hurried,

Article II

in frequent sessions. (About two-thirds of state constitutions impose some limit on the length of sessions.) Delegates feared that constraints on the length (and frequency) of sessions might result in ill-conceived or imprudent measures as well as a legislative disadvantage *vis-a-vis* the executive.

Over the years, sessions lasted progressively longer. Initially, they ran about 70 days; by the early 1930s, sessions over twice that length were common. Alaskans both inside and outside the legislature grew increasingly skeptical that all of this time was spent wisely and productively. In 1978, the legislature (stopping short of adopting an amendment) asked Alaskans to cast an advisory vote on limiting the length of regular sessions to 120 days. The proposition asked voters whether a constitutional amendment to that effect should be placed before them in the 1980 election. The voters responded strongly in the affirmative. Three years later the legislature acted to put an amendment before the electorate in the 1984 general election that would limit the session to 120 days. It was ratified by a large majority (150,999 to 46,099).

In May 1935, at the end of the 120th day of the second regular session of the fourteenth legislature, legislative leaders stopped the clock in order to complete business before the adjournment deadline. A suit was filed challenging the legality of the 29 laws passed after midnight. The Alaska Supreme Court rejected the challenge, holding that the day the legislature convenes should not be counted against the 120-day limit, so the legislature has, in effect, a total of 121 days in which to transact business (*Alaska Christian Bible Institute v. State*, 772 P.2d 1079, 1939).

The call for deadlines for scheduling session work, found in the last sentence of this section, is an effort to mitigate the perennial problem of the "logjam" of legislation at the end of the session (most of the bills that pass the legislature are enacted in the closing days of the session, often in long, wearisome meetings which are not conducive to the studious deliberation of each item).

At the end of the second regular session of the seventeenth legislature (1991 - 1992), both houses adjourned before work was completed on several appropriation bills. In this case it was too late to extend the regular session according to the provision in this section, so the legislature called a special session to finish its business.

Article II

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Seldovia Chamber of Commerce

P. O. Drawer F

Seldovia, Alaska 99663-0150

Phone & Fax: 907-234-7612, www.xyz.net/~seldovia

March 23, 1998


Normal Rokeberg
State Representative
House District 11
Juneau, AK 99801-1182

Dear Mr. Rokeberg:

Your letter to Tinnette Paulson, former President of the Seldovia Chamber of Commerce, was forwarded to me for response, since I am the present Chamber President.

I am very much in favor of a 90-day session limit (HJR 1) on the legislature, because it will save the state a great deal of money, and because I think they should be able to get their business done in ninety days.

Sincerely,


Peggy Cloninger, President

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Shorter session, better government

Among the more pertinent pieces of legislation filed this session is a proposed amendment to the state Constitution that would limit the 120-day session to 90 days. If passed, House Joint Resolution No. 1 would require a vote of the people.

It's a worthy concept that keeps surfacing, especially with legislators who live elsewhere, and we think it merits discussion.

Here's why: Every year, Christmas and New Year holidays are very nearly ruined for people preparing to return to Juneau for the session. First, they must wind down their duties and close up their offices before Christmas. Then, they must pack up their belongings and hit the road around the New Year to make it to Juneau in time to settle in for the session. New legislators must be in Juneau by about Jan. 4 so they can take part in orientations. Some legislators and staff members must catch a ferry. Many of them arrive in the capital exhausted, having had their family time over the holidays completely disrupted.

This has spawned an annual sense of dread among many involved in the Legislature, a dread that isn't easily dissolved by the friendliness of Juneau. As one staff member put it, they feel as though they are gerbils on a treadmill: "We get here (Juneau) with a bad attitude."

Rep. Norm Rokeberg and Rep. Jerry Sanders are putting their efforts behind the resolution, the very one that died of neglect last session. Rokeberg argues the Legislature could start later, perhaps in February or early March. So much of what the Legislature does must wait until the March budget forecast from the Department of Revenue, so why not wait to get started until some of the real nuts-and-bolts work can be done?

Years ago, the people of Alaska became frustrated with the Legislature when sessions-without-limits dragged on until June or July. Thus, the 120-day limit was passed by voters. We think an even shorter session would be just as responsive, more cost-effective for the people of Alaska, and possibly even more productive. Other states do it.

Although Juneau would feel an economic impact, the perceived need to move the capital to Anchorage or elsewhere would become far less important.

The idea of a shorter session is also in line with the concept of a citizen-statesman government, one that has legislators spending more time in their districts, working in their own professions and being available to listen to their constituents. And that's a capital idea that would benefit the state as a whole.

1-FEB-97

Sam Bishop, Opinion Page Editor; 459-7574

1 Feb 1

FAIRBANKS

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Established in: 1903CHARLES L. GRAY
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PublisherKELLY BOSTIAN
Managing EditorSAM BISHOP
Editorial Page Editor**WHAT OTHERS SAY****Set a 90-day legislative session**

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—Juneau Empire, Jan. 26

HOUSE JUDICIARY STANDING COMMITTEE

DATE: 4/15/98

ISSUE: HJR 1

	YEA	NAY	PRESENT
Vice Chair Bunde		✓	
Representative Berkowitz		✓	
Representative Croft	✓		
Representative James			
Representative Porter	✓		
Representative Rokeberg	✓		
Chairman Green	✓		
TOTALS:	4	2	

PASSED ✓ FAILED _____

HJR

2

Date Referred to Committee: January 13, 1997

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 3/6/97

By STATE AFFAIRS Committee considered:

HJR 2

HOUSE JOINT RESOLUTION NO. 2

REPEAL OF REGULATIONS BY LEGISLATURE

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

Committee recommends it be replaced with the following committee substitute _____ the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) Gov.

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS

DP DNP NR AM

	DP	DNP	NR	AM
<i>Janette James</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>			✓	

CHAIR'S SIGNATURE Janette James

(7)
Date Referred to Committee: March 7, 1997

FURTHER REFERRALS:

Finance

Date of Committee Action: 4/30/97

The JUDICIARY Committee considered:

HJR 2

HOUSE JOINT RESOLUTION NO. 2

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 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) 60V./ELECTIONS

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Chris W. Croft</i> CROFT		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
<i>Alan Rokeberg</i> ROKEBERG	<input checked="" type="checkbox"/>			
<i>Brian Porter</i> PORTER	<input checked="" type="checkbox"/>			
<i>Monnette James</i> JAMES	<input checked="" type="checkbox"/>			
<i>Car Blend</i> BUNDE	<input checked="" type="checkbox"/>			
<i>Bill Berkowitz</i> BERKOWITZ			<input checked="" type="checkbox"/>	
<i>Bob Green</i> GREEN	<input checked="" type="checkbox"/>			

CHAIR'S SIGNATURE *[Signature]*

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HJR2

Revision Date _____	Dept. Affected <u>Office of the Governor</u>
Title <u>Const amendment re: repeal of regulations</u>	BRU <u>Elective Operations</u>
by the legislature. _____	Component <u>General and Primary Elections</u>
Sponsor <u>Representative Rokeberg</u>	
Requester <u>House State Affairs</u>	Component Serial No. <u>#22</u>

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Personal Services						
Travel						
Contractual		3.0				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	3.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
CHANGE IN REVENUES []						

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		3.0				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	3.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: none

POSITIONS

Full-time	0				
Part-time	0				
Temporary	0				

ANALYSIS: *(Attach a separate page if necessary)*

This figure includes the cost of providing information about this issue in the Official Election Pamphlet as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by \$56.0.

Prepared by <u>Dana LaTour</u> <i>D LaTour</i>	Phone <u>465-5347</u>
Division <u>Division of Elections</u>	Date <u>3/3/97</u>
Approved by Co <u>Lt. Governor Fran Ulmer</u> <i>Fran Ulmer</i>	Date <u>3/3/97</u>
Agency <u>Office of the Lieutenant Governor</u>	

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CS FOR HOUSE JOINT RESOLUTION NO. 2(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES ROKEBERG AND JAMES, Kohring

A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Alaska relating to
2 repeal of regulations by the legislature.

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

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

6 Section 22. Repeal of Regulations. The legislature may, after finding that a
7 regulation is inconsistent with its enabling statute, by joint resolution repeal a
8 regulation adopted by a State department or agency. The repeal of the regulation is
9 effective thirty days after the passage of the resolution by the legislature unless a
10 different prospective effective date is specified in the resolution.

11 * Sec. 2. The amendment proposed by this resolution shall be placed before the voters of
12 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
13 State of Alaska, and the election laws of the state.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 11, 1997

Hon. Joe Green
House of Representatives
State Capitol
Juneau, Alaska 99801

RE: HJR 2

Dear Representative Green:

HJR 2 has been referred to the House Judiciary Committee. This letter is to express the Department of Law's opposition to HJR 2.

HJR 2 is a resolution to place before the voters for the fourth time in 15 years an amendment to the Constitution of the State of Alaska to allow repeal of regulations by resolution of the legislature. If passed by the voters, the amendment would create a new section 22 in Article II of our state constitution to allow the legislature, by joint resolution to repeal a regulation adopted by a state department or agency. The resolution would not be subject to the review, and possible veto, of the governor.

The Department of Law opposes the resolution for the following reasons:

1. The voters of Alaska have voted down this type of constitutional amendment three times in the last 15 years. We assume that the public means what its votes have indicated, and that the public prefers the status quo on checks and balances in the development and enforcement of regulations.

2. Under existing law, the legislature has substantial power to guide or limit the adoption of regulations. Initially, the legislature can pass tight statutes that clearly define the executive branch's rule-making authority. The Administrative Procedure Act requires that a regulation must be consistent with the statute. See AS 44.62.030. The Department of Law makes a legal review for consistency before a regulation is filed by the Office of the Lieutenant Governor. After an executive-branch regulation is adopted, if the legislature

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1594
PHONE: (907) 269-5100
FAX: (907) 276-3697

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100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2811
FAX: (907) 451-2846

P.O. BOX 110300-DIMOND COURT HOUSE
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-6735

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MAR 10 1997

believes that the regulation is not consistent with the believes that the regulation is not consistent with the enabling statute, the legislature can amend the statute to clarify its intent. The current system provides the legislature with the power to guide regulations formation.

3. Allowing the legislature to repeal a regulation by resolution would mean a major change in the way law is developed in this state. Regulations have the force of law. Repealing regulations changes law. Our constitution presently grants the power to the legislature to change law by passing a bill, which is then subject to the governor's review and possible veto. Because the governor cannot veto a resolution, allowing repeal of regulations by resolution would allow the legislature to change law without the action being subject to the governor's review. This is an important change in our constitution's system of checks and balances between the legislative and executive branches.

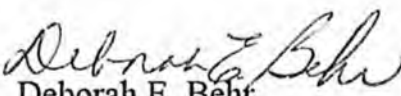
4. By repealing a regulation by resolution, the legislature would not be providing policy guidance or direction that is appropriate to the legislature's law-making function. In other words, the resolution would tell the executive branch that the regulation was unacceptable, but not what is acceptable. The state agency would have to guess again and spend state money to develop a new regulation, which might not be on the "right track." By using a bill, the legislature could change statutes to give clearer policy direction to the executive branch.

5. The Administrative Procedure Act allows legislators, as well as the general public, to comment on any new regulation proposed. The executive branch considers comments in the development of regulations. In this way, the legislature and the public have input into the regulation-adoption process.

If you have additional questions, please let me know.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Deborah E. Behr
Assistant Attorney General

Hon. Joe Green
HJR 2

March 11, 1997
Page 3

cc: Hon. Norman Rokeberg
Alaska House of Representatives

Pat Pourchot, Legislative Director
Office of the Governor

Bruce M. Botelho, Attorney General
Barbara Ritchie, Deputy Attorney General
Chrystal Smith, Legal Administrator
Dept. of Law
Juneau

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

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SPECIAL COMMITTEE ON OIL & GAS, MEMBER
JUDICIARY COMMITTEE, MEMBER
CORRECTIONS BUDGET SUBCOMMITTEE, MEMBER
ADMINISTRATION BUDGET SUBCOMMITTEE, MEMBER
HESS BUDGET SUBCOMMITTEE, MEMBER



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FAX: (907) 258-2916

SESSION:
STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4968
FAX: (907) 465-2040

Representative Norman Rokeberg

SPONSOR STATEMENT

HOUSE JOINT RESOLUTION 2 - REPEAL OF REGULATIONS

REPRESENTATIVE NORMAN ROKEBERG

House Joint Resolution 2 proposes an amendment to Alaska's Constitution which would allow the legislature to repeal a regulation adopted by a state department or agency. The question of whether or not to adopt this proposal would be placed before Alaskan voters at the next general election (1998).

In many cases, legislative directives are ignored or regulations are created that go far beyond the scope of what the legislature intended. Once regulations go into effect, they have all the force and effect of law. The bureaucracy may, and has, subverted the will of the legislature by creating regulations with different effects and consequences than that intended under the actual law adopted by Alaska's elected representatives.

Currently, the only recourse the legislature has to rogue regulations is to rewrite the entire law which is expensive and time consuming. Under the current system, if a constituent calls with a concern about a particular regulation, a legislator can only respond by rewriting the law instead of reviewing the regulation in question and repealing it if it does not accomplish what the legislature intended.

Over 9,500 pages of regulations are in the Alaska Administrative Code. No elected official voted on these regulations and the public has no one to hold responsible for the bad regulations. It is the legislature's responsibility to make laws -- not the bureaucracy. HJR 2 opens the process to public scrutiny.

This resolution would allow the public to express its view on this matter. The last consideration of this matter by voters was in 1986. While the voters have turned down repeal of regulations three times since 1980, the regulations adopted since that time have become so onerous that it is time to again ask the voters about this process. The repeal of onerous regulations is needed to ensure a healthy environment for resource and other economic development in Alaska.

I urge your support of this resolution.

Ed1:3/6/97

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE COMMITTEE, CHAIRMAN
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
JUDICIARY COMMITTEE, MEMBER
CORRECTIONS BUDGET SUBCOMMITTEE, MEMBER
ADMINISTRATION BUDGET SUBCOMMITTEE, MEMBER
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PHONE: (907) 465-4968
FAX: (907) 465-2040

Representative Norman Rokeberg

SECTIONAL ANALYSIS HJR 2 - REPEAL OF REGULATIONS By Representative Norman Rokeberg

This resolution proposes an amendment to the Constitution of the State of Alaska relating to repeal of regulations by the legislature.

Section 1: Would amend the Constitution to provide that the Legislature could, by joint resolution, appeal a regulation adopted by a State department or agency. The repeal would be effective 30 days after the passage of the resolution unless otherwise stated in the resolution.

Section 2: Provides that the proposed constitutional amendment would be placed before the Alaskan voters at the next general election, November 1998.

MAR 04 1997



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FEBRUARY 10, 1997

REP NORMAN ROKEBERG
ALASKA STATE LEGISLATURE
STATE CAPITAL
JUNEAU ALASKA 99801-1182

REF: HJR 2- REPEAL OF REGULATIONS

REPRESENTATIVE ROKEBERG:

I enclose a resolution by the Alaska Airmen's Association supporting HJR 2.

The Alaska Airmen's Association Inc. in concert with the Alaska Air Carriers Association Inc. and the Fairbanks Airmen's Coalition have been fighting the bureaucracy of the Department of Transportation (aviation division) since 1994 on a proposed set of regulations (17 ACC 40 & 45) that are clearly detrimental to the aviation industry and circumvent the intent of the Legislature.

If these regulations become law the losses contemplated for the aviation industry will be crippling and the cost of litigation prohibitive.

The outcry over these regulations was completely ignored by the DOT until our constituency took its case to the Legislature. In 1996 the Alaska Legislature passed HB 543 with only one dissenting vote. HB 543 was an attempt to clarify the intent of the law.

It has been seven months since that legislation passed. The same onerous regulations have been resubmitted with the caveat that they now include new regulations specifically designed to circumvent (not implement) HB543. In the interim the DOT bureaucracy has written new leases based on their proposed regulations while refusing to extend or approve leases based on the existing regulations.

The only recourse of the people of the State of Alaska in the face of a determined bureaucracy like the Department of Transportation is the Legislature. HJR 2 is the only recourse available to the people to maintain for them the checks and balances intended by the State Constitution and prevent professional bureaucrats from subverting the law in their own self interest with self serving regulations.

Page 2.

You can find examples of bad regulations in every venue of Alaska State Government. The proposed regulations 17 ACC 40 & 45 happen to be the aviation community's most obvious and current example. My file alone has filled a dozen storage boxes since 1994 and the most recent outcry during the "public comment period" staged during the 1996 Christmas holidays runs to volumes.

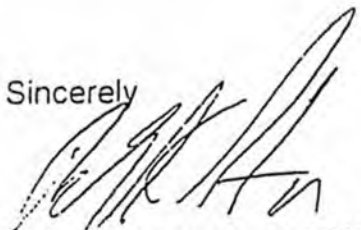
I will only cite one example of issue from 17 ACC 45. Our members file letters are available upon request:

17 ACC 45.210 (a) " a person may not construct, reconstruct ... a private air facility within two miles of a proposed ... highway ... without the written approval of the commissioner".

What law has given the Department of Transportation the right to control private property not on or related to a State Airport?

Without the control provided by HJR- 2 which provides for the intercession of The Legislature to balance the over reaching of a willful bureaucracy, the people of the State of Alaska are at the mercy of these tenured appointees. The further irony of this situation is that we (the people) are forced to pay the salaries of our antagonists.

Sincerely

A handwritten signature in black ink, appearing to read "Philip K. Livingston". The signature is stylized and somewhat cursive.

Philip K. Livingston, CCIM

Legislative Chair
Alaska Airmen's Association



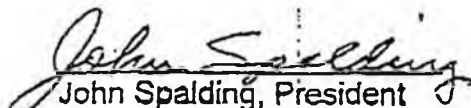
ALASKA AIRMEN'S ASSOCIATION., INC.

RESOLUTION

The Alaska Airmen's Association Inc. hereby resolves it's support for HJR-2, a bill proposed for passage by the 1997 Alaska State Legislature by Representative Norman Rokeberg and Representative Jeannette James to wit:

1. The State bureaucracy is empowered to write regulations to implement bills passed by the State Legislature and signed into law by the Governor.
2. The State bureaucracy frequently writes regulations, with or without the active participation of the Governor, that clearly circumvent the intent of the Legislature.
3. In order to maintain the checks and balances required by the Constitution of the State of Alaska, the Legislature must have the right to reject regulations that violate their original intent.
4. Passage of a series of bills to clarify or change the written regulations is costly, time consuming, and requires the support of the Governor who may be a party to circumvention of the legislative intent.
5. A joint resolution of the Legislature to repeal regulations that circumvent their intent is the most efficient and equitable manner in which to rectify the problem and assure the people of Alaska that their best interests are served.

SO RESOLVED THIS 11th DAY OF FEBRUARY 1997


John Spalding, President
Alaska Airmen's Association

SERVING GENERAL AVIATION IN ALASKA SINCE 1961

P.O. Box 241185 Anchorage, Alaska 99524-1185 Tel/Fax 907-272-1251 e-mail airmens@alaska.net



NFIB
National Federation of
Independent Business

National Federation of Independent Business

Statement of Support

of HJR 2

A resolution calling for a constitutional amendment to allow the legislature to annul regulations found to be inconsistent with the intent of the law.

February 17, 1996

The Alaska Chapter of the National Federation of Independent Business has 4,400 members, making it the largest small-business advocacy group in the state.

The legislative agenda of NFIB is determined by ballot. The ballot is our poll of members on a series of state legislative and regulatory issues.

The 1996 ballot results showed very strong support for giving the voters the chance to amend the constitution to allow repeal of regulations by the legislature. Following are the ballot results on this issue:

Should the State of Alaska place a proposed constitutional amendment before the voters to decide whether the legislature should be given the authority to repeal regulations found to be improper or inconsistent with the law?

73 % YES

15 % NO

12 % Undecided

NFIB/Alaska urges support for HJR 2.

Submitted by Thyes Shaub on behalf of NFIB/Alaska.

MAR 03 1997

Headquarters:
217 2nd Street, Suite 201
Juneau, Alaska 99801
(907) 586-2323 FAX 463-5515



February 27, 1997

Representative Norman Rokeberg
Alaska State Capitol
Juneau, Alaska 99801-1182

Dear Representative Rokeberg:

Thank you for your letter regarding HJR 2, proposing an amendment to the State Constitution relating to repeal of regulations by the legislature. We are pleased to know that you and Representative James have undertaken this important legislative issue.

Reform of the present regulatory system is one of the highest priorities of the Alaska State Chamber of Commerce. Our resolution on this matter asks the legislature and the administration to create a regulatory and economic environment supportive of business development that encourages businesses to locate and grow in Alaska. ASCC's resolution also asks the legislature and the administration to provide for an effective oversight mechanism to assure that regulations are producing effective results that follow legislative intent.

A common complaint of the business community is that too often regulations ignore or miss the point of the legislation to which the regulations are intended to apply. Presently, the only recourse the legislature has in correcting regulation that is contrary to their intent is to pass further corrective legislation. However, if the administration is supportive of the regulatory intent, rather than the legislative intent, the governor is able to veto the corrective legislation. In this manner, under the present system, the power of the legislative branch can be usurped by the executive branch of government.

Throughout the legislative process the public has opportunity to provide input on the laws under consideration and, therefore, has the opportunity to influence the laws by which they must abide. The regulatory process is not nearly so open or receptive to the thoughts of the public, and regulations are sometimes adopted in spite of public sentiment.

HJR 2 provides the public with the opportunity to express their wishes on this matter by placing it before them on the ballot in the next general election. The Alaska State Chamber fully supports your effort.

Sincerely,

A handwritten signature in cursive script that reads "Pamela La Bolle".

Pamela La Bolle
President

MAR 04 1997



Juneau Chamber of Commerce

February 27, 1997

The Honorable Norman Rokeberg
State Representative
State Capitol
Juneau, AK 99801-1182

Dear Rep. Rokeberg:

Thank you for your inquiry relating to House Joint Resolution No. 2, proposing an amendment to the Constitution of the State of Alaska relating to repeal of regulations by the legislature.

As the Juneau Chamber of Commerce has previously supported similar legislation, the Chamber Board at its meeting on February 18, 1997, reaffirmed its continuing support of legislation proposing an amendment to the Constitution of the State of Alaska for the repeal of regulations by the legislature.

Thank you for the opportunity to comment on proposed legislation.

Sincerely,

Patty Ann Polley
Executive Director



ALASKA MINERS ASSOCIATION, INC.

561 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 279-7887 Telephone: (907) 276-0347

March 5, 1997

Honorable Norm Rokeberg
Alaska State House of Representatives
Capitol Building
Juneau, AK 99801

RE: HJR-2, Repeal of Regulations by the Legislature

Dear Representative Rokeberg,

The Alaska Miners Association wishes to go on record in support of House Joint Resolution 2 relating to the repeal of regulations by the legislature with some changes as described below.

It is our understanding that the purpose of this legislation is to insure that if regulations do not accurately implement the Legislature's intent in passing a statute, the regulations can be repealed, with the result that the agency will have to rewrite them. This approach has several advantages. First, the Legislature, the Administration, and the public would not have to again go through the entire law-making process to address an issue that everyone believed had been settled in a previous Session of the Legislature. A second advantage is that this approach does not infringe on the administrative public process under which the regulations are developed. This approach in effect says, no, these regulations were not our intent, Department of XYZ, go back to the drawing board and develop new regulations on this topic that will satisfy our intent. A third advantage is that the agencies will be more concerned to insure that the regulations accurately implement the statutes.

A potential problem with this approach is that a simple majority in a future legislature could repeal regulations which would cause tremendous uncertainty until new regulations were promulgated. Also, when there is a major high-visibility issue, for example an "Exxon Valdez" incident, there could be a tendency to over-react without allowing sufficient time and perspective to deal properly with an issue.


It appears that some minor changes to HJR-2 could be made that would preserve the advantages of this approach while at the same time minimize the potential problems. One way to accomplish this would be to change Section 1 of the bill to read as follows

with the new material underlined:

"Section 22. Repeal of Regulations. The legislature may, by joint resolution, repeal a regulation adopted by a State department or agency within one year after promulgation of regulations to implement a statute that has become law. The repeal of the regulation..."

There are other ways to accomplish the same thing but this is one approach.

Sincerely,



Steven C. Borell, P.E.
Executive Director

cc: Representative Jeannette James

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 28, 1997

Hon. Jeanette James
House of Representatives
State Capitol
Juneau, Alaska 99801

RE: HJR 2

Dear Representative James:

HJR 2 has been scheduled for review by the House State Affairs Committee. This letter is to express the Department of Law's opposition to HJR 2.

HJR 2 is a resolution to place before the voters for the fourth time in 15 years an amendment to the Constitution of the State of Alaska to allow repeal of regulations by resolution of the legislature. If passed by the voters, the amendment would create a new section 22 in Article II of our state constitution to allow the legislature, by joint resolution to repeal a regulation adopted by a state department or agency. The resolution would not be subject to the review, and possible veto, of the governor.

The Department of Law opposes the resolution for the following reasons:

1. The voters of Alaska have voted down this type of constitutional amendment three times in the last 15 years. We assume that the public means what its votes have indicated, and that the public prefers the status quo on checks and balances in the development and enforcement of regulations.

2. Under existing law, the legislature has substantial power to guide or limit the adoption of regulations. Initially, the legislature can pass tight statutes that clearly define the executive branch's rule-making authority. The Administrative Procedure Act requires that a regulation must be consistent with the statute. See AS 44.62.030. The Department of Law makes a legal review for consistency before a regulation is filed by the Office of the Lieutenant Governor. After an executive-branch regulation is adopted, if the legislature

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1993
PHONE: (907) 269-5100
FAX: (907) 276-3697

KEY BANK BUILDING
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2811
FAX: (907) 451-2846

P.O. BOX 110300-DIMOND COURT HC
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-6735

believes that the regulation is not consistent with the believes that the regulation is not consistent with the enabling statute, the legislature can amend the statute to clarify its intent. The current system provides the legislature with the power to guide regulations formation.

3. Allowing the legislature to repeal a regulation by resolution would mean a major change in the way law is developed in this state. Regulations have the force of law. Repealing regulations changes law. Our constitution presently grants the power to the legislature to change law by passing a bill, which is then subject to the governor's review and possible veto. Because the governor cannot veto a resolution, allowing repeal of regulations by resolution would allow the legislature to change law without the action being subject to the governor's review. This is an important change in our constitution's system of checks and balances between the legislative and executive branches.

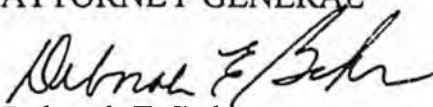
4. By repealing a regulation by resolution, the legislature would not be providing policy guidance or direction that is appropriate to the legislature's law-making function. In other words, the resolution would tell the executive branch that the regulation was unacceptable, but not what is acceptable. The state agency would have to guess again and spend state money to develop a new regulation, which might not be on the "right track." By using a bill, the legislature could change statutes to give clearer policy direction to the executive branch.

5. The Administrative Procedure Act allows legislators, as well as the general public, to comment on any new regulation proposed. The executive branch considers comments in the development of regulations. In this way, the legislature and the public have input into the regulation-adoption process.

If you have additional questions, please let me know.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Deborah E. Behr
Assistant Attorney General

Hon. Jeanette James
HJR 2

February 28, 1997
Page 3

cc: Hon. Norman Rokeberg
Alaska House of Representatives

Pat Pourchot, Legislative Director
Office of the Governor

Bruce M. Botelho, Attorney General
Barbara Ritchie, Deputy Attorney General
Chrystal Smith, Legal Administrator
Dept. of Law
Juneau

AMENDMENT #1
Fails 4/30/97

OFFERED IN THE HOUSE
TO: HJR 2

CROFT

Shift of BOP
to agency

1 Page 1, line 2:

2 Delete "repeal of regulations by the legislature"

3 Insert "the burden of proof in a judicial proceeding for the review or enforcement
4 of regulations"

5 Page 1, line 6:

6 Delete "Repeal"

7 Insert "Review and Enforcement"

8 PAGE 1, LINE 7 AGENCY
Following "Regulations.", through line 9:

9 Delete all material.

DISAPPROVED BY ME
4/30/97

10 Insert "In a judicial proceeding for the review or enforcement of a regulation, the
11 burden is on the agency that adopted the regulation to establish that all or part of the
12 regulation is within the procedural and substantive authority delegated by the legislature to
13 the agency."

PAGE 1, LINE 7

DELETE "REPEAL"

INSERT "BURDEN OF PROOF IN A JUDICIAL PROCEEDING FOR THE REVIEW OR ENFORCEMENT OF"

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE COMMITTEE, CHAIRMAN
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
JUDICIARY COMMITTEE, MEMBER
CORRECTIONS BUDGET SUBCOMMITTEE, MEMBER
ADMINISTRATION BUDGET SUBCOMMITTEE, MEMBER
HESS BUDGET SUBCOMMITTEE, MEMBER



INTERIM:
716 WEST 4TH AVENUE, SUITE 640
ANCHORAGE, AK 99501
PHONE: (907) 258-8191
FAX: (907) 258-2916

SESSION:
STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4968
FAX: (907) 465-2040

Representative Norman Rokeberg

SPONSOR STATEMENT

HOUSE JOINT RESOLUTION 2 - REPEAL OF REGULATIONS

REPRESENTATIVE NORMAN ROKEBERG

House Joint Resolution 2 proposes an amendment to Alaska's Constitution which would allow the legislature to repeal a regulation adopted by a state department or agency. The question of whether or not to adopt this proposal would be placed before Alaskan voters at the next general election (1998).

In many cases, legislative directives are ignored or regulations are created that go far beyond the scope of what the legislature intended. Once regulations go into effect, they have all the force and effect of law. The bureaucracy may, and has, subverted the will of the legislature by creating regulations with different effects and consequences than that intended under the actual law adopted by Alaska's elected representatives.

Currently, the only recourse the legislature has to rogue regulations is to rewrite the entire law which is expensive and time consuming. Under the current system, if a constituent calls with a concern about a particular regulation, a legislator can only respond by rewriting the law instead of reviewing the regulation in question and repealing it if it does not accomplish what the legislature intended.

Over 9,500 pages of regulations are in the Alaska Administrative Code. No elected official voted on these regulations and the public has no one to hold responsible for the bad regulations. It is the legislature's responsibility to make laws -- not the bureaucracy. HJR 2 opens the process to public scrutiny.

This resolution would allow the public to express its view on this matter. The last consideration of this matter by voters was in 1986. While the voters have turned down repeal of regulations three times since 1980, the regulations adopted since that time have become so onerous that it is time to again ask the voters about this process. The repeal of onerous regulations is needed to ensure a healthy environment for resource and other economic development in Alaska.

I urge your support of this resolution.

Ed1:2 /25/97

HJR

4

FISCAL NOTE

No: 2

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Bill version: HJR 4
 (H) Publish Date: 1/30/98

Revision Date (Note if correction) _____	Dept Affected <u>Office of the Governor</u>
Title <u>Const. Amend Relating to terms of legislators</u>	BRU <u>Elective Operations</u>
	Component <u>Elections</u>
Sponsor <u>Representatives Thernault, Rokeberg</u>	
Requester <u>House State Affairs Committee</u>	Component Serial No. <u>#21</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual	3.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	3.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF	3.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	3.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by \$56.0.

Prepared by <u>Gail Fenumia</u> <i>Gail Fenumia</i>	Phone <u>465-3935</u>
Division <u>Division of Elections</u>	Date <u>1/23/98</u>
Approved by <u>C. Lt. Governor Fran Ulmer</u> <i>Fran Ulmer</i>	Date <u>1/23/98</u>
Agency <u>Office of the Lieutenant Governor</u>	

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COMMITTEE COPY

FISCAL NOT

No: 1

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Bill Version: HJR 4
(H) Publish Date: 1/30/98

Revision Date: _____
Title: "Proposing amendments to the
Constitution of the State of Alaska relating to terms..."
Sponsor: Representative Therriault
Requestor: House State Affairs

Department Affected: Legislative Affairs Agency
BRU: All
Component: All

COMPONENT SERIAL NO:

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

REVENUE FUND SOURCE	0	0	0	0	0	0
---------------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary)

Zero fiscal impact to the Legislative Affairs Agency.

Prepared By: Karla Schofield, Deputy Director *Karla Schofield* Phone: 465-3852
 Division: Administrative Services Date: 1/27/98
 Approved By: Pamela A. Varni, Executive Director *Pamela A. Varni*
 Agency: Legislative Affairs Agency Date: 1/27/98

Alaska State Legislature

REPRESENTATIVE
GENE THERRIALT

Mailing Address:
119 N. Cushman, Suite 101
Fairbanks, Alaska 99701
(907) 488-0857
FAX: (907) 488-4271

While in Session
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797
Fax: (907) 465-3884

House Of Representatives

House District 33

HJR 4 0-LS0188VA 1/13/97

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

SPONSOR: Representative Gene Therriault

Sectional Analysis:

Election and Terms

- Section 1: Amends Article II, section 3, Constitution of the State of Alaska, by limiting a person from serving consecutively more than twelve regular sessions in the legislature. A person may not serve again in the legislature as a result of election or appointment until at least two consecutive regular sessions have elapsed.
- Section 2: Exempts periods served during the interim, between sessions or during special sessions from being considered when calculating the tenure limit. In addition, 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: Regular sessions served in the legislature before the convening of the first regular session of the Twenty-Third Legislature will be considered when calculating tenure limit.
- Section 4: Places the proposed amendments on the ballot at the next general election.

Alaska State Legislature

REPRESENTATIVE
GENE THERRIAULT

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119 N. Cushman, Suite 101
Fairbanks, Alaska 99701
(907) 488-0857
FAX: (907) 488-4271

While in Session
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797
Fax: (907) 465-3884

House District 33

House Of Representatives

HJR 4 Proposing amendments to the Constitution of the State of Alaska relating to terms of legislators

SPONSOR: Representative Gene Therriault

SPONSOR STATEMENT:

HJR 4 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 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. In addition, when 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 demonstrated their desire for congressional term limits through 1994's ballot measure 4, which passed by a margin of 62%. 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 4 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 that new legislators will be elected along with new ideas. The popularity of term limits indicates that a majority of our citizens do not prefer career politicians representing them. Term limits will also level the playing field for challengers facing long-term incumbents whose power oftentimes is derived primarily from seniority.

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

HJR

5

FISCAL NOTE

Bill Version: HJR 5

(H) Publish Date: 1/30/98

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Revision Date (Note if correction) _____ Dept. Affected Office of the Governor
 Title Const. Amend. Freedom of Conscience BRU Elective Operations
 Component Elections
 Sponsor Representative Martin
 Requester House State Affairs Committee Component Serial No. #21

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual	3.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	3.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	3.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	3.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by \$56.0.

Prepared by Dana LaTour Phone 465-5347
 Division Division of Elections Date 1/16/98
 Approved by C Lt. Governor Fran Ulmer Date 1/16/98
 Agency Office of the Lieutenant Governor

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Date Referred to Committee: January 30, 1998

FURTHER REFERRALS:

Finance

Date of Committee Action: 2/27/98

The JUDICIARY Committee considered:

HJR 5

HOUSE JOINT RESOLUTION NO. 5

CONSTIT AMNDMNT: FREEDOM OF CONSCIENCE

Proposing an amendment to the Constitution of the State of Alaska relating to freedom of conscience.

recommends it be replaced with the following committee substitute ~~CSHR 5~~ CSHR 5 (Jud) the same title a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) Gov

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>		<input checked="" type="checkbox"/>		

CHAIR'S SIGNATURE *[Signature]*

0-LS0199E
Cook
2/25/98

**CS FOR HOUSE JOINT RESOLUTION NO. 5(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION**

BY THE HOUSE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE MARTIN

A RESOLUTION

1 **Proposing an amendment to the Constitution of the State of Alaska relating to**
2 **freedom of conscience.**

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

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

6 **Section 25. Freedom of Conscience.** An individual may not be denied
7 freedom of conscience and may not be compelled to act in a manner that violates the
8 individual's conscientious objections to the act; however, the freedom of conscience
9 provided under this section does not excuse acts of licentiousness or justify practices
10 inconsistent with the peace and safety of the State.

11 *** Sec. 2.** The amendment proposed by this resolution shall be placed before the voters of
12 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
13 State of Alaska, and the election laws of the state.

AMENDMENT

To HJR 5

Offered in House Judiciary Committee

Offered by

Green

On page 1, line 8, following the phrase, "the act"

Delete the period and Insert:

"; however, the liberty of conscience hereby secured shall not be
so construed as to excuse acts of licentiousness or justify practices
inconsistent with the peace and safety of the state."

Fax Transmittal



Providence | Health System

TO: *Senator Joe Green*

FAX NUMBER: *907 465 4316*

FROM: Janet Oates, Director of Marketing &
Government/Community Relations

PHONE: 907 261-4946 **FAX NUMBER:** 907 261-3048

DATE: *2/11/98*

RE: *Today's testimony*

NUMBER OF PAGES: *Total 4 pages*



3200 PROVIDENCE DRIVE
P.O. BOX 196604
ANCHORAGE, ALASKA
99519-0004

Tei: 307 562 2211

PROVIDENCE HEALTH SYSTEM POSITION

REGARDING HJR5

2/11/98

Providence Health System wishes to express our support for a Conscience Clause constitutional amendment such as HJR5 or Senator Miller's proposed amendment to the Right to Privacy Statute.

The recent Alaska Supreme Court ruling in the Valley Hospital abortion case does appear to be inconsistent with the historic American constitutional right to freedom of conscience, the body of law at the Federal level and in most state constitutions.

Providence has felt that as a private and religious hospital, with our documented heritage and beliefs, and with guaranteed right under the US Constitution, our position of not doing abortions was not jeopardized. (We are not "quasi-public" as the Court ruled Valley Hospital to be.) However, based on the Court decision, we could not be **certain** of this unless our own case were tested in the courts--a less than desirable path. (We have plenty do without fighting legal battles.) We are also concerned about other hospitals in the state who find themselves vulnerable.

This has created a real dilemma for them. If they must do abortions, but have no staff willing to do them, they are going to have to recruit replacement staff--an expensive and time consuming task.

Providence *does* see possible risk in the hospitals where we have partnered with the communities of Kodiak and Seward to provide management and operation.

We believe a constitutional amendment would take us back to the intent of the original legislation regarding abortions in the state which apparently did include a section insuring no coercion would be applied to anyone not wanting to participate in an abortion.

A couple of suggestions and comments we would make on this particular amendment:

1. Add "organization" to the conscience clause. "An individual *or organization* may not be denied freedom of conscience and may not be compelled to act in a manner that violates the individual's *or organization's* objections to the act."
2. Although we have received assurance that the broad language of HJR5 reflects the historic U.S. Constitutional perspective there is still some concern that in our state--filled with the independent individualists we all are--we might be setting ourselves up for more battles between extremist points of view that challenge our basic laws

for civil order and common good. At the same time this amendment does reflect some of the core values of Providence Health System which include the words Compassion and Respect--especially RESPECT. Respect goes both ways, doesn't it. We are asking people to respect us as we pursue the dictates of our conscience, but at the same time we must be willing to give them the same right.

We are comfortable with the language of Senator Miller's proposed amendment to Section 22 of the Constitution in regard to Right of Privacy which says specifically "Nothing in this Constitution requires a hospital or person to participate in an abortion." And we respectfully suggest that you might consider looking at that approach.

Thank you for the opportunity to testify today.

Contacts:

Janet Oates, Director of Marketing & Government Relations
907-261-4946
(out of state until Feb. 23)

During that time you may contact
Sister Kaye Belcher
907 261-3675

REPRESENTATIVE
TERRY MARTIN
VICE-CHAIRMAN
BUDGET & AUDIT COMMITTEE
MEMBER
HOUSE FINANCE COMMITTEE

Alaska State Legislature



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JAN 15 - MAY 15 465-3783
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MEMORANDUM

To: House Judiciary Committee Members
From: Representative Terry Martin *TMM*
Date: February 11, 1998
Subject: HJR5 - Freedom of Conscience

Although the State of Alaska's Constitution does not contain a 'conscience' clause, many States, both explicitly and implicitly, guarantee and protect the 'freedom of conscience' in their State Constitutions. Some examples are:

Indiana, in Section 3 of their Bill of Rights, states: "No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience".

Kentucky Bill of Rights, Section 5 includes "No human authority shall, in any case whatever, control or interfere with the rights of conscience".

Washington, in Article 1, Section 11 of their Constitution reads: "Absolute freedom of conscience in all matters of religious sentiment, belief, and worship shall be guaranteed to every individual and no one shall be molested or disturbed in person or property on account of religion;"

New Hampshire Bill of Rights, Section 4, Rights of conscience unalienable: "Among the natural rights, some are, in their very nature unalienable, because no equivalent can be given or received for them. Of this kind are the Rights of Conscience."

Oregon Bill of Rights, Article I, Section 3 reads: "No law shall in any case whatever control the free exercise, and enjoyment of religious opinions or interfere with the rights of conscience".

Arkansas Constitution, in Article II, Section 3, states that "The State shall not control or interfere with the right of conscience..."

Delaware, Article I, Section 1: "...no power shall or ought to be vested in or assumed by any magistrate that shall in any case interfere with, or in any manner control the rights of conscience..."



Georgia, Section I, Paragraph III, Freedom of Conscience; "...no human authority should, in any case, control or interfere with such right of conscience."

Kansas Section 7: "...nor shall any control of or interference with the rights of conscience be permitted..."

Ohio Article 1, Bill of Rights: "nor shall any interference with the rights of conscience be permitted."

Pennsylvania Constitution Article I, Section 3 "...no human authority can, in any case whatsoever, control or interfere with the rights of conscience".

The **Minnesota** Bill of Rights, Section 16, Freedom of Conscience reads: "...nor shall any control of or interference with the rights of conscience be permitted..."

Missouri Constitution, Article I, Section 5: "...that no human authority can control or interfere with the rights of conscience..."

Idaho, Article I, Section 7, Rights of conscience; education; necessity of religion and knowledge: "...nor shall any interference with the rights of conscience be permitted."

The State of **Tennessee** Declaration of Rights, Article I, Section 3, reads: "...that no human authority can, in any case whatever, control or interfere with the rights of conscience..."

Wisconsin, Declaration of Rights, Section 18: "... nor shall any control of, or interference with, the rights of conscience be permitted..."

The **Arizona** constitution reads: "The liberty of conscience secured by the provisions of this Constitution shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the State." Idaho, California, Connecticut, New York, North Dakota, Wyoming, and Illinois include similar cautions in their constitutions.

See attached documentation

Arizona

Article 2 Section 12 - Liberty of conscience

Section 12. The liberty of conscience secured by the provisions of this Constitution shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the State. No public money or property shall be appropriated for or applied to any religious worship, exercise, or instruction, or to the support of any religious establishment. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror in consequence of his opinion on matters of religion, nor be questioned touching his religious belief in any court of justice to affect the weight of his testimony.

Arkansas - Proposed New Constitution

ARTICLE II - DECLARATION OF RIGHTS

Section 3. Freedom of Religion.

All persons have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No law shall be made respecting an establishment of religion or prohibiting the free exercise of religion; no person shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry. **The State shall not control or interfere with the right of conscience,** nor give any preference by law to any religious establishment, denomination, or mode of worship. Religion, morality, and knowledge being essential to good government, the General Assembly shall enact suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship. No religious test shall ever be required of any person as a qualification to vote or hold public office, nor shall any person be rendered incompetent to be a witness on account of religious belief, but nothing herein shall be construed to dispense with oaths or affirmations.

DELAWARE BILL OF RIGHTS

ARTICLE I, BILL OF RIGHTS

FREEDOM OF RELIGION

Sec. 1. Although it is the duty of all men frequently to assemble together for the public worship of Almighty God; and piety and morality, on which the prosperity of communities depends are hereby promoted; yet no man shall or ought to be compelled to attend any religious worship, to contribute to the erection or support of any place of worship, or to the maintenance of any ministry, against his own free will and consent; and **no power shall or ought to be vested in or assumed by any magistrate that shall in any case interfere with, or in any manner control the rights of conscience,** in the free exercise or religious worship, nor a preference given by law to any religious societies, denominations, or modes of worship.

Georgia

Section I. Rights of Persons, Paragraph III. Freedom of conscience.

Each person has the natural and inalienable right to worship God, each according to the dictates of that person's own conscience; and **no human authority should, in any case, control or interfere with such right of conscience.**

Constitution of the State of Indiana

ARTICLE I. Bill of Rights

Section 3. Freedom of religious opinions and rights of conscience

Section 3. **No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.**

STATE OF KANSAS

Kansas Bill of Rights

§ 7. Religious liberty. The right to worship God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend or support any form of worship; **nor shall any control of or interference with the rights of conscience be permitted**, nor any preference be given by law to any religious establishment or mode of worship. No religious test or property qualification shall be required for any office of public trust, nor for any vote at any elections,

Kentucky Constitution

BILL OF RIGHTS

Kentucky Constitution, Section 5

Right of religious freedom.

No preference shall ever be given by law to any religious sect, society or denomination; nor to any particular creed, mode of worship or system of ecclesiastical polity; nor shall any person be compelled to attend any place of worship, to contribute to the erection or maintenance of any such place, or to the salary or support of any minister of religion; nor shall any man be compelled to send his child to any school to which he may be conscientiously opposed; and the civil rights, privileges or capacities of no person shall be taken away, or in anywise diminished or enlarged, on account of his belief or disbelief of any religious tenet, dogma or teaching. **No human authority shall, in any case whatever, control or interfere with the rights of conscience.**

Minnesota

Sec. 16. FREEDOM OF CONSCIENCE; NO PREFERENCE TO BE GIVEN TO ANY RELIGIOUS ESTABLISHMENT OR MODE OF WORSHIP. The enumeration of rights

in this constitution shall not deny or impair others retained by and inherent in the people. The right of every man to worship God according to the dictates of his own conscience shall never be infringed; nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry, against his consent; **nor shall any control of or interference with the rights of conscience be permitted**, or any preference be given by law to any religious establishment or mode of worship; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state, nor shall any money be drawn from the treasury for the benefit of any religious societies or religious or theological seminaries.

Missouri Constitution

Article I, BILL OF RIGHTS, Section 5

Religious freedom--liberty of conscience and belief--limitations.

Section 5. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; **that no human authority can control or interfere with the rights of conscience**; that no person shall, on account of his religious persuasion or belief, be rendered ineligible to any public office or trust or profit in this state, be disqualified from testifying or serving as a juror, or be molested in his person or estate; but this section shall not be construed to excuse acts of licentiousness, nor to justify practices inconsistent with the good order, peace or safety of the state, or with the rights of others.

New Hampshire State Constitution

AMENDED AND IN FORCE DECEMBER 1990, PART FIRST- BILL OF RIGHTS

4. Rights of conscience unalienable.

Among the natural rights, some are, in their very nature unalienable, because no equivalent can be given or received for them. Of this kind are the Rights of Conscience.

CONSTITUTION OF THE STATE OF OHIO

ARTICLE I: BILL OF RIGHTS

CURRENT TO JULY 1, 1996

§ 7 Rights of **conscience**; education; necessity of **religion** and knowledge.

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own **conscience**. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; **nor shall any interference with the rights of conscience be permitted**. No religious test shall be required, as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. **Religion**, morality, and knowledge, however, being essential to good government, it shall be the duty of the general assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

ARTICLE I

Oregon BILL OF RIGHTS

Section 3. Freedom of religious opinion. No law shall in any case whatever control the free exercise, and enjoyment of religious (sic) opinions, or interfere with the rights of conscience.

PENNSYLVANIA

Article 1, DECLARATION OF RIGHTS, Religious Freedom
Section 3.

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect or support any place of worship or to maintain any ministry against his consent; **no human authority can, in any case whatever, control or interfere with the rights of conscience**, and no preference shall ever be given by law to any religious establishments or modes of worship.

TENNESSEE

ARTICLE I DECLARATION OF RIGHTS

Sec. 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own **conscience**; that no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent; **that no human authority can, in any case whatever, control or interfere with the rights of conscience**; and that no preference shall ever be given, by law to any religious establishment or mode of worship.

The Texas Constitution

Article 1 - BILL OF RIGHTS, Section 6 - FREEDOM OF WORSHIP

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. **No human authority ought, in any case whatever, to control or interfere with the rights of conscience** in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.

Wisconsin,

DECLARATION OF RIGHTS

Sec. 18. The right of every man to worship Almighty God according to the dictates of his own conscience shall never be infringed; nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any ministry, against his consent; **nor shall any control of, or interference with, the rights of conscience be permitted,** or any preference be given by law to any religious establishments or modes of worship; nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries.

Washington

We, the people of the State of Washington, grateful to the Supreme Ruler of the Universe for our liberties, do ordain this constitution.

ARTICLE I DECLARATION OF RIGHTS

SECTION 11 RELIGIOUS FREEDOM. Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment: **PROVIDED, HOWEVER,**

That this article shall not be so construed as to forbid the employment by the state of a chaplain for such of the state custodial, correctional, and mental institutions, or by a county's or public hospital district's hospital, health care facility, or hospice, as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony. [AMENDMENT 88, 1993 House Joint Resolution No. 4200, p 3062. Approved November 2, 1993.]

JAN 20 1998

Representative Berkowitz:

Here are some facts and some thoughts concerning the *Valley Hospital* case, which will hopefully be of some use in responding to the proposal for a constitutional "conscience" amendment. That proposal is apparently being advanced because of a misunderstanding of our Supreme Court's decision in *Valley Hospital Association, Inc. v. Mat-Su Coalition for Choice*, Opn. No. 4906 (Alaska, Nov. 21, 1997), which will be cited as "Opn." in this memo.

1. Consistent with Alaska's strong tradition of respecting individual liberty, Alaska was among the very first states to decriminalize pro viability abortions. The Legislature did so in 1970, three years prior to the U.S. Supreme Court's decision in *Roe v. Wade*. Ch. 103, §1, SLA 1970. In stark contrast to the diminished legislative commitment to personal freedom and privacy with which Alaskans seemingly must now contend, the Legislature enacted that law by a supermajority, overriding Governor Miller, who had vetoed the law because of his personal opposition to abortion. See 1970 Senate Journal 792-93; 1970 House Journal 924-25 (Governor's veto messages); 1970 Senate Journal 905-06 (veto override vote).

2. The primary reason for the Legislature's action in 1970 was its commitment to the principle that individual conscience and belief concerning abortion should be respected in Alaska. Recommending passage of the law, the Senate Judiciary Committee explained:

This bill basically permits a woman to follow her conscience in the matter of abortions until the period of "viability."

* * *

We do not feel that those who oppose abortions should impose their will through the criminal law on those who as a matter of conscience feel that abortions are a proper and reasonable exercise of their religious principles or their humanistic or ethical beliefs. Stated differently, we believe that equally intelligent, religious, ethical and sensitive persons can reasonably disagree on the issue of abortions. The resolution of this issue is a matter of personal belief and should not be frozen into the criminal law of Alaska, forcing all to conform to one view under threat of imprisonment.

1970 Senate Journal Supp. No. 10, at 2 (Mar. 25, 1970). Another Senate report explained that the law "intended to permit each to follow his

health of such women, and to avoid the imposition of other hardships on such women." However, that judgment also expressly provided that:

Nothing in the permanent injunction granted as part of this Final Judgment shall require any member of the medical staff of Valley Hospital, or any officer, agent, servant, or employee of Valley Hospital, to participate directly in the performance of any abortion procedure if that person, for reasons of conscience or belief, objects to doing so.

5. It is this Final Judgment and permanent injunction which the Alaska Supreme Court affirmed in its decision in the *Valley Hospital* case. The Supreme Court expressly noted, quoting the Final Judgment, that the injunction did not require "anyone affiliated with the hospital 'to participate directly in the performance of any abortion procedure if that person, for reasons of conscience or belief, objects to doing so.'" Opn. at 5.

6. The Hospital -- a non-sectarian hospital built with State funds -- did not and could not assert a religious basis for its restrictive abortion policy. See Opn. at 2, 20 n.20. The Supreme Court thus explicitly left open the question whether another "quasi-public" hospital might assert a religious exemption, based on constitutional religious freedom principles, to the general constitutional requirement that such hospitals must respect a woman's fundamental rights of privacy -- her rights of conscience, belief, and choice -- with respect to lawful abortion procedures. Opn. at 19 n.18.

7. Thus, both the Superior Court and the Supreme Court decisions respected and protected individual rights of conscience -- the right of a woman to make the difficult, often painful, choice whether to have a lawful abortion and the right of a hospital employee to choose, based on his or her conscience or beliefs, not to participate in an abortion procedure.

I hope this information is helpful. Please feel free to give me a call if you have any questions or would like additional information.



CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



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State of Alaska

JAN 20 1998

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2. The primary reason for the Legislature's action in 1970 was its commitment to the principle that individual conscience and belief concerning abortion should be respected in Alaska. Recommending passage of the law, the Senate Judiciary Committee explained:

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1970 Senate Journal Supp. No. 10, at 2 (Mar. 25, 1970). Another Senate report explained that the law "intended to permit each to follow his

conscience and to make abortion of a non-viable fetus a matter of medicine between patient and doctor." 1970 Senate Journal Supp. No. 1, at 2.

2. In July 1970, shortly after the Alaska Legislature decriminalized abortion, Valley Hospital applied for certification to allow the performance of legal abortions at the Hospital. The Hospital maintained a policy of tolerating individual conscience and choice with respect to abortion for more than 22 years, until a change in that policy in 1992. At that time, the Alaska Right to Life organization and anti-abortion clergy in the Mat-Su Valley began a concerted effort to attempt to restrict abortions at the Hospital, conducting a campaign to enroll Mat-Su residents with anti-abortion views as members of the Valley Hospital Association. That campaign was successful and a slate of anti-abortion candidates was elected in April 1992. Then, in September 1992, the Hospital's Board adopted the restrictive abortion policy which was challenged in the *Valley Hospital* case.

3. The Hospital had a policy and procedure, which was incorporated into its collective bargaining agreements with nursing staff and other employees, allowing a Hospital staffer to choose not to participate in an abortion. Those agreements contained a "conscientious objection" article, which provides that "[n]o employee shall be required to participate or assist in an abortion performed at the Valley Hospital or Clinic, if such employee holds a religious or ethical belief opposing abortion." The Hospital thus exempted employees who had religious or ethical beliefs opposing abortion from any requirement that they participate in abortion procedures.

4. The preliminary injunction entered in the *Valley Hospital* case in early February 1993, after the Hospital's restrictive policy had only been in effect for about three months, simply required the Hospital to reinstate the status quo, its longstanding tolerant policy which respected the beliefs of individual women and their physicians with respect to abortion and the beliefs of individual Hospital employees who might choose not to participate in a particular abortion procedure. See Opn. at 4. The permanent injunction later imposed by the Superior Court's Final Judgment similarly required respect for individual conscience and belief concerning abortion. It provided that "Valley Hospital should be permanently enjoined from violating the rights of women under the Alaska Constitution, declared in this Final Judgment and the Court's prior Orders incorporated into this Final Judgment, by prohibiting or restricting the performance of lawful abortion procedures at Valley Hospital's facilities," because "a permanent injunction is necessary to secure the rights of women under the Alaska Constitution who may choose to undergo a lawful abortion procedure, to protect the physical and emotional