ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672
9456 HOUSE STATE AFFAIRS

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,

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 1980s, 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 1986, 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, 1989).

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.

THE BOOK OF THE STATES

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The Council of State Governments
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Table 3.2
LEGISLATIVE SESSIONS: LEGAL PROVISIONS

State or other jurisdiction	Regular sessions: Year	Regular sessions: Legislature convenes: Month	Regular sessions: Legislature convenes: Day	Regular sessions: Limitation on length of session (a)	Special sessions: Legislature may call	Special sessions: Legislature may determine subject	Special sessions: Limitation on length of session
Alabama	Annual	Jan. Apr. Feb.	2nd Tues. (b) 3rd Tues. (c, d) 1st Tues. (e)	30 L in 105 C	No	Yes (f)	12 L in 30 C
Alaska	Annual	Jan. Jan.	2nd Mon. 3rd Mon. (g)	120 C (h)	By 2/3 vote of members	Yes (i)	30 C
Arizona	Annual	Jan.	2nd Mon.	(j)	By petition, 2/3 members, each house	Yes (i)	None
Arkansas	Biennial-odd year	Jan.	2nd Mon.	60 C (h)	No	Yes (f,k)	(k)
California	(l)	Jan.	1st Mon. (d)	None	No	No	None
Colorado	Annual	Jan.	2nd Wed.	120 C	By request, 2/3 members, each house	Yes (i)	None
Connecticut	Annual (m)	Jan. Feb.	Wed. after 1st Mon. (n) Wed. after 1st Mon. (o)	(p)	Yes (q)	(q)	None (r)
Delaware	Annual	Jan.	2nd Tues.	June 30	Joint call, presiding officers, both houses	Yes	None
Florida	Annual	Feb.	Tues. after 1st Mon. (d)	60 C (h)	Joint call, presiding officers, both houses	Yes (f)	20 C (h)
Georgia	Annual	Jan.	2nd Mon.	40 L	By petition, 3/5 members, each house	Yes (i)	(s)
Hawaii	Annual	Jan.	3rd Wed.	60 L (h)	By petition, 2/3 members, each house	Yes	30 L (h)
Idaho	Annual	Jan.	Mon. on or nearest 9th day	None	No	No	20 C
Illinois	Annual	Jan.	2nd Wed.	None	Joint call, presiding officers, both houses	Yes (i)	None
Indiana	Annual	Jan.	2nd Mon. (d, t)	odd-61 L or Apr. 30, even-30 L or Mar. 15	No	No	30 L or 40 C
Iowa	Annual	Jan.	2nd Mon.	(u)	By petition, 2/3 members, both houses	Yes (i)	None
Kansas	Annual	Jan.	2nd Mon.	odd-None, even-90 C (h)	Petition to governor of 2/3 members, each house	Yes	None
Kentucky	Biennial-even year	Jan.	Tues. after 1st Mon. (d)	60 L (v)	No	No	None
Louisiana	Annual	Mar. Apr.	last Mon. (d, n) last Mon. (m, o)	odd-60 L in 85 C; even-30 L in 45 C	By petition, majority, each house	Yes (i)	30 C
Maine	(l,m)	Dec. Jan.	1st Wed. (b) Wed. after 1st Tues. (o)	3rd Wed. of June (h) 3rd Wed. of April (h)	Joint call, presiding officers, with consent of of majority of members of each political party, each house	Yes (i)	None
Maryland	Annual	Jan.	2nd Wed.	90 C (g)	By petition, majority, each house	Yes	30 C
Massachusetts	Annual	Jan.	1st Wed.	(w)	By petition (x)	Yes	None
Michigan	Annual	Jan.	2nd Wed. (d)	None	No	No	None
Minnesota	(y)	Jan.	Tues. after 1st Mon. (n)	120 L or 1st Mon. after 3rd Sat. in May (y)	No	Yes	None

LEGISLATIVE SESSIONS: LEGAL PROVISIONS — Continued

State or other jurisdiction	Regular sessions: Year	Regular sessions: Legislature convenes: Month	Regular sessions: Legislature convenes: Day	Regular sessions: Limitation on length of session (a)	Special sessions: Legislature may call	Special sessions: Legislature may determine subject	Special sessions: Limitation on length of session
Mississippi	Annual	Jan.	Tues. after 1st Mon.	125 C (h, z); 90C (h, z)	No	No	None
Missouri	Annual	Jan.	Wed. after 1st Mon.	May 30	By petition, 3/4 members, each house	Yes	30 C (aa)
Montana	Biennial-odd year	Jan.	1st Mon.	90 L	By petition, majority, each house	Yes	None
Nebraska	Annual	Jan.	Wed. after 1st Mon.	odd-90 L (h); even-60 L (h)	By petition, 2/3 members	Yes	None
Nevada	Biennial-odd year	Jan.	3rd Mon.	60 C (u)	No	No	20 C (u)
New Hampshire	Annual	Jan.	Wed. after 1st Tues. (d)	45 L	By 2/3 vote of members, each house	Yes	15 L (u)
New Jersey	Annual	Jan.	2nd Tues.	None	By petition, majority, each house	Yes	None
New Mexico	Annual (m)	Jan.	3rd Tues.	odd-60 C; even-30 C	By petition, 3/5 members, each house	Yes (i)	30 C
New York	Annual	Jan.	Wed. after 1st Mon.	None	By petition, 2/3 members, each house	Yes (i)	None
North Carolina	(y)	Jan.	3rd Wed. after 2nd Mon. (n)	None	By petition, 3/5 members, each house	Yes	None
North Dakota	Biennial-odd year	Jan.	Tues. after Jan. 3, but not later than Jan. 11 (d)	80 L (hh)	No	Yes	None
Ohio	Annual	Jan.	1st Mon.	None	Joint call, presiding officers, both houses	Yes	None
Oklahoma	Annual	Feb.	1st Mon. (cc)	160 C	By vote, 2/3 members, each house	Yes (i)	None
Oregon	Biennial-odd year	Jan.	2nd Mon. after 1st Tues.	None	By petition, majority, each house	Yes	None
Pennsylvania	Annual	Jan.	1st Tues.	None	By petition, majority each house	No	None
Rhode Island	Annual	Jan.	1st Tues.	60 L (u)	No	No	None
South Carolina	Annual	Jan.	2nd Tues. (d)	1st Thurs. in June (h)	No	Yes	None
South Dakota	Annual	Jan.	2nd Tues.	odd-40 L; even-35 L	No	No	None
Tennessee	Annual	Jan.	(dd)	90 L (u)	By petition, 2/3 members, each house	Yes	10 L (u)
Texas	Biennial-odd year	Jan.	2nd Tues.	140 C	No	No	30 C
Utah	Annual	Jan.	3rd. Mon.	45 C	No	No	30 C (ee)
Vermont	(y)	Jan.	Wed. after 1st Mon. (n)	None	No	Yes	None
Virginia	Annual	Jan.	2nd Wed.	odd-30 C (h); even-60 C (h)	By petition, 2/3 members, each house	Yes	None
Washington	Annual	Jan.	2nd Mon.	odd-105 C; even-60 C	By vote, 2/3 members, each house	Yes	30 C
West Virginia	Annual	Feb. Jan.	2nd Wed. (c, d) 2nd Wed. (c)	60 C (h)	By petition, 3/5 members, each house	Yes (ff)	None
Wisconsin	Annual (gg)	Jan.	1st Mon. (n)	None	No	No	None

See footnotes at end of table

LEGISLATIVE SESSIONS: LEGAL PROVISIONS — Continued

State or other jurisdiction	Regular sessions: Year	Regular sessions: Legislature convenes: Month	Regular sessions: Legislature convenes: Day	Regular sessions: Limitation on length of session (a)	Special sessions: Legislature may call	Special sessions: Legislature may determine subject	Special sessions: Limitation on length of session
Wyoming	Annual (m)	Jan. Feb.	2nd Tues. (n) 3rd Mon. (o)	odd-40 L; even-20 L	No	Yes	None
Dist. of Columbia	(hh)	Jan.	2nd day	None			
American Samoa	Annual	Jan. July	2nd Mon. 2nd Mon.	45 L 45 L	No	No	None
Guam	Annual	Jan.	2nd Mon. (n)	None	No	No	None
No. Mariana Islands	Annual	(jj)	(d, jj)	90 L (jj)	Upon request of presiding officers, both houses	Yes (i)	10 C
Puerto Rico	Annual	Jan.	2nd Mon.	Apr. 30 (b)	No	No	20 C
U.S. Virgin Islands	Annual	Jan.	2nd Mon.	None	No	No	None

Sources: State constitutions and statutes.

Note: Some legislatures will also reconvene after normal session to consider bills vetoed by governor. Connecticut–if governor vetoes any bill, secretary of state must reconvene General Assembly on second Monday after the last day on which governor is either authorized to transmit or has transmitted every bill with his objections, whichever occurs first; General Assembly must adjourn *sine die* not later than three days after its reconvening. Hawaii–legislature may reconvene on 45th day after adjournment *sine die*, in special session, without call. Louisiana–legislature meets in a maximum five-day veto session on the 40th day after final adjournment. Missouri–if governor returns any bill on or after the fifth day before the last day on which legislature may consider bills (in even-numbered years), legislature automatically reconvenes on first Wednesday following the second Monday in September for a maximum 10 C sessions. New Jersey–legislature meets in special session (without call or petition) to act on bills returned by governor on 45th day after *sine die* adjournment of the regular session; if the second year expires before the 45th day, the day preceding the end of the legislative year. Utah–if 2/3 of the members of each house favor reconvening to consider vetoed bills, a maximum five-day session is set by the presiding officers. Virginia–legislature reconvenes on sixth Wednesday after adjournment for a maximum three-day session (may be extended to seven days upon vote of majority of members elected to each house). Washington–upon petition of 2/3 of the members of each house, legislature meets 45 days after adjournment for a maximum five-day session.

Key:

C — Calendar day.

L — Legislative day (in some states called a session day or workday; definition may vary slightly, however, generally refers to any day on which either house of legislature is in session).

(a) Applies to each year unless otherwise indicated.

(b) General election year (quadrennial election year).

(c) Year after quadrennial election.

(d) Legal provision for organizational session prior to stated convening date. Alabama–in the year after quadrennial election, second Tuesday in January for 10 C. California–in the even-numbered general election year, first Monday in December for an organizational session, recess until the first Monday in January of the odd-numbered year. Florida–in general election year, 14th day after election. Indiana–third Tuesday after first Monday in November. Kentucky–in odd-numbered year, Tuesday after first Monday in January for 10 L. Louisiana–in year after general election, second Monday in January, not to exceed 15 L. Michigan–held in odd-numbered year. New Hampshire–in even-numbered year, first Wednesday in December. North Dakota–in December. South Carolina–in even-numbered year, Tuesday after certification of election of its members for a maximum three-day session. West Virginia–in year after general election, on second Wednesday in January. No. Mariana Islands–in year after general election, second Monday in January.

(e) Other years.

(f) By 2/3 vote each house.

(g) Following a gubernatorial election year.

(h) Session may be extended by vote of members in both houses. Alaska–2/3 vote for 10-day extension. Arkansas–2/3 vote. Florida–3/5 vote. Hawaii–petition of 2/3 membership for maximum 15-day extension. Kansas–2/3 vote. Maine–2/3 vote for maximum 10 L. Maryland– 3/5 vote for maximum 30 C. Mississippi–2/3 vote for 30 C extension, no limit on number of extensions. Nebraska–4/5 vote. South Carolina–2/3 vote. Virginia–2/3 vote for 30 C extension. West Virginia–2/3 vote (or if budget bill has not been acted upon three days before session ends, governor issues proclamation extending session). Puerto Rico–joint resolution.

(i) Only if legislature convenes itself. Special sessions called by the legislature are unlimited in scope in Arizona, Georgia, Maine, and New Mexico.

(j) No constitutional or statutory provision; however, legislative rules require that regular sessions adjourn no later than Saturday of the week during which the 100th day of the session falls.

(k) After governor's business has been disposed of, members may remain in session up to 15 C by a 2/3 vote of both houses.

(l) Regular sessions begin after general election, in December of even-numbered year. In California, legislature meets in December for an organizational session, recesses until the first Monday in January of the odd-numbered year and continues in session until Nov. 30 of next even-numbered year. In Maine, session which begins in December of general election year runs into the following year (odd-numbered); second session begins in next even-numbered year.

(m) Second session limited to consideration of specific types of legislation. Connecticut–individual legislators may only introduce bills of a fiscal nature, emergency legislation and bills raised by committees. Louisiana–fiscal matters. Maine–budgetary matters; legislation in the governor's call; emergency legislation; legislation referred to committees for study. New Mexico–budgets, appropriations and revenue bills; bills drawn pursuant to governor's message; vetoed bills. Wyoming–budget bills.

(n) Odd-numbered years.

(o) Even-numbered years.

(p) Odd-numbered years–not later than Wednesday after first Monday in June; even-numbered years not later than Wednesday after first Monday in May.

(q) Constitution provides for regular session convening dates and allows that sessions may also be held ". . . at such other times as the General Assembly shall judge necessary." Call by majority of legislators is implied.

(r) Upon completion of business.

(s) Limited to 40 L unless extended by 3/5 vote and approved by the governor, except in cases of impeachment proceedings.

LEGISLATIVE SESSIONS: LEGAL PROVISIONS — Continued

(t) Legislators may reconvene at any time after organizational meeting; however, second Monday in January is the final date by which regular session must be in process.

(u) Indirect limitation; usually restrictions on legislator's pay, per diem, or daily allowance.

(v) May not extend beyond April 15.

(w) Legislative rules say formal business must be concluded by Nov. 15th of the 1st session in the biennium, or by July 31st of the 2nd session for the biennium.

(x) Joint rules provide for the submission of a written statement requesting special session by a specified number of members of each chamber.

(y) Legal provision for session in odd-numbered year; however, legislature may divide, and in practice has divided, to meet in even-numbered years as well.

(z) 90 C sessions every year, except the first year of a gubernatorial administration during which the legislative session runs for 125 C.

(aa) 30 C if called by legislature; 60 C if called by governor.

(bb) No legislative day is shorter than a natural day.

(cc) Odd number years will include a regular session commencing on the first Tuesday after the first Monday in January and recessing not later than the first Monday in February of that year. Limited constitutional duties can be performed.

(dd) Commencement of regular session depends on concluding date of organizational session. Legislature meets, in odd-numbered year, on second Tuesday in January for a maximum 15 C organizational session, then returns on the Tuesday following the conclusion of the organizational session.

(ee) Except in cases of impeachment.

(ff) According to a 1955 attorney general's opinion, when the legislature has petitioned to the governor to be called into session, it may then act on any matter.

(gg) The legislature, by joint resolution, establishes the session schedule of activity for the remainder of the biennium at the beginning of the odd-numbered year.

(hh) Each Council period begins on January 2 of each odd-numbered year and ends on January 1 of the following odd-numbered year.

(ii) Legislature meets on the first Monday of each month following its initial session in January.

(jj) 60 L before April 1 and 30 L after July 31.

NATIONAL CONFERENCE OF STATE LEGISLATURES
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Telecopy to: Janet Seitz
Ofc. of Rep Rokeberg

From: Brenda Erickson

Message: Attached are legislative session calendars for 1997 and 1996; these should give you an idea of when legislatures meet during one odd- and even- year.

1997 LEGISLATIVE SESSION CALENDAR

*Legislature meets throughout the year

STATES	DATES
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. 6-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 6
MISSOURI	Jan. 8-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 Convenes	Adjourns	Comments
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 Convenes	Adjourns	Comments
Alabama	Feb-04	May-19	
Alaska	Jan-13	May-13	
Arizona	Jan-13	Apr-26	
Arkansas	Jan-13	mid Mar	
California	Jan-06	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-06	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-06	
Missouri	Jan-08	May-30	
Montana	Jan-06	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-06	*	
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-06	*	
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.

Alaska State Legislature
HOUSE OF REPRESENTATIVES

Official Business

State Capitol
Juneau, AK 99801-1182

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 proposes 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 next 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.

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.

Ed.1:2/11/97

ALASKA STATE LEGISLATURE
House of Representatives

COMMITTEE ASSIGNMENTS:

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SESSION:
STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4958
FAX: (907) 465-2040

Representative Norman Rokeberg

MEMORANDUM

TO: Representative Jeannette James, Chair
House State Affairs

FROM: Representative Norman Rokeberg

DATE: February 18, 1997

RE: HJR 1 - 90 day session limit

I am submitting additional information regarding the captioned matter. By memorandum dated February 11, 1997, a scheduling request was sent to you. A fiscal note from Legislative Affairs was delivered to your office last week.

The following items are attached:

1. "1997 Legislative Session Calendar" from NCSL.

2. "1996 Legislative Regular Session Calendar" from NCSL.

3. "1997 Legislative Regular Session Calendar" from NCSL.

4. Proposed amendment. This amendment would:

a. Change the title so that it would read: "Proposing an amendment to the Constitution of the State of Alaska relating to the convening and duration of a regular session."

b. Delete current lines 6 and 7 and replace with the language in the amendment. This language would have the effect of making the session convening date the first Monday in February and limiting the duration of a session to 90 days.

If you have any questions, please do not hesitate to contact me.

Attachments

cc: Rep. Sanders (w/ attachments)

HJR 1

Am 1

Vezey - Am to 60 days
Alton Objected

Failed 5-1

~~Convene 4th Mon in Jan~~

Am 2

Change 90 → 100 days line 7 p-1

Hodgens
Berkowitz objected
Failed 3-2

0-LS0090\A.1
Cook
2/14/97

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE ROKEBERG

TO: HJR 1

Page 1, line 2, following "**the**":

Insert "**convening and**"

Page 1, lines 6 and 7:

Delete "fourth Monday in January, but the month and day may be changed by law. **Each regular session is limited to ninety** [THE"

Insert "**first** [FOURTH] Monday in **February. Each regular session is limited to ninety** [JANUARY, BUT THE MONTH AND DAY MAY BE CHANGED BY LAW. THE

Failed

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HJR1

Revision Date (Note if correction) _____ Dept. Affected Office of the Governor

Title Const. Amend: Relating to the duration of a regular session

BRU Elective Operations

Component General and Primary

Sponsor Representative Rokeberg

Requester House State Affairs Committee

Component Serial No. #22

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 Gail Fenumiai Phone 465-3935

Division Division of Elections Date 3/2/98

Approved by C Lt. Governor Fran Ulmer Date 3/2/98

Agency Office of the Lieutenant Governor

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

NO.
BILL VERSION: HJR 1
PUBLISH DATE:

Revision Date:
Title: Proposing an amendment to the Constitution of the State of Alaska relating to the duration...
Sponsor: Representative Rokeberg
Requestor: House State Affairs

Department Affected: Legislative Affairs Agency
BRU: Legislative Council
Component: Session Expenses
Salaries & Allowances

COMPONENT SERIAL NO:

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	-1,040.0	-1,040.0	-1,040.0	-1,040.0	-1,040.0	-1,040.0
TRAVEL	-298.6	-298.6	-298.6	-298.6	-298.6	-298.6
CONTRACTUAL	-126.4	-126.4	-126.4	-126.4	-126.4	-126.4
SUPPLIES	-25.0	-25.0	-25.0	-25.0	-25.0	-25.0
EQUIPMENT	-10.0	-10.0	-10.0	-10.0	-10.0	-10.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-1,500.0	-1,500.0	-1,500.0	-1,500.0	-1,500.0	-1,500.0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

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)

HJR 1 would amend the Constitution of the State of Alaska by limiting the regular session to 90 days. The daily cost of a legislative session is $50,000. A 90 day session would decrease the cost of a regular session by $1,500,000.

Session per diem is budgeted under travel. Session per diem for 30 days is $298.6.

Prepared By: Karla Schofield, Deputy Director — Karla Schofield — Phone: 465-3852
Division: Administrative Services — Date: 3/2/98

Approved By: Pamela A. Varni, Executive Director — Pamela A Varni
Agency: Legislative Affairs Agency — Date: 3/2/98

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

FISCAL NOTE

(1997)

STATE OF ALASKA
1997 LEGISLATIVE SESSION

NO.
BILL VERSION: HJR 1
PUBLISH DATE:

Revision Date:
Title: Proposing an amendment to the Constitution of the State of Alaska relating to the duration...
Sponsor: Representative Rokeberg
Requestor: Representative Rokeberg

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

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	0	-1,040.0	-1,040.0	-1,040.0	-1,040.0	-1,040.0
TRAVEL	0	-298.6	-298.6	-298.6	-298.6	-298.6
CONTRACTUAL	0	-126.4	-126.4	-126.4	-126.4	-126.4
SUPPLIES	0	-25.0	-25.0	-25.0	-25.0	-25.0
EQUIPMENT	0	-10.0	-10.0	-10.0	-10.0	-10.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	-1,500.0	-1,500.0	-1,500.0	-1,500.0	-1,500.0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	-1,500.0	-1,500.0	-1,500.0	-1,500.0	-1,500.0
FEDERAL FUNDS						
OTHER FUND SOURCE						
TOTAL	0	-1,500.0	-1,500.0	-1,500.0	-1,500.0	-1,500.0

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)

HJR 1 would amend the Constitution of the State of Alaska by limiting the regular session to 90 days. The daily cost of a legislative session is $50,000. A 90 day session would decrease the cost of a regular session by $1,500,000.

Session per diem is budgeted under travel. Session per diem for 30 days is $298.6.

Prepared By: Karla Schofield, Deputy Director — Phone: 465-3852
Division: Administrative Services — Date: 2/14/97

Approved By: Pamela A. Varni, Executive Director
Agency: Legislative Affairs Agency — Date: 2/14/97

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

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House of Representatives

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Representative Norman Rokeberg

MEMORANDUM

TO: Representative Jeannette James, Chair
House State Affairs Committee

FROM: Representative Norman Rokeberg

DATE: February 3, 1998

RE: HJR 1 – Proposing an amendment to the Constitution of the State of Alaska relating to the duration of a regular session

On February 11, 1997, Representative Sanders and I requested that the captioned resolution be brought before your committee for a hearing. On February 14, 1997, a fiscal note from Legislative Affairs Agency showing savings of $1.5 million per year was delivered to your office.

I would like to renew my request that this resolution be heard by your committee.

Thank you for your attention to this matter.

cc: Rep. Sanders

HJR

2

HOUSE COMMITTEE REPORT

[redacted] [redacted]

ite Referred to Committee: January 13, 1997 **FURTHER REFERRALS:** Judiciary
Finance

ite of Committee Action: 3/6/97

e STATE AFFAIRS Committee considered: HJR 2

)USE JOINT RESOLUTION NO. 2 REPEAL OF REGULATIONS BY LEGISLATURE

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

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

] additional referral to _____ Committee
] attached amendment(s)

ADOPTS: _____ Letter of Intent

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

[X] fiscal note(s) Gov. [ ] fiscal note(s) _____

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

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
Jeannette James	✓			
	✓			
	✓			
			✓	

HAIR'S SIGNATURE Jeannette James _____

ALASKA STATE LEGISLATURE
House of Representatives

COMMITTEE ASSIGNMENTS:

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

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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

ALASKA STATE LEGISLATURE
House of Representatives

COMMITTEE ASSIGNMENTS:

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SPECIAL COMMITTEE ON OIL & GAS, MEMBER
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JUNEAU, AK 99801-1182
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.

A L A S K A

FEB 17 1997

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.

217 Second Street, Suite 206 • Juneau, AK 99801 • 907-463-5118 • Fax 907-463-5128

MAR 0 3 1997

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

ALASKA
STATE
CHAMBER
OF COMMERCE

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,

Pamela La Bolle

Pamela La Bolle
President

MAR 0 4 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

124 West 5th Street ◆ Juneau, Alaska 99801 ◆ (907) 586-6420 ◆ FAX (907) 463-5670

MAR 0 4 1997

ALASKA AIRMEN'S ASSN., INC.

SERVING GENERAL AVIATION 40 YEARS (1951-1991)

U of A Aviation Complex
1515 East 13th Avenue Anchorage, Alaska 99501-4814

(907) 272-1251 — 24 Hour Phone/Fax

FEBRUARY 10, 1997

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

REF: HJR 2- REPEAL OF RE GULATIONS

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.

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 from17 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

Philip K. Livingston, CCIM

Legislative Chair
Alaska Airmen's Asscciation

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

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

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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ANCHORAGE, ALASKA 99501-1994
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 HOUSE
JUNEAU, ALASKA 99811-0300
PHONE (907) 465-3600
FAX (907) 465-6735

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

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.

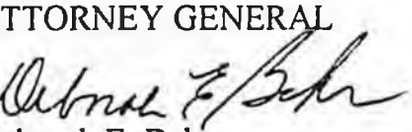
4. By repealing a regulation by resolution, the legislature would not be providing policy guidance or direction that is appropriate to the legislature's law-making function. In other words, the resolution would tell the executive branch that the regulation was unacceptable, but not what is acceptable. 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

DEB:lmm
H:\WP\LEGIS97\HJR2.LTR

cc: Hon. Norman Rokeberg
Alaska House of Representatives

Pat Pourchot, Legislative Director
Office of the Governor

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

ALASKA STATE LEGISLATURE
House of Representatives

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Representative Norman Rokeberg

MEMORANDUM

TO: Rep. Jeannette James, Chair
House State Affairs Committee

FROM: Rep. Norman Rokeberg

DATE: February 25, 1997

RE: Scheduling Request
House Joint Resolution 2 - Repeal of Regulations

Please schedule House Joint Resolution 2 before your committee for a hearing.

Attached are the following:

a. HJR 2
b. Sponsor Statement
c. Sectional Analysis
d. Letters of Support:
   i. Alaska Airmen's Assn., Inc.
   ii. NFIB

If you have any questions, please do not hesitate to contact me.

OK Janet

HJR

4

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 13, 1997 FURTHER REFERRALS: Judiciary
Finance

Date of Committee Action: 1/29/97

The STATE AFFAIRS Committee considered: HJR 4

HOUSE JOINT RESOLUTION NO. 4 LIMITING TERMS OF STATE LEGISLATORS

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

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) L&A [ ] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
Jeannette James	✓			
Kim Elton	✓			
Mike Robinson	✓			
Lyman Hoffman			✓	
Fred Thomas			✓	
Al Vezey	✓			
Mark Hodgins	✓			

CHAIR'S SIGNATURE Jeannette James _____

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

Alaska State Legislature

House Of Representatives

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

House District 33

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 full regular sessions in the legislature. A person may not again serve in the legislature as a result of election or appointment to fill a vacancy until at least two consecutive regular sessions have elapsed. 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.

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House Of Representatives

While in Session
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Juneau, Alaska
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House District 33

HJR 4 0-LS0188\A 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 full 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 full regular sessions have elapsed.

Section 2: Exempts periods served during the interim, between sessions or during special sessions from being considered when calculating the 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.

REPRESENTATIVE
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House Of Representatives

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Juneau, Alaska
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House District 33

MEMORANDUM

DATE: January 20, 1998

TO: Representative Jeannette James, Chair
House State Affairs Committee

FROM: Representative Gene Therriault GT

SUBJECT: Scheduling of HJR 4

I would like to respectfully request that House Joint Resolution 4, "Proposing amendments to the Constitution of the State of Alaska relating to terms of legislators" be scheduled for a hearing in the House State Affairs Committee.

The resolution proposes that a person may not serve consecutively more than twelve full regular sessions in the legislature. A person may not again serve in the legislature as a result of election or appointment to fill a vacancy until at least two consecutive full regular session have elapsed.

I appreciate your consideration of my request.

NFIB Alaska

NFIB
The Voice of Small Business

National Federation of Independent Business

Statement of Support

of HJR 4

A resolution calling for a constitutional amendment relating to term limits for state legislators and certain officers of the state.

The Alaska Chapter of the National Federation of Independent Business has over 3000 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 limiting the number of terms served by members of the Alaska legislature. Following are the ballot results on this issue:

Should the Alaska legislature be limited in the number of terms they can serve in office?

76 % YES **21 % NO** **3 % Undecided**

If you answered yes to the above question, which of the following options do you prefer?

a. Term limit of no more than 12 consecutive years. (69 %)

b. Term limit of four 2-year terms as a State Representative and two 4-year terms as a State Senator. (31 %)

NFIB/Alaska urges support for HJR 4.

Submitted by Thyes Shaub on behalf of NFIB/Alaska.

National Federation of Independent Business
217 Second Street, Suite 206 • Juneau, AK 99801 • 907-463-5118 • Fax 907-463-5128

Small Business Works FOR ALASKA
...and NFIB works for small business.

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

NO.
BILL VERSION: HJR 4
PUBLISH DATE:

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

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

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HJR4

Revision Date (Note if correction) _____ Dept. Affected Office of the Governor

Title Const. Amend: Relating to terms of legislators BRU Elective Operations

Component Elections

Sponsor Representatives Therriault, Rokeberg

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 Gail Fenumiai Phone 465-3935

Division Division of Elections Date 1/23/98

Approved by Lt. Governor Fran Ulmer Date 1/23/98

Agency Office of the Lieutenant Governor

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HJR

5

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 13, 1997

FURTHER REFERRALS: Judiciary
Finance

Date of Committee Action: 1/29/98

The STATE AFFAIRS 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 _____ [ ] the same title [ ] a new title

[ ] additional referral to _____ Committee
[ ] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[✓] fiscal note(s) GOV

_____

[ ] zero fiscal note(s) _____

_____

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____

_____

[ ] zero fiscal note(s) _____

_____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
Jeannette James	✓			
[illegible]		✓		
[illegible]	✓			
[illegible]	✓			
[illegible]	✓			
[illegible]	✓			

CHAIR'S SIGNATURE Jeannette James _____

State of Alaska

Alaska State Legislature

To: Rep. Jeannette James, Chair
State Affairs Committee Members

From: Rep. Terry Martin

Re: HJR 5

Date: January 27, 1998

In light of today's discussion of the pro's and con's of freedom of religion and conscience, I offer the following observations from Supreme Court Justice Sandra Day O'Connor:

"The principle of religious 'free exercise' and the notion that religious liberty deserved legal protection were by no means new concepts in 1791, when the Bill of Rights was ratified. To the contrary, these principles were first articulated in this country in the colonies of Maryland, Rhode Island, Pennsylvania, Delaware, and Carolina in the mid-1600s. These colonies, though established as sanctuaries for particular groups of religious dissenters, extended freedom of religion to groups--although often limited to Christians--beyond their own. Thus, they encountered early on the conflicts that may arise in a society made up of a plurality of faiths.

"The term *free exercise* appeared in an American legal document as early as 1648, when Lord Baltimore extracted from the new Protestant governor of Maryland and his councilors a promise not to disturb Christians, particularly Roman Catholics, in the 'free exercise' of their religion. Soon after, in 1649, the Maryland Assembly enacted the first free exercise clause by passing the Act Concerning Religion: "No person . . . professing to believe in Jesus Christ shall from henceforth be any ways troubled, molested or discountenanced for or in respect of his or her religion nor in the free exercise thereof . . . nor in any

way [be] compelled to the belief or exercise of any other religion against his or her consent, so as they be not unfaithful to the Lord Proprietary, or molest or conspire against the civil government.'

Rhode Island's Charter of 1663 used the analogous term--'liberty of conscience.' It protected residents from being 'in any ways molested, punished, disquieted, or called into question, for any differences in opinion, in matters of religions and do not actually disturb the civil peace of our said colony.' The charter further provided that residents may 'freely, and fully have and enjoy his and their own judgments, and conscience in matters of religious concernments . . . ; they behaving themselves peaceably and quietly and not using this liberty to licentiousness and profaneness; nor to the civil injury, or outward disturbance of others.'

"The principles expounded in these early charters reemerged more than a century later in state constitutions that were adopted in the flurry of constitution drafting that followed the American Revolution. By 1789 every state but Connecticut had incorporated some version of a free exercise clause into its constitution. These state provisions, which were typically longer and more detailed than the federal Free Exercise Clause, are perhaps the best evidence of the original understanding of the Constitution's protection of religious liberty. After all, it is reasonable to think that the states that ratified the First Amendment assumed that the meaning of the federal free exercise provision corresponded to that of their existing state clauses. The precise language of these state precursors to the Free Exercise Clause varied, but most guaranteed free exercise of religion or liberty of conscience, limited by particular, defined state interests.

"For example, the New York Constitution of 1777 provided: "The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed, within this state, to all mankind: provided that the liberty of conscience, hereby granted, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.'

"Similarly, the New Hampshire Constitution of 1784 declared: 'Every individual has a natural and ualienable right to worship God according to the dictates of his own conscience, and reason; and no subject shall be hurt, molested, or restrained in his person, liberty or estate for worshipping God, in the manner and season most agreeable to the dictates of his own conscience . . . provided he doth not disturb the public peace, or disturb others, in their religious worship.'

"The Maryland Declaration of Rights in 1776 read: "No person ought by any law to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice; unless, under color of

religion, any man shall disturb the good order, peace or safety of the state, or shall infringe the laws of morality, or injure others, in their natural, civil, or religious rights' (Maryland Constitution, Declaration of Rights, Art. XXXIII).

"The New York Constitution [stated that] rights of conscience should not be 'construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of [the] state.'

"Like the federal Free Exercise Clause, the Virginia religious liberty clause was simply silent on the subject, providing only that all men are equally entitled to the free exercise of religion, according to the dictates of conscience.'

"George Washington expressly stated that he believed that government should do its utmost to accommodate religious scruples, writing in a letter to a group of Quakers: 'In my opinion, the conscientious scruples of all men should be treated with great delicacy and tenderness; and it is my wish and desire, that the laws may always be as extensively accommodated to them, as a due regard to the protection and essential interests of the nation may justify and permit.'"

- U.S. Supreme Court Justice Sandra Day O'Connor, adapted from her dissent in Boerne vs. Flores

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

Alaska State Legislature

MAY 15 - JAN 15 258-8169
716 W. 4TH, SUITE 650
ANCHORAGE, AK 99504

JAN 15 - MAY 15 465-3783
STATE CAPITOL
JUNEAU, AK 99801-1182

MEMORANDUM

February 21, 1997

To: Representative Jeannette James, Chair
House Committee on State Affairs

From: Representative Terry Martin TM.

Subject: HJR 5 - "Freedom of Conscience"

Thank you for scheduling HJR 5 for a public hearing. I believe the debate in which your committee is about to engage is vitally important to the recognition and protection of our basic freedom--the freedom to follow our conscience.

The first objection you will likely hear to this proposed constitutional change is that it is not needed--that it does nothing. This argument hinges on the fact that the constitution already recognizes the freedom of religion, and that therefore the "wall of separation" has already been erected. This objection postulates that freedom of religion and freedom of conscience are the same thing, and that anyone who says they are not is splitting hairs.

Perhaps that is so. But because the court has been splitting hairs in the Valley Hospital case, we now find ourselves in this unbelievable situation: members of the staff of the hospital are forced (short of quitting their jobs) to participate indirectly in support of operations to which they conscientiously object. In other words, even though a nurse or housekeeper believes an abortion is a morally abhorrent murder, he or she is required by the court to clean up after the operations, dispose of fetal remains, etc.

Here, in brief, is the hair the court has attempted to split: The freedom of conscience to not participate in abortions is codified in the state law passed in 1970 that legalized abortion. A woman's "right to choose" an abortion is recognized by the courts as protected by the right to privacy clause, added to the constitution in 1972. The court decided in the Valley Hospital case that, because the hospital is a public facility, it must offer abortions, a constitutionally-protected right of women. And it decreed that the

Heard +
Held
1997

constitutional right overrides the statutory protection of the freedom of conscience.

It is clear to me that, inasmuch as the court does not recognize it within the freedom of religion clause, the freedom of conscience deserves the protection of its own clause within the constitution.

We should also bear in mind that many people who morally object to abortion, euthanasia and the death penalty, do not practice or profess any religion. They are simply following their conscience and object on moral grounds, not on religious grounds.

A second argument you will likely hear over the proposed language of the amendment is that it is too broad. What if someone uses it to challenge a state law, arguing, for instance, that he conscientiously objects to driving less than 80 miles an hour on the freeway, or to paying taxes because he doesn't agree with the uses to which the state puts the tax money?

Other states, such as Washington and Connecticut, have included in their freedom of conscience clauses a narrowing backstop, which your committee might also want to consider. The subsentence included in these two constitutions says, "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." Licentiousness is defined by Webster's as 1) morally undisciplined or sexually unrestrained, or 2) having no regard for accepted rules or standards.

I do not object if the committee decides such an addition would be in order.

HJR-5

WORDING OF BALLOT ISSUE

RIGHT OF PRIVACY -
RIGHT OF CONSCIENCE

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

Alaska State Legislature

MAY 15 - JAN 15 258-8169
716 W. 4TH, SUITE 650
ANCHORAGE, AK 99504

JAN 15 - MAY 15 465-3783
STATE CAPITOL
JUNEAU, AK 99801-1182

OK

MEMORANDUM

To: **Representative Jeannette James, Chair**
House Committee on State Affairs

From: **Representative Terry Martin** TM

Date: **January 16, 1997**

Subject: **Scheduling of HJR 5**

At your earliest convenience, please schedule a hearing for HJR 5, a proposed amendment to the Alaska Constitution protecting the individual's freedom of conscience.

Support information and backup materials are attached. If you have questions, please contact either myself or John Manly of my staff at 465-3783. Thank you for your expeditious attention to this request.

Sponsor Statement

HJR 5

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

What do we mean when we say "freedom of conscience?" The United States is a nation founded on the freedom of religion; it is fundamental to the many institutions we have grown up with and take for granted. That is to say, our freedom of religion is not Christian, Jewish, Islamic or any other specific sect, but recognizes the basic tenets of these and other religions as foundational to our society.

Yet, what is it to claim a freedom of religion if not to be able to act upon one's conscience when your religious beliefs collide with the secular world? The freedom to act in accordance with one's religious--or even non-religious, but moral--beliefs is a fundamental precept of freedom of religion.

In Alaska, we have been careful to articulate the rights of the individual, through both the Alaska and the US Constitutions. We have gone so far as to recognize in the state constitution the right to privacy. Perhaps the right to freedom of conscience has simply been taken for granted, as implied by the protection of the freedom of religion, or as codified in Alaska statutes

However, having the freedom of conscience in statute has not been sufficient, and a court challenge has sought to compel individual Alaskans to perform actions to which they personally objected as a matter of conscience. Specifically, providers of medical services, such as doctors and nurses, have been forced to perform or participate in certain medical procedures such as abortions, even though they are morally opposed to the killing of innocent human life. Today's new emphasis on assisted suicide could well become a public governmental policy, mandated by the courts or the legislature.

Any convoluted rationalization of a social policy that forces a person to participate in what he or she considers to be murder puts Alaska at the doorstep of Nazi Germany of the 1930s or of the several communist despotisms of the 30s, 40s and 50s.

By adding this new protection to the Alaska Constitution, we can make it crystal clear that Alaskans enjoy complete freedom of conscience, just as we now imagine we do.

Sectional Analysis

HJR 5

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

Section 1 amends Article 1 of the state constitution by adding a new section that reads: "Section 25. Freedom of Conscience. An individual may not be denied freedom of conscience and may not be compelled to act in a manner that violates the individual's conscientious objections to the act."

Section 2 directs that the proposed amendment be placed before the voters in the next general election in conformity with that section of the constitution that governs how the constitution may be amended. Article XIII, sec. 1 requires that the proposed amendment pass the legislature by a 2/3 vote of each house and be approved by more than half the voters in the election. When passed, the amendment takes effect 30 days after certification of the election by the Lt. Governor.

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

MAT-SU COALITION FOR CHOICE, DR. SUSAN LEMAGIE, and JANE DOES I-X,

Plaintiffs,

vs.

VALLEY HOSPITAL ASSOCIATION, INC., and JAMES G. WALSH, Valley Hospital Executive Director,

Defendants,

Case No. 3PA-92-01207 Civil

FINAL JUDGMENT

In accordance with the Court's Order of September 20, 1995, granting plaintiffs' motion for summary judgment and a permanent injunction, Final Judgment is hereby entered in this case in plaintiffs' favor as follows:

IT IS HEREBY ADJUDGED and DECLARED that the policy adopted by the Operating Board of the defendant Valley Hospital Association, Inc. ("Valley Hospital") to restrict the performance of lawful elective abortion procedures at Valley Hospital violates the protections for the right of privacy provided by Article I, §22 of the Alaska Constitution. It is also adjudged and declared that Valley Hospital is a non-sectarian, quasi-public hospital which may not violate or abridge the fundamental rights of women, protected by the Alaska Constitution, to choose to terminate their pregnancies. For these reasons, and for the further reasons set

STEPHAN H. WILLIAMS
Attorney at Law
[illegible]

forth in the Court's Order granting plaintiffs' motion for a preliminary injunction, entered on February 9, 1993, it is thus adjudged and declared that the restrictive abortion policy adopted by Valley Hospital is unlawful and unenforceable.

IT IS FURTHER ADJUDGED AND DECLARED 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. Based on the evidence presented to the Court and for the reasons stated in the Court's Order granting plaintiffs' motion for a preliminary injunction, entered on February 9, 1993, the court has concluded, in the exercise of its equitable discretion, that 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 health of such women, and to avoid the imposition of other hardships on such women.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Valley Hospital, its Operating Board, medical staff members, officers, agents, servants, and employees, any of their successors, and all persons acting in concert, participation, or cooperation with them or any of them, or at their direction or under their control, are hereby permanently enjoined and restrained as follows:

1. from enforcing any policy, rule, regulation, practice, or custom prohibiting the performance of any lawful abortion procedure at Valley Hospital;

STEPHAN H. WELLIKER
Attorney At Law
500 L Street, Suite 600
Anchorage, Alaska 99501
(907) 276-9322

2. from refusing to permit the facilities of Valley Hospital to be used for the performance of any lawful abortion procedure by qualified medical personnel;

3. and from imposing any restriction on the performance or scheduling of any lawful abortion procedure at Valley Hospital which is not based on accepted, established medical practices or requirements with respect to such procedures.

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.

IT IS FURTHER ORDERED AND ADJUDGED that defendant Valley Hospital shall pay to plaintiffs attorney's fees in the amount of $_____ and costs in the amount of $_____. Post-judgment interest at the statutory rate of 10.5 per cent a year shall accrue on the total amount of this Final Judgment from the date this Final Judgment is entered until fully paid.

ENTERED this 9th day of ~~October~~ November, 1995, at Anchorage, Alaska.

Dana Fabe
Superior Court Judge

STEPHAN K. WILLIAMS
ATTORNEY AT LAW
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(907) 276-0337

BOPP, COLESON & BOSTROM
ATTORNEYS AT LAW

JAMES BOPP, JR.

ASSOCIATES:
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February 8, 1996

Senator Drue Pearce
President, Alaska Senate
Representative Gail Phillips
Speaker, Alaska House of
Representatives
State Capitol
Juneau, AK 99801-1182

Re: brief *amicus curiae* in *Mat-Su Coalition et al. v. Valley Hospital et al.*

BY FACSIMILE TRANSMISSION

Dear Mr. Pearce and Ms. Phillips:

Mr. James Bopp, Jr. and I are lead counsel for Valley Hospital in a case which is currently before the Alaska Supreme Court. Mr. Brian Brundin, of Hughes, Thorsness, Gantz, Powell & Brundin in Anchorage, is local counsel in this matter.

Valley Hospital is a small (thirty-six bed) private, non-profit, community hospital in the Matanuska-Valley. In the Fall of 1992, it adopted a policy to not offer abortions except in the case of rape or incest; when a life-threatening condition existed for the patient; or when the fetus had a condition which was incompatible with life. This policy was promulgated to protect the moral consciences of its employees, a majority of whom were opposed to offering elective abortions.

In enacting this policy, Valley Hospital relied, at least in part, on Alaska's conscience clause legislation, AS 18.16.010(b). This statute was passed in 1970 and expressly provides that no hospital or person shall be required to participate in an abortion, nor may they be held liable for refusing to do so. The legislative history clearly indicates that, in passing this statute, the legislature wanted to take a "hands-off" position on this sensitive issue. The Legislature recognized that people on both sides of the abortion debate have strong feelings concerning it, and it wanted to respect the beliefs of all persons on this issue. In short, it wanted to ensure that coercion would not be applied to any person or institution regarding this procedure.

Despite the very explicit protection which this statute conferred on Valley Hospital and its employees, and their conscientiously-held beliefs against performing elective abortions, Valley Hospital was sued in order to force it to offer all such procedures. Unfortunately, the trial court has ordered the Hospital to offer all abortions and has only exempted those persons who would have to *directly* participate in these procedures from being forced to do so. Such an order creates severe moral problems for members of the surgical and support staff who are now forced to indirectly participate in these procedures, e.g., by cleaning surgical instruments used in performing abortions, by cleaning the operating rooms following these procedures, by disposing of fetal remains, etc.

In *Frank v. State*, 604 P.2d 1068, 1070 (Alaska 1979), the Alaska Supreme Court noted that forcing persons to engage in acts which violate their consciences "works an exceptional harm on them." In *Cleveland v. Municipality of Anchorage*, 631 P.2d 1073, 1081 (Alaska 1981), the Alaska Supreme Court analyzed AS 18.16.010 in a different context and expressly deferred to the legislative balancing on the issue of abortion (generally) which is embodied in this statute, holding that "the Alaska legislature is better suited to strike the balance [of competing interests on this issue] than is this court." In sum, Alaska's highest court has noted that it is important to protect the consciences of its citizens and has deferred to the balancing of competing interests struck by the Alaska Legislature on the issue of abortion.

However, the Alaska Supreme Court has never addressed the issue of whether a few persons may utilize the government, i.e., the judicial system, to force a great many more persons to engage in an activity which violates sincerely held beliefs of moral conscience. Based on the trial court's ruling in this case, there is the very real danger that despite the protection of conscience AS 18.16.010(b) provides on the issue of abortion, the Alaska Supreme Court may decide that a few persons may use their desire to obtain abortions as a means to force many more persons to engage in acts which are morally abhorrent to them. In short, it may decide that a persons's interest in obtaining an abortion automatically and totally overrides peoples' conscientiously-held beliefs against participating in this procedure, including, as in this case, completely *private* actors. Such a decision would render AS 18.16.010(b) unconstitutional and would, of course, present a Pandora's Box of dangers for all Alaskans.

To ensure that its beliefs on this issue are respected--and, by implication, the beliefs of all Alaskans--Valley Hospital is seeking your support and that of your colleagues. Specifically, it would like as many members of the Alaska House and Senate as possible to participate in an *amicus curiae* ("friend of the

court") brief before the Alaska Supreme Court. This brief would be limited in scope to advocating the continuing validity of AS 18.16.010(b). In this regard I have contacted members of both Houses who I have been advised would recognize the continuing importance of protecting moral beliefs on this issue.

As a brief submitted by members of a co-equal branch of government--the same branch which enacted the statute--Valley Hospital believes that the Alaska Supreme Court would (or at least should) give this brief particular attention. Participating in this fashion would not require you to devote either resources or time; it would be funded and written by an attorney with expertise in this area. It would only require you to, literally, "sign on" to it, i.e., allow your name to be included as "a friend of the court" who would be speaking to it on this issue. The brief would probably be filed in approximately thirty days.

In the interim, Valley Hospital would appreciate it if, as soon as possible, you would call a Republican caucus to discuss this matter and to encourage as many of your colleagues as possible to participate in such a project. The Hospital would then appreciate it if Mr. Brundin or I could be apprised of the results.

Valley Hospital enacted its policy not to coerce anyone, but, rather, to ensure that no coercion would be applied to it and its employees. By helping save AS 18.16.010(b) from invalidation, your assistance in this case will not only ensure that Valley Hospital and its employees will be allowed to follow their moral consciences, but it will go a long way to restoring respect to the beliefs of all persons on this issue.

Sincerely yours,

BOPP, COLESON & BOSTROM

John K. Abegg

John K. Abegg

cc:
Bob Byron
Brian Brundin
Republican Members of the Alaska Legislature

Supreme Court hears abortion appeal

ANCHORAGE – The Alaska Supreme Court on Wednesday heard arguments on an abortion case involving Valley Hospital in Palmer. The arguments came on the anniversary of the day the U.S. Supreme Court issued its landmark ruling that legalized abortion 24 years ago.

In the Valley Hospital case, an anti-abortion majority on the nonprofit hospital's board banned second-trimester abortions at the facility. A Palmer physician and a pro-abortion group filed a suit to overturn that decision.

Dana Fabe, now sitting on the Supreme Court, ruled from the Superior Court bench that the hospital was a quasi-public institution because of the millions in public funds used to build the facility. She ruled such a facility couldn't bar abortions because of the right to privacy set out in the state constitution.

Valley Hospital is the only hospital in the state where second-trimester abortions can be performed. The procedures are relatively rare. Most abortions occur in the first three months of pregnancy and can be done in a doctor's office or clinic.

Juneau Empire - Thurs. Jan 23 '97

IN THE
SUPREME COURT OF ALASKA

Valley Hospital Association, Inc., and James G. Walsh, Valley Hospital Executive Director,	)	Docket No. S 7417
Defendants-Appellants,	)	Superior Court for the State of Alaska Third Judicial District at Palmer
vs.	)	
Mat-Su Coalition for Choice, Dr. Susan Lemagie, and Jane Does I-IX,	)	Hon. Dana Fabe, Judge Presiding
Plaintiffs-Appellees.	)	Case No. 3 PA-92-1207 Civil

BRIEF AMICUS CURIAE OF MEMBERS OF THE ALASKA LEGISLATURE IN SUPPORT OF DEFENDANTS-APPELLANTS.

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Filed in the Supreme Court
of the State of Alaska this
15th day of May, 1996

JAN HANSEN, CLERK

By: Tracy Cerra

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List of Amici

Sen. Robin L. Taylor (Rep.)	"A" District
Sen. John Torgerson (Rep.)	"D" District
Sen. Loren Leman (Rep.)	"G" District
Sen. Rick Halford (Rep.)	"M" District
Sen. Lyda N. Green (Rep.)	"N" District
Sen. Michael W. Miller (Rep.)	"Q" District
Rep. Joe Green (Rep.)	10th District
Rep. Mark Hanley (Rep.)	12th District
Rep. Terry Martin (Rep.)	14th District
Rep. Sean Parnell (Rep.)	17th District
Rep. Jerry Sanders (Rep.)	19th District
Rep. Pete Kott (Rep.)	24th District
Rep. Vic Kohring (Rep.)	26th District
Rep. Scott Ogan (Rep.)	27th District
Rep. Al Vezey (Rep.)	32nd District
Rep. Don Long (Dem.)	37th District

Applicable Statute

Alaska Statutes, § 18.16.010(b):

Nothing in this section requires a hospital or person to participate in an abortion, nor is a hospital or person liable for refusing to participate in an abortion under this section.

Statement of the Issue Presented for Review

Whether, assuming that the Alaska Constitution protects an independent right of abortion, a quasi-public hospital is required to make its facilities available for the performance of elective abortions over its objections and in violation of the state statute, Alaska Stat. § 18.16.010(b), which guarantees the institutional and individual rights of conscience of both public and private hospitals and their physicians, nurses and staff.[1]

Statement of the Interest of the Amici

Amici curiae are elected Members of the Alaska Legislature. Amici may not share a common view as to whether, and under what circumstances, abortion should be legal, but all are in agreement with and strongly support the institutional and individual rights of conscience embodied in § 18.16.010(b). Amici support Valley Hospital Association's right to rely on this statute and submit that the lower court seriously erred in ordering the hospital to allow elective abortions to be performed on its premises. The court's judgment has implications not only for other hospitals in Alaska that choose not to perform abortions, but also for the power of the State of Alaska, acting through its legislature, to determine whether and to what extent public facilities and funds should be made available for elective abortions. That authority may be called into question if the lower court's judgment is allowed to stand. Amici urge this Court to reverse.

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[1] Amici assume for purposes of this Brief that defendant hospital is a "quasi-public" institution.

Statement of the Case

Amici curiae generally adopt the defendants-appellants' Statement of the Case.

Statement of the Standard of Review

The standard of review for the issue presented for review in this Brief is de novo.

SUMMARY OF ARGUMENT

The Alaska abortion statute provides, in pertinent part: "Nothing in this section requires a hospital or person to participate in an abortion, nor is a hospital or person liable for refusing to participate in an abortion under this section." Alaska Stat. § 18.16.010(b). The rights of conscience secured by this statute are not limited to private or denominational hospitals, nor to persons employed by such facilities. Rather, the rights of conscience are guaranteed to all hospitals and persons, without exception. Defendant Valley Hospital seeks to avail itself of this right in resisting plaintiffs' claim that the hospital must open its doors to the performance of elective abortions in violation of the established policy of the hospital and the conscientious objections of its members, staff, and governing board.

The lower court's decision in this case is unprecedented. Although a few courts have erroneously held, on federal constitutional grounds (later rejected by the Supreme Court), that a public (or quasi-public) hospital may not refuse to perform elective abortions, no court has held that a state constitutional right to abortion overrides an otherwise applicable statutory right of conscience. The lower court's decision compelling defendants to allow elective abortions to be performed in its facilities over its conscientious objection is clearly wrong and must be reversed.

I. THE LOWER COURT ERRED IN FORCING VALLEY HOSPITAL ASSOCIATION TO MAKE ITS FACILITIES AVAILABLE FOR THE PERFORMANCE OF ELECTIVE ABORTIONS OVER ITS OBJECTIONS AND IN VIOLATION OF THE STATE STATUTE WHICH GUARANTEES THE INSTITUTIONAL AND INDIVIDUAL RIGHTS OF CONSCIENCE OF BOTH PUBLIC AND PRIVATE HOSPITALS, AND THEIR PHYSICIANS, NURSES AND STAFF.

The lower court determined that Valley Hospital was not entitled to rely on the conscience clause for three reasons. First, the clause was part of a "statute enacted in 1970, three years prior to Roe v. Wade, 410 U.S. 113 (1973), the U.S. Supreme Court decision which held that a woman's right to an abortion is a fundamental constitutional right." Order of February 9, 1993, granting preliminary injunctive relief, at 20. Second, the statute in which the clause appears "was also enacted prior to Alaska's adoption of an express constitutional right of privacy," and that, as a consequence, § 18.16.010(b) "may not be construed as immunizing quasi-public hospitals from violating Alaska's constitutional reproductive freedom rights." Id. at 20-21. Third, institutional conscience clause protection may not be claimed by public or quasi-public entities. Id. at 21-22. Not one of these reasons withstands scrutiny.

A. The Federal Constitutional Right To Abortion Recognized In Roe v. Wade Does Not Require Public Institutions To Make Their Facilities Available For Abortions.

The lower court suggested in its Order of February 9, 1993, that the United States Supreme Court's recognition of a federal constitutional right to abortion necessarily implies a right of access to public (or quasi-public) facilities for performance of abortions--therapeutic or elective. That implication is wrong.

Amici note that, notwithstanding the recognition of an

abortion right in Roe v. Wade, the Supreme Court has repeatedly held that the Constitution does not require either the United States or the States to pay for therapeutic or elective abortions, or to make their health care facilities available for the performance of either. See Harris v. McRae, 448 U.S. 297 (1980) (upholding Hyde Amendment restricting federal funding of abortion to instances in which the mother's life is endangered); Williams v. Zbaraz, 448 U.S. 358 (1980) (upholding state statute prohibiting public funding of abortion except to save the life of the mother); Maher v. Roe, 432 U.S. 464 (1977) (upholding state statute limiting public funding of abortion to those abortions which were "medically necessary"); Poelker v. Doe, 432 U.S. 519 (1977) (rejecting challenge to municipal policy allowing abortions to be performed in city hospitals only to save the mother's life or health); Webster v. Reproductive Health Services, 492 U.S. 490 (1989) (rejecting challenge to state statute forbidding abortions at state-run medical centers except to save the life of the mother). The latter two decisions are particularly instructive and merit this Court's close attention.

In Poelker, the Mayor of St. Louis issued a directive to the Director of Health and Hospitals prohibiting the performance of abortions at two city hospitals except when there was a threat of grave physiological injury or death to the mother. The Supreme Court, relying upon its decision in Maher v. Roe, 432 U.S. 464 (1977), decided the same day, upheld this directive. The Court agreed that "the constitutional question presented here is

identical in principle with that presented by a State's refusal to provide Medicaid benefits for abortions while providing them for childbirth." Poelker, 432 U.S. at 521. The Court found "no constitutional violation by the city of St. Louis in electing, as a policy choice, to provide publicly financed hospital services for childbirth without providing corresponding services for non-therapeutic abortions," and held that "the Constitution does not forbid a State or city, pursuant to the democratic processes, from expressing a preference for normal childbirth as St. Louis has done." Id. The Court upheld this policy even though, as the dissent observed, "[p]ublic hospitals that do not permit the performance of elective abortions will frequently have physicians on their staffs who would willingly perform them," and notwithstanding the possibility that the Court's holding would "pose difficulties in small communities where the public hospital is the only nearby health facility." Id. at 523-24 (Brennan, J., dissenting).

In Webster v. Reproductive Health Services, the Supreme Court upheld a state statute prohibiting the performance of an abortion in any public facility except to save the life of the mother. Rejecting the argument that Missouri had created an obstacle to a woman's ability to exercise her right to choose an abortion, the Court stated:

> [T]he State's decision here to use public facilities and staff to encourage childbirth over abortion "places no governmental obstacles in the path of a woman who chooses to terminate her pregnancy." McRae, 448 U.S. at 315 . . . . Just as Congress' refusal to fund abortions in McRae left "an indigent woman with at

> least the same range of choice in deciding whether to obtain a medically necessary abortion as she would have had if Congress had chosen to subsidize no health care costs at all, id., at 317 . . . , Missouri's refusal to allow public employees to perform abortions in public hospitals leaves a pregnant woman with the same choices as if the State has chosen not to operate any public hospitals at all.

492 U.S. at 509.

The Court explained that the Missouri's decision "only restrict[s] a woman's ability to obtain an abortion to the extent that she chooses to use a physician affiliated with a public hospital," a "circumstance . . . more easily remedied, and thus considerably less burdensome, than indigency, which 'may make it difficult--and, in some cases, perhaps impossible--for some women to have abortions' without public funding." Webster, 492 U.S. at 509 (quoting Maher v. Roe, 432 U.S. 464, 474 (1977)).

> Having held that the State's refusal to fund abortions does not violate Roe v. Wade, it stains logic to reach a contrary result for the use of public facilities and employees. If the State may 'make a value judgment favoring childbirth over abortion and . . . implement that judgment by the allocation of public funds," Maher, [432 U.S.] at 474 . . . , surely it may do so through the allocation of other public resources, such as hospitals and medical staff.

Id. at 509-10.

In language that is directly applicable to the lower court's first reason for refusing to give effect to the Alaska conscience clause in this case, i.e., that the clause was part of a statute enacted before Roe was decided, the Supreme Court held:

> Nothing in the Constitution requires States to enter or remain in the business of performing abortions. Nor, as appellees suggest, do private physicians and their patients have some kind of constitutional right of access to public facilities for the performance of

abortions.

Id. at 510. The Court emphasized that there is no "right of access to public facilities for the performance of abortions," even where "the State recoup[s] all of its cost in performing abortions, and no state subsidy, direct or indirect, is available, ..." Id. Citing Maher, Poelker, and McRae, the Court stated that "the State need not commit any resources to facilitating abortions, even if it can turn a profit by doing so." Id. at 511. The Court noted that in Poelker, "the suit was filed by an indigent who could not afford to pay for an abortion, but the ban on the performance of nontherapeutic abortions in city-owned hospitals applied whether or not the pregnant woman could pay." Id.

The Supreme Court's decisions in Poelker and Webster leave no doubt that a public hospital is not required to make its facilities available for the performance of elective abortions, even where no expenditure of public funds is involved.[2] The Court reached these decisions, it must be noted, without relying

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[2] From October 1, 1988, until January 22, 1993, the Department of Defense had a formal policy of prohibiting "pre-paid" (patient-funded) abortions at United States military bases overseas, even though no federal funds were at stake. See Memorandum for Secretaries of the Military Departments from William Mayer, M.D., Ass't Sec. of Defense, June 21, 1988. That policy was never challenged as being violative of the abortion right recognized in Roe v. Wade. More recently, Congress enacted two laws that prohibit abortions at military hospitals except to save the life of the mother, or in cases where the pregnancy resulted from an act of rape or incest. See Pub. L. 104-61, §§ 8119, 8119a (Dec. 1, 1995); Pub. L. 104-106, § 738 (Feb. 10, 1996). That legislation has not been challenged, either.

upon a federal or state statutory right of conscience.[3] The recognition by the Supreme Court of a right to abortion in Roe does not require federal or state hospitals to offer abortion services. Thus, the lower court's first reason for refusing to give effect to the Alaska institutional conscience clause--that it was part of a statute adopted before Roe was decided--must be rejected. Thus, even in the absence of an express conscience clause, nothing in the federal constitution requires public hospitals to make their facilities available for abortions.

B. Assuming, Arguendo, That The State Constitution Protects A Right To Abortion Separate And Independent From The Federal Right To Abortion Recognized In Roe v. Wade, That Right Does Not Override The Institutional And Individual Rights Of Conscience Guaranteed By Alaska Stat. § 18.16.010(b).

The lower court also determined that the conscience clause is inapplicable because it was part of a statute enacted before the Alaska Constitution was amended to include a specific right of privacy upon which plaintiffs based their right of access. See Order of February 9, 1993, granting preliminary injunctive relief, at 20-21. Although the court's reasoning here is not

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[3] Even before Poelker and Webster were decided, one federal circuit court strongly implied that a private, nondenominational hospital is not required to make its facilities available for the performance of elective abortions, even if the hospital is otherwise acting under color of state law, if its refusal is based on moral or religious grounds. In Doe v. Charleston Area Medical Center, Inc., 529 F.2d 638, 642-44 & nn. 7, 11 (4th Cir. 1975), the court held that a federal "conscience clause" (42 U.S.C. § 300a-7(a)(2)(A)) for facilities constructed with Hill-Burton funds did not immunize a quasi-public hospital from suit where the hospital's refusal to make its facilities available for the performance of elective abortions was based on a pre-Roe statute prohibiting nontherapeutic abortions and not upon institutional religious or moral convictions.

entirely clear, the court appears to suggest that a statutory right of conscience may be raised only against one asserting a statutory, not a constitutional, right of access. Thus, before the Alaska Constitution was amended to include a right of privacy (and, arguendo, a right to abortion), a hospital might refuse, on the basis of § 18.16.010(b), to allow its facilities to be used for the performance of abortions made legal by the same statute. However, such refusal would be of no avail after the state constitution was amended to include a specific right of privacy and, by extension, a right to abortion.

Neither the court nor plaintiffs, however, cite cases from this Court or any other state court holding that a constitutional right to abortion overrides an otherwise applicable statutory conscience clause. To argue, as plaintiffs have (Memorandum in Support of Plaintiffs' Cross-Motion for Summary Judgment and in Opposition to Defendants' Motion for Summary Judgment at 58-60 & n.38), that a constitutional claim necessarily trumps a statutory defense simply begs the question before this Court and conceals the paucity of authority in support of their argument. No state court has held, on state as opposed to federal constitutional grounds, that public (or quasi-public) hospitals must make their facilities available for the performance of elective abortions.[4]

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[4] In addition to the federal cases previously discussed in the text, the following federal courts held that a public hospital could not rely on a state "conscience clause" as the basis for its refusal to allow its facilities to be used for the performance of abortions because such a policy interfered with the right to abortion recognized in Roe v. Wade: Wolfe v. Schroering, 541 F.2d 523, 527-28 (6th Cir. 1976) (Kentucky);

At least twenty-eight States, in addition to Alaska, have conscience clauses that apply to public, as well as private, institutions.[5] Not one of these statutes has been struck down or limited in its application to private institutions on state constitutional grounds, even though court decisions in several of these States recognize abortion rights under their state constitutions.[6] The absence of such authorities indicates the unprecedented nature of the lower court's judgment.

It is evident that the legislature's intention in including a conscience clause in the Alaska abortion statute in 1970 was to protect the right of institutions and individuals not to participate in a procedure (i.e., abortion) that was being made

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Hodgson v. Lawson, 542 F.2d 1350, 1356 (8th Cir. 1976) (Minnesota); Orr v. Koefoot, 377 F. Supp. 673, 683-84 (D. Neb. 1974) (Nebraska). These decisions, of course, are no longer valid in light of the Supreme Court's subsequent opinions in Poelker v. Doe and Webster v. Reproductive Health Services.

[5] Ark. Code Ann. § 20-16-601(b) (1991); Colo. Rev. Stat. § 18-6-104 (1990); Del. Code Ann. tit. 24, § 1791(b) (1987); Fla. Stat. Ann. § 390.001(8) (1993); Geo. Code Ann. § 16-12-142 (1994); Haw. Rev. Stat. § 453-16(d) (1985); Idaho Code § 18-612 (1987); Ill. Comp. Stat. ch. 745, §§ 30/1(b), 70/9 (1994); Ind. Stat. Ann. § 16-21-8-7 (Burns 1993); Kan. Stat. Ann. § 65-444 (1992); Ky. Rev. Stat. § 311.800(1) (1995); La. Rev. Stat. § 40:1299.33(C) (1992); Me. Rev. Stat. Ann. tit. 22, § 1591 (1992); Md. Ann. Code, Health-Gen. § 20-214(b) (1995 Supp.); Mich. Comp. Laws Ann. § 333.20181 (1992); Minn. Stat. Ann. § 145.414 (1989); Mo. Ann. Stat. § 197.032 (1983), see also § 188.215 (1996 Supp.); Neb. Rev. Stat. § 28-337 (1989); N.J. Stat. Ann. § 2A:65A-2 (1987); N.M. Stat. § 30-5-2 (1994); N.C. Gen. Stat. § 14-45.1(f) (1993); N.D. Cent. Code § 23-16-14 (1991); Ohio Rev. Code § 30-5-2 (1994); Pa. Cons. Stat. Ann. tit. 18, § 3215(a), -(b) (1983 & 1995 Supp.); S.D. Cod. Laws § 34-23A-14 (1994); Tenn. Code Ann. § 39-15-204 (1991); Va. Code § 18.2-75 (1988); Wis. Stat. Ann. § 253.09 (1995 Supp.).

[6] See, e.g., In re T.W., 551 So.2d 1186 (Fla. 1989); Women of the State of Minnesota v. Gomez, 542 N.W.2d 17 (Minn. 1995).

legal.[7] That abortion may have been placed on a stronger legal foundation with the adoption of the privacy amendment in 1972 (which amici do not concede) does not make defendants' and others' reliance on the conscience clause any weaker. There is no support in the law for the lower court's unstated conclusion that recognition of a state right to abortion, in and of itself, overrides the rights of conscience--statutory or constitutional--of institutions and individuals.

C. Under Alaska Stat. § 18.16.010(b), A Quasi-Public Institution May Express A Conscientious Objection To Abortion.

The heart of the lower court's opinion may be found in its view that a quasi-public institution is not entitled to express a conscientious objection to abortion. See Order of February 9, 1993, granting preliminary injunctive relief, at 21-22. But this third reason for ignoring the Alaska conscience clause is no more persuasive than the first two. The court cites one Attorney General Opinion from 1978, 1978 Op. Att'y Gen. No. 8 (Formal), and one decision from the New Jersey Supreme Court, Doe v.

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[7] The March 25, 1970, report by members of the Senate Judiciary Committee who voted to pass the bill noted that "the bill forces no woman to get an abortion, no doctor to perform an abortion and not hospital to permit an abortion." Report by Members of the Senate Judiciary Committee voting "do pass" in support of Judiciary Committee Substitute for Senate Bill 527, an Act relating to Abortions." Senate Journal Supp. No. 10, March 25, 1970, p. 2. The April 9, 1970, report of the House Judiciary Committee stated, in part, that "[t]he bill also provides that a hospital or person is not required to participate in an abortion and neither shall a hospital or person be held liable for refusing to participate in an abortion." Judiciary Committee Report on CS for Senate Bill 527 (HWE), House Journal Supp. No. 12, April 9, 1970, p. 3. The same Report reiterated that "[i]mmunity from liability is granted to a hospital or other person for refusing to participate in an abortion." Id.

Bridgeton Hosp. Ass'n, Inc., 366 A.2d 641 (N.J. 1976), cert. denied, 433 U.S. 914 (1977). Neither is persuasive.

The Attorney General Opinion was issued in response to a request to evaluate a proposed bill regulating abortion, not the existing law adopted in 1970. One provision of the proposed bill would have relieved all physicians, clinics, surgical centers, and their employees from any duty to perform an abortion over their objection in writing. The Attorney General expressed the view that an institutional right of conscience is limited to "sectarian" hospitals, and that "nonsectarian hospitals built or operating with public support would be foolish to rely on it." 1978 Op. Att'y Gen. No. 8 (Formal) at 13 (Feb. 10, 1978). The two lower federal court decisions cited in support of this conclusion--Nyberg v. City of Virginia, 495 F.2d 1342 (8th Cir. 1974), appeal dismissed, 419 U.S. 91 (1974), and Doe v. Hale Hospital, 500 F.2d 144 (1st Cir. 1974), cert. denied, 420 U.S. 907 (1975)--must be regarded as having been rejected by the Supreme Court's decisions in Poelker v. Doe, and Webster v. Reproductive Health Services.[8]

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[8] After the Supreme Court's decision in Poelker, defendants in the Nyberg case sought to vacate the injunction that had been issued forbidding them from implementing a resolution prohibiting staff physicians from using the facilities of the local municipal hospital to perform abortions except to save the mother's life. The court of appeals, noting that the woman refused an abortion in Poelker was indigent, affirmed the district court's denial of relief, explaining that "there is a fundamental difference between providing direct funding to effect the abortion decision and allowing staff physicians to perform abortions at an existing publicly owned hospital." Nyberg v. City of Virginia, 667 F.2d 754, 758 (8th Cir. 1982), appeal dismissed, 462 U.S. 1125 (1983). In Webster, the Supreme Court, after citing and quoting this

In an Opinion issued seven weeks after the one cited by the lower court, the Alaska Attorney General "guess[ed]" that the Alaska Supreme Court would not follow the decision in Poelker because this Court "has provided greater protection for the individual as against governmental regulation and control under the state constitution than has the United States Supreme Court under the federal constitution." 1978 Op. Att'y Gen. No. 15 (Formal), at 2-3 (March 31, 1978). Whether the Attorney General's "guess" will prove to be correct is the precise issue to be decided. Moreover, as the defendants and other amici have argued, the conscience clause does protect the constitutional rights of individuals, acting through their institutions, not to participate in medical procedures they deem morally abhorrent.

> [E]xclusion of health care institutions from laws protecting conscience can not be reconciled with other legal doctrines protecting the rights of conscience. For example, to protect individual rights of conscience in the provision of health service but deny protection to collective (entity) forms of individual conduct is rather like arguing that the first amendment protects only individual speech (direct, person-to-person, natural, voice communication, or personally-written, personally-delivered letters) but not collective speech (for example, by corporations, or via television, books, or newspapers--which are collective, institutional efforts).

Lynn D. Wardle, "Protecting the Rights of Conscience of Health Care Providers," 14 J. Legal Med. 177, 187 (1993).

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passage, 492 U.S. at 503, rejected this reasoning, stating, "If the State may 'make a value judgment favoring childbirth over abortion and . . . implement that judgment by the allocation of public funds,' . . . surely it may do so through the allocation of other public resources, such as hospitals and medical staff." Id. at 510 (citation omitted).

In Bridgeton, the other authority cited by the lower court, the New Jersey Supreme Court initially held that a quasi-public hospital has an enforceable common law duty to make available the full range of medical services which it is qualified to provide, including elective abortions. Doe v. Bridgeton Hosp. Ass'n, Inc., 366 A.2d at 643-47. While the case was pending in the state supreme court, the New Jersey Legislature enacted a conscience clause intended to protect the rights of both public and private health care institutions. The New Jersey Supreme Court, citing the same two federal cases relied upon by the Alaska Attorney General in his 1978 Opinion, held that "[f]or the state to frustrate [the abortion] right by its action would be violative of the constitutional guarantee." Id. at 647. In view of the Supreme Court's rejection of the reasoning of Nyberg v. City of Virginia and Doe v. Hale Hospital[9] in Poelker v. Doe and Webster v. Reproductive Health Services, the lower court's reliance on Bridgeton was clearly misplaced. Moreover, the reasoning, if not the result, in Bridgeton was called into question by the New Jersey Supreme Court's later decision in Right to Choose v. Byrne, 450 A.2d 925 (N.J. 1982).[10]

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[9] It also must be noted that, unlike the Alaska conscience clause, which applies to any hospital, the Massachusetts conscience clause at issue in Doe v. Hale Hospital applies only to a "privately controlled hospital or other health facility." Mass. Gen. Laws Ann., ch. 272, § 21B (1990).

[10] After the Supreme Court decided Poelker, the New Jersey courts refused to grant the defendant hospital relief from the New Jersey Supreme Court's judgment in the mistaken belief that Poelker was a public funding, not a public access, case. See Doe v. Bridgeton Hosp. Ass'n, Inc., 389 A.2d 526 (N.J. Super. Ct. Law

In Right to Choose, the New Jersey Supreme Court held that New Jersey could not choose to fund childbirth but not "medically necessary" abortions for indigent women. Accordingly, the court construed a state statute limiting public funding of abortions to those necessary to save the life of the mother to include "all abortions that are medically necessary to preserve the mother's life or health." 450 A.2d at 941. The court, however, held that "the New Jersey Constitution does not require the funding of elective, nontherapeutic abortions," id. at 928, and that "the State may pursue its interest in potential life by excluding those abortions from the [state] Medicaid program." Id. at 937. Rejecting Justice Pashman's view that New Jersey was required to fund all abortions for indigent women, the court stated that "the flaw in his analysis is in failing to recognize that the right of the individual is freedom from undue governmental interference, not an assurance of government funding." Id. at 935 n.5. Clearly, the New Jersey Supreme Court's holding in Right to Choose, that New Jersey has no obligation under the state constitution to fund elective abortions for indigent women, strongly suggests that public (or quasi-public) hospitals have no obligation to make their facilities available for the performance of elective abortions for any women, indigent or otherwise.

Although not mentioned in the lower court's Opinion, plaintiffs argued below (and may be expected to argue on appeal) that a state statute cannot confer upon a public (or quasi-

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Div. 1978), aff'd, 403 A.2d 965 (N.J. Super. Ct. App. Div. 1979).

public) hospital the right to assert a conscientious objection to abortion. Memorandum in Support of Plaintiffs' Cross-Motion for Summary Judgment and in Opposition to Defendants' Motion for Summary Judgment at 71-73. If, however, the State may mandate a policy forbidding the use of public facilities for performance of nontherapeutic abortions, it is difficult to understand why the State may not also permit the governing boards of public and quasi-public hospitals to adopt such policies as a matter of conscience. Contrary to plaintiffs' view, legislative deference in such matters would not constitute an Establishment Clause violation any more than a blanket state policy would. See Harris v. McRae, 448 U.S. 297, 318-20 (1980) (rejecting Establishment Clause claim against the Hyde Amendment).[11] This Court, too, has recognized that "the fact that sectarian beliefs may be entertained by those persons [acting on behalf of a public institution] does not bar [that institution] from achieving its valid secular goal[s] . . . ." Lien v. City of Ketchikan, 383 P.2d 721, 724 (Alaska 1963).

In Chrisman v. Sisters of St. Joseph of Peace, 506 F.2d 308 (9th Cir. 1974), the Ninth Circuit Court of Appeals rejected an Establishment Clause challenge to a federal statute which

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[11] Significantly, in the Right to Choose decision, discussed supra, the New Jersey Supreme Court specifically rejected the argument that the state abortion funding ban violated a state constitutional provision forbidding establishment of one religious sect in preference to another. 450 A.2d at 938-39. The court observed, "Merely because a statute is consistent with one or more religions does not mea that its principal effect is religious." Id. at 938.