ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672
9829 HOUSE HEALTH EDUCATION & SOCIAL SERVICES

BARR: I am greatly in favor of establishing public libraries. However, there is great doubt in my mind as to whether this is constitutional material. We do have a law establishing library boards which will carry over to the new state, of course, and if we put such a proposal into the constitution, it will be permanent. If at some future time we decide that conditions are so bad we can't afford libraries or want to abolish them, we can't very well do it if it is in the constitution. I would like to point out, the library board is one of the minor departments at the present time, and in the report submitted by the Committee on the Executive Branch which deals with the establishment of the various departments of the government, no mention was made of many departments much more important than a library board for the simple reason that it was supposed the legislature would make laws relating to it.

PRESIDENT EGAN: Shall the proposed amendment as offered by Mrs. Hermann be adopted by the Convention? Mrs. Hermann.

HERMANN: I claim the prerogative of making the final remarks about this brainchild of mine, and I want to say in answer to Mr. Barr's statement, except for the public school system of Alaska, I don't think that anything is more important than library service. Maybe he does not read as much as I do, maybe he reads more but buys his own, but I feel very strongly that the entire cultural pattern of a state or any unit of government is set by the library facilities it offers to the people of that country, and I hope that you will pass this amendment because just for the very reason that he says that we might sometime feel too poor to afford a library service. I don't think we can ever be too poor to afford a library service, and I don't think there is anything in our government, aside from our public school system, that is so valuable to the citizens as a whole as a library service.

McNEES: Roll call, please.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mrs. Hermann be adopted by the Convention?" The Chief Clerk will call the roll.

STEWART: May we have it read?

PRESIDENT EGAN: Could the Chief Clerk please read the amendment at this time.

CHIEF CLERK: "Add a new Section 2 and renumber succeeding sections: 'The state shall provide for a Unified Library Service'."

(The Chief Clerk called the roll with the following result:

Item 3

Relevant Court Cases

From around the Nation

Note

The section is a listing of the major US and State Supreme Court Cases that directly affect our review of the Alaska State Constitution. The actual cases have been forward to the committee aide and is available for your review. Due to the fact that this packet is over 250 pages, members of the committee were not issued this section of the packet. Copies will be made on request.

Relevant Court Cases

Traverse City School District v. Attorney General, 384 Mich. 390, IN RE Proposal C, 185 N.W. 2d 9, January 1971

Lemon v. Kurtzman, 403 US 602, 29 L Ed 745, June 1971

Warren v. Nusbaum, 198 N.W. 2d 650, July 1972

Warren v. Nusbaum, 219 N.W. 2d 577, June 1974

Runyon v. McCrary, 427 US 160, 49 L Ed 2d 415, June 1976

Sheldon Jackson College v. State of Alaska, 599 P.2d, 127 Aug. 1979

Mueller v. Allen, 463 US 388, 77 L Ed 2d 721, June 1983

Aguilar v. Felton, 473 US 402, 87 L Ed 2d 290, July 1985

Grand Rapids Sch Dist. v. Ball, 473 US 373, 87 L Ed 2d 267, July 85

Witters v. Wash. Dept. of Serv., 474 US 481 L Ed 2d 846, Jan 1986

Bishop v. Amos, 483 US 327, 97 L Ed 2d 273, June 1987

Davis v. Grover, 480 N.W. 2d 460, March 1992

Florence Co. Sch. Dist. v. Carter, 510 US 7, 126 L Ed 2d 284, 1993

Zobrest v. Catalina Foothills Sch. Dist. 125 L Ed 2d 793, 1994

Campbell v. Manchester Bd. of Sch. Dir., 641 a.2d 352, Jan. 1994

Agostini v. Felton, 138 L Ed 391, June 1997

Jackson v. Benson, 578 N.W. 2d 602, June 1998

Kotterman v. Killian, Supreme Court CV-97-0412-SA, January 1999

Item 4

Overview of

Court Cases

and the Analysis of

Arizona's School Chioce

Ruling, January 27, 1999

(A) Lemon v. Kurtzman, 403 U.S. 602, 702 (1971) 8-1 vote

Recent decisions by the U.S. Supreme Court make clear that unlike direct subsidies to religious schools, educational benefits that include religious schools among the range of options do not violate the First Amendment.

The U.S. Supreme Court applies a three-part test to determine whether state action violates the First Amendment's prohibition against establishment of religion "*establishment clause.*"

(1) Whether the action has a "*secular purpose.*"
(2) Whether its "*primary effect*" is to advance religion
(3) Whether it creates "*excessive entanglement*"

Litigation in the school choice area revolves around the second and third questions.

(B) Corporation of the presiding Bishop v. Amos, 483 U.S. (1987)

Alleged religious discrimination in violation of Title VII of the Civil Rights Act of 1964. The Supreme Court Ruled: Applying the test set out in Lemon v. Kurtzman, 403 U.S. 602. 702's exemption to religious organizations' secular activities does not violate the Establishment Clause. There is ample room under the Clause for benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference.

Section 702's first requirement of the three-part Lemon test that challenged law serve a "secular legislative purpose." This requirement is aimed at preventing the relevant governmental decision-maker from abandoning neutrality and acting with the intent of promoting a particular point of view in religious matters. It is a permissible legislative purpose to alleviate significant governmental interference with the ability of religious organizations to define and carry out their religious missions.

Section 702, Lemon's second requirement that the challenged law have a principal or primary effect that neither advances more inhibits religion. A law is not unconstitutional simply because it allows churches to advance religion, which is their very purpose. Far a law to have forbidden "effect," the Government itself must have advanced religion through its own activities and influences. 702 is rationally related to the legitimate purpose of alleviation significant governmental interference

with the ability of religious organizations to define and carry out their religious missions.

Section 702, Lemon's third requirement is satisfied sine 702 does not impermissibly entangle church and state. Rather, is effects a more complete separation of the two.

(C) Mueller v. Allen, 463 U.S. 388 (1983) 5-4 vote

The Court upheld Minnesota's income tax deduction for educational expenses, including private school tuition. The Court resolved the question left open in Committee for Public Education and Religious liberty v. Nyquist 413 U.S. 756 (1973), upholding tax deductions for public and private school expenses even though the vast majority were claimed by religious school parents.

(D) Witters v, Dep't of Services for the Blind, 474 U.S. 481 (1986)

The Court unanimously upheld the use of public funds by a blind student pursuing a divinity degree in a religious caooege.

(E) Zobrest v. Catalina Foothills School Dist., 113 S. Ct. 2462 (1993)

The Court ruled that the First Amendment does not forbid the use of public funds to provide an interpreter for a deaf child attending a Catholic high school.

(F) Campbell v. Manchester Bd. Of School Directors, A.2d, 1994 Westlaw 162645 (Vt. Jan 28, 1994), at 3

The Court ruled that the First Amendment forbade funding for children to attend religious schools, Swart v. South Burlington School Dist., 167 A.2d 514 (Vt. 1961).

But in 1994, the Court unanimously overturned its prior ruling, remarking that *"jurisprudence has evolved greatly since 1961 and in directions unpredictable at that time, thus "we must examine the constitutional issues anew in light of more recent teachings."*

(G) Warren v. Nusbaum, 219 N.E.2d 737 (III. 1973)

Court decisions interpret state constitutions to parallel the First Amendment. Therefore, the recent First Amendment cases should control state constitutional interpretation.

(H) Davis v. Grover, 480 N.W.2d 460 (Wis. 1991)

The plaintiffs challenged the Milwaukee Parental Choice Program on the grounds that it was a "local" bill enacted as part of the budget, that it failed to provide a constitutionally mandated "uniform" education, and that it captained inadequate regulations to ensure the program's public purpose would be fulfilled. The Wisconsin Supreme Court rejected the challenge on all grounds.

(I) Runyon v. McCrary, 427 U.S. 160 (1976)

Private schools are already subject to the federal statute prohibiting discrimination on the basis of race in making contracts, which was held applicable to private schools in the above mentioned case. In addition, private schools must avoid racial discrimination in order to maintain tax-exempt status under the Internal Revenue Code (Bob Jones University v. United States, 461 U.S. 574 (1983)}. Receipt of public funds in a school choice program would likely have no additional effects on a private school's obligations with respect to race discrimination.

(J) Florence County School Dist. Four v. Carter, 114 S.CT. 361 (1993)

Under the Individuals with Disabilities in Education Act, federal and state courts consistently have ruled that where public schools fail to provide disabled youngsters "appropriate" education, they must provide such opportunities in private schools.

(K) Jackson v. Benson 4-2 vote

The Wisconsin Supreme Court upheld a 1995 state law that expanded the Milwaukee voucher program to include religious schools.

(L) Kotterman v. Killian, C-B-970412-SA 3-2 vote

Suite brought challenging tax credit law on Establishment Clause grounds. Oral arguments presented to Arizona Supreme Court in October 1997. Decision expected in August 1998.

NOTE: See attached fax Analysis of the Arizona School Choice Victory January 27, 1999

INSTITUTE FOR JUSTICE

MEMORANDUM

TO: School Choice Allies

FROM: Chip Mellor
Clint Bolick

DATE: January 27, 1999

RE: Analysis of the Arizona School Choice Victory

The decision late yesterday by the Arizona Supreme Court upholding the state income tax credit for contributions to private scholarship programs provides strong jurisprudential support for school choice and could give a boost to scholarship programs across the nation.

The tax credit plan allows taxpayers to reduce their tax liability by up to $500 for private scholarship contributions and up to $200 for contributions to public schools for extracurricular activities. It was challenged by the Arizona Education Association, the ACLU, and others on First Amendment and state constitutional grounds. IJ represented Superintendent of Public Instruction Lisa Graham-Keegan, Jeff Flake of the Goldwater Institute, Trent Franks, and several families who hope to receive scholarships for their children.

The 3-2 ruling is in excess of 80 pages, with the Court sharply divided on both First Amendment and state constitutional grounds. The First Amendment ruling makes the case a candidate for review by the U.S. Supreme Court.

The majority opinion by Chief Justice Thomas A. Zlaket is scholarly and tightly reasoned. Among other cases, the decision cites the Wisconsin Supreme Court's ruling on the Milwaukee school choice program (Jackson v. Benson), as well as the U.S. Supreme Court's decision in Mueller v. Allen upholding tax deductions for school expenses.

Under the First Amendment, the Court ruled that the *"primary beneficiaries of this credit are taxpayers who contribute to the [school tuition organizations], parents who might otherwise be deprived of an opportunity to make meaningful decisions about their children's educations, and the children themselves."* Private schools are *"at best only incidental beneficiaries."*

By creating the program, the legislature *"hoped to encourage the development of educational settings that would invigorate learning, improve academic achievement, and provide additional choices to parents and children,"* the majority reasoned.

1717 Pennsylvania Avenue, NW Suite 200 Washington, DC 20006 (202) 955-1300 (202) 955-1329 Fax
e-mail: General@ij.org Homepage: www.ij.org

Decisions from the Ohio, Vermont and Maine Supreme Court's still pending. Institute for Justice is closely monitoring the legal aspects of school choice in Texas, Florida, New York City, Pennsylvania, Arizona and Virginia.

The following organization have requested a basic package on Sponsor Substitute House Bill 5. These organizations will be reviewing Alaska's Education Voucher Program and providing comments in regard to Alaska's School Choice Program as compared to the rest of the nation.

Center for Education Reform
Heritage Foundation
Fordham Foundation
Association of Christian Schools International
Institute for Justice
Pacific Legal Foundation

Item 5

Michigan's Constitution

Article VIII, Section 2

Nonpublic Schools, Prohibited Aid.

And

Traverse City School District v.

Attorney General, the State Board

Of Education; IN RE Proposal C,

185 N.W. 2d 9, excerpts

Michigan

CONSTITUTIONS
of the
UNITED STATES

National
and
State

Michigan

(Revised and Updated)

Release 95-2
Issued June 1995

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COLUMBIA UNIVERSITY

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Dobbs Ferry, New York

tures and revenues shall adopt such budgets only after a public hearing in a manner prescribed by law.

History: Const. 1963, Art. VII, Section 32, Eff. Jan. 1, 1964.

Section 33. Removal of elected officers.

Sec. 33. Any elected officer of a political subdivision may be removed from office in the manner and for the causes provided by law.

History: Const. 1963, Art. VII, Section 33, Eff. Jan. 1, 1964.
Former Constitution: See Const. 1908, Art. IX, Section 8.

Section 34. Construction of constitution and law concerning counties, townships, cities, villages.

Sec. 34. The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor. Powers granted to counties and townships by this constitution and by law shall include those fairly implied and not prohibited by this constitution.

History: Const. 1963, Art. VII, Section 34, Eff. Jan. 1, 1964.

ARTICLE VIII
Education

Section 1. Encouragement of education.

Sec. 1. Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

History: Const. 1963, Art. VIII, Section 1, Eff. Jan. 1, 1964.
Former Constitution: See Const. 1908, Art. XI, Section 1.

Section 2. Free public elementary and secondary schools; discrimination.

Sec. 2. The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin.

Nonpublic schools, prohibited aid.

No public monies or property shall be appropriated or paid or any public credit utilized, by the legislature or any other political subdivision or agency of the state directly or indirectly to aid or maintain any private, denominational or other nonpublic, pre-elementary, elementary, or secondary school. No payment, credit, tax benefit, exemption or deductions, tuition voucher, subsidy, grant or loan of public monies or property shall be provided, directly or indirectly, to support the

attendance of any student or the employment of any person at any such nonpublic school or at any location or institution where instruction is offered in whole or in part to such nonpublic school students. The legislature may provide for the transportation of students to and from any school.

History: Const. 1963, Art. VIII, Section 2, Eff. Jan. 1, 1964;--Am. Init., approved Nov. 3, 1970, Eff. Dec. 19, 1970.
Constitutionality: Portion of second sentence of second paragraph of this section, prohibiting use of public money to support attendance of any student or employment of any person at any location or institution where instruction is offered in whole or in part to nonpublic students, was held unconstitutional, void, and unenforceable because it contravened free exercise of religion guaranteed by the United States Constitution and was violative of equal protection of laws provisions of United States Constitution. Traverse City School District v. Attorney General, 384 Mich. 390, 185 N.W.2d 9 (1971).

Section 3. State board of education; duties.

Sec. 3. Leadership and general supervision over all public education, including adult education and instructional programs in state institutions, except as to institutions of higher education granting baccalaureate degrees, is vested in a state board of education. It shall serve as the general planning and coordinating body for all public education, including higher education, and shall advise the legislature as to the financial requirements in connection therewith.

Superintendent of public instruction; appointment, powers, duties.

The state board of education shall appoint a superintendent of public instruction whose term of office shall be determined by the board. He shall be the chairman of the board without the right to vote, and shall be responsible for the execution of its policies. He shall be the principal executive officer of a state department of education which shall have powers and duties provided by law.

State board of education; members, nomination, election, term.

The state board of education shall consist of eight members who shall be nominated by party conventions and elected at large for terms of eight years as prescribed by law. The governor shall fill any vacancy by appointment for the unexpired term. The governor shall be ex-officio a member of the state board of education without the right to vote.

Boards of institutions of higher education, limitation.

The power of the boards of institutions of higher education provided in this constitution to supervise their respective institutions and control and direct the expenditure of the institutions' funds shall not be limited by this section.

History: Const. 1963, Art. VIII, Section 3, Eff. Jan. 1, 1964.
Former Constitution: See Const. 1908, Art. XI, Subsection 2, 6.

I.

RULES OF CONSTRUCTION

[1] This case requires the construction of a constitution, where the technical rules of statutory construction do not apply. McCulloch v. Maryland, 17 U.S. (4 Wheat) 316, 407, 4 L.Ed. 579 (1819).

B)

[2] The primary rule is the rule of "common understanding" described by Justice Cooley:

> "A constitution is made for the people and by the people. *The interpretation that should be given it is that which reasonable minds, the great mass of the people themselves, would give it.* 'For as the Constitution does not derive its force from the convention which framed, but from the people who ratified it, *the intent to be arrived at is that of the people,* and it is not to be supposed that they have looked for any dark or abstruse meaning in the words employed, *but rather that they have accepted them in the sense most obvious to the common understanding,* and ratified the instrument in the belief that that was the sense designed to be conveyed.' (Cooley's Const. Lim. 81)." (Emphasis added.)

(See also quotations on "common understanding" in the *per curiam* opinion of the companion *Carman* case, *supra.*)

[3] A second rule is that to clarify meaning, the circumstances surrounding the adoption of a constitutional provision and the purpose sought to be accomplished may be considered. On this point this Court said the following:

> "In construing constitutional provisions where the meaning may be questioned, the court should have regard to the circumstances leading to their adoption and the purpose sought to be accomplished." Kearney v. Board of State Auditors, 189 Mich. 666, 673, 155 N.W. 510, 512.

[4] A third rule is that wherever possible an interpretation that does not create constitutional invalidity is preferred to one that does. Chief Justice Marshall pursued this thought fully in Marbury v. Madison, 5 U.S. (1 Cranch) 137, 2 L.Ed. 60, which we quote in part:

> "If any other construction would render the clause inoperative, that is an additional reason for rejecting such other construction, * * *"

II.

THE EFFECT OF AMENDED ARTICLE 8, SECTION 2, CONSTITUTION OF 1963 ON CHAPTER 2, ACT 100 OF 1970

In Advisory Opinion re Constitutionality of P.A.1970, No. 100, 384 Mich. 82, 180 N.W.2d 265 (1970), we held that the Constitution of Michigan did not prohibit the purchase with public funds of secular educational services from a nonpublic school.[1]

[5, 6] Article 8, Sec. 2, as amended by Proposal C, now prohibits the use of public funds "directly or indirectly to aid

1. The concept of the state purchasing secular educational services from nonpublic schools has been implemented in various ways. Michigan implemented it by paying public monies to eligible nonpublic schools to pay a portion of the salaries of lay teachers who taught secular subjects in the nonpublic school. 1970 P.A. 100 Secs. 55–66a; M.S.A. 15.1919 (105–116a). This is similar to the Rhode Island statute which provides salary supplements to lay teachers in nonpublic school systems in order to attain salaries competitive with those of the public school system. The Pennsylvania statute provides public reimbursements to elementary parochial schools for the actual expenditures they incurred in purchasing services for secular education without regard to the fact whether the teacher was a layman or a member of a religious order.

dents are prohibited by any of the five prohibitions mentioned above. This question will be considered under three headings:

1. *Shared time—at the public school.*

[8] Attorney General's Opinion 4715 construes Proposal C to prohibit shared time services at the public school as follows:

> "Under the amendment, public funds could not be used to support the attendance of nonpublic school students at 'any location or institution where instruction is offered in whole or *in part* to nonpublic school students.' (Emphasis supplied.)"

This is a shocking result. It violates both the free exercise of religion and the equal protection provisions of the United States Constitution. (See Part VIII)

These reasons evoke the necessity of applying the rules of construction (Part I). As a consequence, the question before this Court is whether there is an alternative constitutional construction to that adopted in the aforesaid Attorney General's Opinion, which also preserves the purpose of Proposal C of proscribing parochiaid and, of course, is consonant with a common understanding of the language used in Proposal C. This Court has already considered a similar problem in Advisory Opinion re Constitutionality of P.A.1970, No. 100, 384 Mich. 82, 180 N.W.2d 265 (1970). This Court there refused to adopt "a strict 'no benefits, primary or incidental' rule" and found "no evidence * * * that the people intended such a rule when they adopted this (Article 1, Sec. 4) provision of the Constitution." The same reasoning is applicable to the terms "support" in the second, third, fourth and fifth

as it shall deem necessary or desirable for the maintenance and improvement of the schools; determine the courses of study to be pursued and cause the pupils attending school in such district to be taught in such schools or departments as it may deem expedient:" (M.C.L.A. 340.583; M.S.A. 15.3583.)

As good a description as any of shared time is found in the United States Senate Education Subcommittee Report on that subject, which reads:

"As generally used in current literature in the field of education, the term 'shared time' means an arrangement for pupils enrolled in nonpublic elementary or secondary schools to attend public schools for instruction in certain subjects . . . The shared time provision is or would be for public school instruction for parochial school pupils in subjects widely (but not universally) regarded as being mainly or entirely secular, such as laboratory science and home economics." (Staff of Senate Comm. on Labor and Public Welfare, 88th Congress, 1st Session, Proposed Federal Promotion of "Shared Time" Education (Comm. Print 1963) p. 1.)

As this quotation indicates, shared time is an operation whereby the public school district makes available courses in its general curriculum to both public and nonpublic school students normally on the premises of the public school.

Shared time has been an accepted fact of American life for more than forty years. (Shared Time: Indirect Aid to Parochial Schools, 65 Mich.L.Rev. 1224 [1967]; Watkins, Experiment in Educational Sharing, 60 Religious Education 43 [1965]; Staff of Senate Comm. on Labor and Public Welfare, 88th Congress, 1st Session, Proposed Federal Promotion of "Shared Time" Education 1 [Comm. Print 1963] p. 2; U. S. Dept. of Health, Education & Welfare, Dual Enrollment in Public & Non-Public Schools 5 [1965].)

On the basis of historical analysis, therefore, it would require a strong showing that Proposal C really did intend to outlaw shared time in the public schools because that had become a long accepted practice over a number of years. (New York Trust v. Eisner, 256 U.S. 345, 349, 41 S.Ct. 506, 65 L.Ed. 963 [1921]; Walz v. Tax Commission of the City of New York, 397 U.S. 664, 678, 90 S.Ct. 1409, 25 L.Ed.2d 697 [1970].)

The Stipulation of Facts in this case indicate that over 15,000 Michigan nonpublic school students participate in shared time programs at public schools, about 2,500 at premises leased by public schools from nonpublic schools, and about 800 at nonpublic schools. (Stipulation of Facts paragraphs 21, 27 and 28.)

prohibitions and "aid or maintain" in the first prohibition.

A comparison of the parochiaid act, which this first prohibition proscribes, and shared time which this prohibition does not proscribe, is illuminating as to the construction of the prohibition.

Parochiaid as authorized by Chapter 2 of P.A.1970, No. 100 provided $22,000,000 of public monies for participating nonpublic school units to pay a portion of the salaries of private lay teachers of secular nonpublic school courses in the nonpublic school for nonpublic school students. In contrast shared time provides public monies for local public school districts to use to hire public school teachers to teach public school courses in public or nonpublic schools to public or public and nonpublic school students.

Shared time differs from parochiaid in three significant respects. First, under parochiaid the public funds are paid to a private agency whereas under shared time they are paid to a public agency. Second, parochiaid permitted the private school to choose and to control a lay teacher whereas under shared time the public school district chooses and controls the teacher. Thirdly, parochiaid permitted the private school to choose the subjects to be taught, so long as they are secular, whereas shared time means the public school system prescribes the public school subjects. These differences in control are legally significant.

Obviously, a shared time program offered on the premises of the public school is under the complete control of the public school district and is not invalidated by the first prohibition against aiding a nonpublic school since such shared time instruction provides only incidental aid, if any. The second prohibition of Proposal C precludes public monies to "support the attendance of any student . . . at any such nonpublic school." Any support to a nonpublic school student from a shared time program at a public school in which he participates would be only remotely incidental to his attendance at the nonpublic school and thus not prohibited. The third prohibition, no public money to employ anyone at a nonpublic school, is not here in question.

[9] Prohibitions four and five are based particularly on the last portion of the second sentence of the second paragraph of Article 8, Sec. 2—no public money "to support the attendance of any student or the employment of any person at any such nonpublic school *or at any location or institution where instruction is offered in whole or in part to such nonpublic school students.*" (Emphasis added.) The plain meaning of this language is that when nonpublic school students go to a public school, the public school becomes an "institution where instruction is offered * * to such nonpublic school students" and hence ineligible for public monies. This quoted language contravenes the free exercise of religion guaranteed by the United States Constitution and is violative of the equal protection of the laws provisions of the United States Constitution. (Part VIII)

We hold that portion of the second sentence of Article 8 Sec. 2 hereinafter quoted unconstitutional, void and unenforceable: "or at any location or institution where instruction is offered in whole or in part to such nonpublic school students."

[10] We hold, however, that the quoted portion is severable and capable of being removed from Article 8 Sec. 2 without altering the purpose and effect of the balance of the sentence and section.

2. Shared Time—upon leased or other premises.

[11] Premises occupied by lease or otherwise for public school purposes under the authority, control and operation of the public school system by public school personnel as a public school open to all eligible to attend a public school are public

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aphs 21, 27 and 28.)

Elementary and Secondary Education Act of 1965 (hereinafter cited as ESEA) to fund programs of special educational benefits in the form of services or equipment, which are designed to aid educationally deprived children.[6] The grants to a public school district in conformity to a plan submitted by the school district to obtain federal funds are subject to the requirement that:

"* * * to the extent consistent with the number of educationally deprived children in the school district of the local educational agency who are enrolled in private elementary and secondary schools, such agency has made provision for including special educational services and arrangements (such as dual enrollment, educational radio and television, and mobile educational services and equipment) in which such children can participate;" ESEA, Sec. 205(a) (2), 79 Stat. 30 (1965), 20 U.S.C. 241e(a) (2) (Supp. 1965).

made available under Title I was described as follows:

"Although available statistics are far from complete, it appears that the bulk of Title I projects involve some type of non-instructional service, such as remedial reading or speech therapy. The similarity of the projects actually implemented . . . seems to indicate a belief on the part of educators that the solution to the problems of educational deprivation lies in 'compensatory' educational services, which services offer the student special instruction in a skill or subject, thereby enabling him to proceed at the same rate as his peers." (Comment, The Elementary and Secondary Education Act—The Implications of the Trust Fund Theory for Church-State Questions Raised by Title I, 65 Mich.L. Rev. 1184, 1187 [1967]) (Footnotes not shown.)

As this appraisal indicates, these educational services are general health and safety measures similar in nature to auxiliary services which we have found to be permissible under Proposal C.

[20] The question is, does the language of Proposal C which prohibits "public monies" to "aid" a private school, "support the attendance" of a student at a nonpublic school or support the "employment" of any person at a nonpublic school encompass the situation where public school districts make available special educational services to both public and private school students under the required conditions of a federal grant. We hold it does not. The adoption of Proposal C does not disallow a public school district from participation in any federal program under Title I of ESEA for aiding elementary and secondary school children.

Two reasons lead to this conclusion. First, the nature of the special educational services are similar to auxiliary services. The character of the educational programs

[21] Second, the federal funds do not become "public monies" when they are transmitted from the Office of Education in the Department of Health, Education and Welfare through the State Board of Education to the public school district. Instead the federal funds are impressed with a trust and must be used by state agencies in accordance with federal guidelines and for the purposes for which the funds were granted. Other courts when confronted with the question of the status of federal grants in aid of education to the states have determined that a trust arose with the federal funds serving as the res and the state agency, which administers the program, serving as trustee. Montana State Federation of Labor v. School Dist., 7 F.Supp. 82 (D.Mont.1934), Ross v. Trus-

6. Elementary & Secondary Education Act, Title I, 79 Stat. 27 (1965), as amended, 20 U.S.C. 241a–244.

tees of Univ. of Wyoming, 31 Wyo. 464, 228 P. 542 (1924).

The "public monies" phrase of Proposal C, used in the five prohibitions of the proposal, has reference only to state resources and does not include federal funds. Since the federal grants under Title I do not become public monies of the state when they come under the administrative control of public school boards, Proposal C has no effect on them.

VI.

PRIVATE FOSTERHOMES

The fourth certified question asks:

Does Proposal C preclude direct or indirect assistance to private institutions providing educational services to children who are placed there pursuant to court order?

Answer: No.

[22] Under the probate code a probate judge is clothed with the authority to place a minor, that is any child who has not attained his seventeenth birthday, in a private fosterhome. The relevant statutory authority states:

"(The probate court) may enter an order of disposition which shall be appropriate for the welfare of said child and society * * * as follows:

(d) Place the child in or commit the child to a private institution or agency incorporated under the laws of this state and approved or licensed by the state department of social welfare for the care of children of similar age, sex and characteristics;" (M.C.L.A. 712A.18 [d]; M.S.A. 27.3178 [598.18].)

The private fosterhome receives county funds to pay all expenses incurred in caring for a minor placed in the home by court order.[7] Some private fosterhomes provide educational facilities and instruction for the minors who reside in the home. Payments may be made from two funds, either out of the county's general fund or out of the county's child care fund established under the social services act. These arrangements raise the question whether public funds are paid to "aid or maintain" a private school in violation of Proposal C's first prohibition.

The key language of Proposal C is "any private, denominational or other nonpublic pre-elementary, elementary or secondary school." Is a private fosterhome which serves primarily as a home but also as a school for court appointed juveniles a "nonpublic school" for purposes of the amendment?

Both in function and operation, a private fosterhome which, in addition to providing food, shelter and personal care to its residents offers incidental educational services is a special kind of private institution. The minors placed in its care are committed to the fosterhome by order of the Probate Court.[8]

The minors who are committed are lawbreakers, victims of intemperate habits or products of an unsuitable home environment.[9] At the time of their commitment to a private fosterhome, they are either in the custody of the Probate Court or the Department of Social Welfare.[10] The fosterhome must file semi-annual progress reports to the Probate Court.[11] The Department of Social Welfare is responsible

7. M.C.L.A. 712A.25; M.S.A. 27.3178 (598.25).

8. M.C.L.A. Sec. 712A.18; M.S.A. 27.3178 (598.18).

9. M.C.L.A. Sec. 712A.2; M.S.A. 27.3178 (598.2).

10. M.C.L.A. Sec. 712A.20; M.S.A. 27.3178 (598.20).

11. M.C.L.A. Sec. 712A.24; M.S.A. 27.3178 (598.24).

vices in the nonpublic school where the hiring and control is in the hands of the nonpublic school, otherwise known as "parochiaid." (Part II)

2. Proposal C has no prohibitory impact upon shared time instruction wherever offered provided that the ultimate and immediate control of the subject matter, the personnel and the premises are under the public school system authorities and the courses are open to all eligible to attend the public school, or absent such public school standards, when the shared time instruction is merely "incidental" or "casual" or non-instructional in character, subject, of course, to the issue of religious entanglement. (Question 1; Part III)

3. Proposal C does not prohibit auxiliary services and drivers training, which are general health and safety services, wherever these services are offered except in those unlikely circumstances of religious entanglement. (Question 2; Part IV)

4. Proposal C does not attempt to interfere with the distribution of federal funds. (ESEA) (Question 3; Part V)

5. Proposal C does not, in an educational proposal, intervene to prohibit the operation of a social welfare institution such as a fosterhome. (Question 4; Part VI)

6. Proposal C does not change Michigan's long-standing policy of tax exemption for religious, charitable, and educational institutions. (Question 5; Part VII)

7. Regarding the constitutionality of Proposal C (Questions 6 and 7; Part VIII):

   a. The language "or at any location or institution where instruction is offered in whole or in part to such nonpublic school students" at the end of the second sentence in Proposal C is unconstitutional, void and unenforceable and is severable and capable of being removed from Article 8 Sec. 2 without altering the purpose and effect of the balance of the sentence and section. (Part III, Sec. 1)

   b. The remainder of Proposal C's language by this Court's construction of Proposal C raises no questions of unconstitutionality under the Michigan or the United States Constitutions.

   c. An interpretation of Proposal C that nonpublic school children are barred from shared time in the public schools and from auxiliary services and drivers training at public and nonpublic schools is unconstitutional under the United States Constitution.

The foregoing answers to certified questions one through seven will be certified to the 13th Circuit for disposition of the cause in accord with this opinion. No costs.

BLACK, SWAINSON, BRENNAN and T. G. KAVANAGH, JJ., concurred with WILLIAMS, J.

T. M. KAVANAGH, Chief Justice.

For the reasons stated in my separate opinion in Carman v. Secretary of State (1971), Mich., 185 N.W.2d 1, we believe this case should be dismissed with prejudice. However, the majority opinion in *Carman, supra,* is for the present at least, the law in Michigan.

We agree that if Proposal C was properly submitted to the People and properly adopted, the opinion of Justice Williams correctly interprets our Constitution as amended and correctly applies the due process and equal protection clauses of the Federal Constitution.

T. G. KAVANAGH, J., concurs.

ADAMS, Justice.

In Carman v. Hare (1971), Mich., 185 N.W.2d 1, this Court decided that the

Legal Forum

By Allen B. Dyal,
Assistant Professor
Educational Leadership
Auburn University at Montgomery

Court Allows Use Of Public Funds In Private Schools For Title I Services

The debate over public funds being used in religious K-12 schools has persisted for many years. However, in most instances, the establishment clause of the First Amendment to the Constitution has been interpreted to prohibit financial support for religious schools.

In 1965, the U.S. Congress passed legislation intended to provide full educational opportunities to economically-disadvantaged children. Title I of the Elementary and Secondary Education Act of 1965 provided funds to local schools for the specific purpose of providing remedial education, guidance services and job counseling.

The city of New York, as well as many other cities, developed programs that not only met the needs of public school students, but also provided services to students enrolled in private schools. In 1971, the court developed a three-pronged test to evaluate whether practices of schools and individual laws violated the First Amendment. The standard requires that the law has a secular purpose, neither promotes nor inhibits religion and avoids excessive governmental entanglement. I have often looked at this standard in previous Legal Forum articles.

Title I programs provided by many urban school systems to children in parochial schools were finally challenged in Aguilar v. Felton. The question the court considered was whether it was permissible for a school system, in this case the city of New York, to place public school teachers in private parochial schools to provide Title I remedial services to students. The Supreme Court found the program created an excessive entanglement of church and state. The court indicated that remedial services could be provided to a religious school, but the services must be provided at a neutral site. Strict guidelines have since been created which relate to these programs.

Allen B. Dyal

Many school systems provided mobile classrooms off campus to satisfy the ruling. You may ask, "Why would a public school system want to provide such services to religious schools?" Clearly, the programs helped economically-disadvantaged children. For large urban districts, the program provided a significant amount of funding to the district.

Since 1985, school systems have carefully provided appropriate remedial services at neutral sites. The common sense question that has surfaced in the educational community concerns how a neutral site could really make a difference. The petitioners in Agostini v. Felton sought relief from the courts earlier decision based on the excessive cost of complying with the neutral site provision of the Aguilar decision.

Can the Supreme Court change its mind? Yes, and it did just that in Agostini v. Felton. This past June, the court asserted that with appropriate safeguards, providing Title I programs on parochial school grounds was not a violation of the establishment clause. There was no evidence that public school teachers attempted to religiously indoctrinate students or that the programs promoted or enhanced religion. The court also determined the program did not excessively entangle government, or that public funds for religious schools were not automatically inappropriate or invalid.

This case is significant to educational leaders for several reasons. It shows how important it is to stay up-to-date on legal matters that are dynamic and ever changing. It also shows us that the Supreme Court can change its mind. On the broader question of the separation of church and state, it would seem that the pendulum, constantly moving on such matters, is swinging toward a more flexible view concerning public funds being spent in parochial schools.

I spoke with Barry Blackwell, federal programs coordinator for the State Department of Education, concerning this case. It is Blackwell's opinion that, "The Agostini case will have a major impact on students in Alabama's private schools. In the past, a number of school systems provided services to private school students using mobile units. This finding will allow school systems to provide better and more Title I services at a lower cost. School systems as diverse as Mobile and Wilcox Counties are likely to take advantage of this decision."

It is my view that while Alabama has yet to take advantage of Title I funds for students in religious schools, we are likely to see a move in that direction. The Supreme Court, in this case, affirmed its trend of moving toward greater acceptance of allowing the use of public funds for students in private schools. ■

References

Aguilar v. Felton, 473 U.S. 402 (1985).

Agostini v. Felton (In Press) (1997).

Lemon v. Kurtzman, 403 U.S. 602 (1971).

Barry Blackwell, telephone interview, Oct. 31, 1997.

much effect as these more mundane predictors of school success.

The picture of Vietnamese "boat people" struggling to give their children an education and of the children scoring high on tests as a consequence is one that has been painted often in articles critical of native-born American students. Overall, though, those who have immigrated from Southeast Asia don't reach the national average on standardized tests. In fact, says Kim, "the high school dropout rates for schools with high concentrations of Southeast Asians hover around 50%." Southeast Asians also have lower expectations of what their own educational attainments will be. Some 65% of them think they'll earn at least a bachelor's degree, while for the other Asian groups the figures are in the range of 80%-95%. Fully 75% of the South Asian seniors expect to wind up with an advanced degree, 39% saying they'll get a master's degree and 37% anticipating a Ph.D. or its equivalent.

Kim observes that "the stereotype of Asian Americans is that of a highly successful minority who have made it in American society. Asian American students are portrayed as 'whiz kids,' the 'best and the brightest,' math and science majors, students who pass through our toughest universities with ease. . . . Contrary to the stereotype, there are significant differences among Asian American seniors in terms of socioeconomic characteristics, parental expectations and involvement, educational values, academic achievement, and college aspirations." (Another stereotype that Kim doesn't discuss envisions Asians living in various urban "Chinatowns" when, in fact, a majority live in the suburbs.)

If we put all of the Asian kids into one school district, we would characterize it as an affluent (median income of $41,251 in 1990, compared to $32,142 overall), highly educated, suburban system. No wonder they score well on tests.

Kim goes on to make a different point. Although the stereotype of Asian students is a "good" stereotype, it is still a stereotype and so prevents us from seeing the reality. Recall that Denis Doyle earned his Rotten Apple Award in the Seventh Bracey Report for claiming that it was "Asian" kids who were pushing the SAT math scores up. (Kim's report can be obtained for $9.50, prepaid, from the Policy Information Center, Mail Stop 04-R, Educational Testing Service, Rosedale Rd., Princeton, NJ 08541-0001. ☒

COURTSIDE

A Rare Religious Reversal

BY PERRY A. ZIRKEL

CONGRESS enacted Title I of the Elementary and Secondary Education Act of 1965 "to provide full educational opportunity to every child regardless of economic background." Under Title I school districts receive and spend federal funds for remedial education, guidance, and job counseling for eligible students. Eligibility is based on residence in low-income areas and failing — or being at risk of failing — the state's student performance standards.

Title I funds are not limited to eligible children in public schools; services to eligible students in private schools must be "equitable in comparison to services and other benefits for public school children." However, special restrictions do apply, such as 1) the school district must retain complete control over the funds, 2) the district must provide the services through public employees or other persons independent of the private school and any religious institution, and 3) the services must supplement, not supplant, the level of services provided by the private school and must be "secular, neutral, and nonideological."

The New York City Board of Education first applied for Title I funds in 1966 and has grappled ever since with how to provide Title I services to the private school students, especially those in parochial schools, within its jurisdiction. Its initial arrangement, which was to transport the children to public schools for after-school Title I instruction, was largely unsuccessful; attendance was poor, teachers and children were tired, and parents were concerned with safety. The board next tried after-school instruction on the private school campuses, which also yielded mixed results. Then the board offered Title I services on private school premises during school hours. Under this arrangement, the Title I teachers, who were district employees, received a detailed set of rules spelling out the secular purpose of the program, and a board field supervisor made unannounced monthly visits to monitor compliance.

In 1978, six taxpayers from New York City filed suit in federal court, claiming that the board's third arrangement violated the establishment clause of the First Amendment. In 1985, after appeals to and beyond the Second Circuit, the Supreme Court issued a 5-4 decision in *Aguilar* v. *Felton* finding the board's program to be unconstitutional because of an "excessive entanglement of church and state in the administration of [Title I] benefits."[1] On remand, the federal district court permanently enjoined the board from offering Title I instruction and counseling services provided by public school personnel "on the premises of sectarian schools."

The board then arranged for Title I services to be offered at public school sites, at leased neutral sites, in mobile units parked near sectarian schools, or by means of computer-assisted instruction (CAI) on the premises of sectarian schools. The costs of compliance were significant. Since the 1986-87 school year, the board has spent over $100 million providing CAI, leasing sites and mobile units, and transporting students.

In October and December 1995, the board and a group of parents of eligible parochial school students filed motions in the district court seeking relief from the

PERRY A. ZIRKEL is Iacocca Professor of Education, Lehigh University, Bethlehem, Pa.

permanent injunction under *Aguilar*. The district court recognized that the plaintiffs were seeking a procedurally sound vehicle to get the issue back before the Supreme Court, and it denied the motions. On appeal, the Second Circuit affirmed.

On 23 June 1997, the Supreme Court voted 5-4 in *Agostini* v. *Felton* to reverse *Aguilar*.[2] While rejecting two of the three grounds argued by the plaintiffs — the costs of compliance and the dicta of five of the justices in favor of reconsidering or overruling *Aguilar*[3] — the majority decision relied on the significant change in the legal landscape represented by the Court's establishment clause decisions since *Aguilar*. More specifically, the majority concluded that more recent rulings have so undermined *Aguilar* and its companion case, *School District of Grand Rapids* v. *Ball*,[4] that they are no longer good law.

First, in *Zobrest* v. *Catalina Foothills School District*,[5] in which the Court held that providing an interpreter for a deaf student on the premises of a sectarian school did not violate the establishment clause, the Court refused to accept the assumption that the placement of public employees on parochial school grounds inevitably results in state-sponsored religious indoctrination or constitutes a symbolic union between government and religion.

Second, in *Witters* v. *Washington Department of Services for the Blind*,[6] in which the Court held that the establishment clause did not bar a state from issuing a vocational tuition grant to a blind person for religious education, the Court invalidated the assumption that any and all public aid that directly aids the educational function of religious schools impermissibly finances religious indoctrination.

Finally, *Zobrest* also undid the "excessive entanglement" argument, which was an essential assumption underlying the *Aguilar* finding. The Court's logic in *Agostini* was as follows: "Since we have abandoned the assumption that properly instructed public employees will fail to discharge their duties faithfully, we must also discard the assumption that pervasive monitoring of Title I teachers is required."

In thus overruling both *Aguilar* and *Ball* as inconsistent with "our current understanding of the Establishment Clause," the majority of the Court expressly held that "a federally funded program providing supplemental, remedial instruction to disadvantaged children on a neutral basis is not [unconstitutional]. . . when such instruction is given on the premises of sectarian schools by government employees pursuant to a program containing safeguards such as those present here."

The four dissenters took issue on both substantive and procedural grounds. Substantively, they criticized the majority for exaggerating the meaning of *Aguilar* and *Ball* while ignoring the limited scope of *Zobrest* and *Witters*, thus repudiating the long-standing principles against direct and substantial subsidization. Procedurally, they interpreted the applicable federal rules as requiring deferral of reconsidering *Aguilar* until a future case.

THE FINDING in *Agostini* represents one of the Supreme Court's rare reversals.[7] It was all the more unusual because it happened within the confines of the same case. It reveals the importance of the membership of the Court, which reflects the interaction of individual and societal values and which is particularly crucial for church/state issues.[8] As illustrated by the change in votes from 5-4 against to 5-4 for, it was a close call, but the current bent on the Court is toward lowering the metaphorical wall of separation in establishment clause cases. Factual variations can be significant, however. Thus the U.S. Department of Education has already issued guidelines to spread the "safeguards" referenced in *Agostini*.[9] The most proximate legal issue in the schools, which concerns the provision of services to special education students in parochial schools, is now somewhat clearer; *Agostini* seems to suggest that doing so on the premises of parochial schools is constitutionally permissible. But the new amendments to the Individuals with Disabilities Education Act appear to effectively eliminate the individual statutory entitlement.[10]

Moreover, *Agostini* does not necessarily change the legal landscape in states, such as Washington, that have a higher church/state barrier in their state constitutions than that of the First Amendment establishment clause.[11]

In any event, one can safely predict more church/state litigation, with results that defy safe predictions. School officials, without the aid of state-sponsored prayers, can only continue trying to discharge their First Amendment duties "in good faith."

1. *Aguilar* v. *Felton*, 473 U.S. 402, 414 (1985).
2. 117 S. Ct. 1997 (1997).
3. Although their individual expressions were merely dicta in *Board of Education of Kiryas Joel School District* v. *Grumet*, 512 U.S. 687 (1994), because the issue was distinctly different in that case, the same five justices — O'Connor, Kennedy, Rehnquist, Scalia, and Thomas — constituted the majority in *Agostini*.
4. 473 U.S. 373 (1985). The Court's decision in *Ball*, which similarly concerned an on-premises remedial program, rested on the second prong (primary religious effect) of the tripartite test. Both *Aguilar* and *Ball* passed the first prong (secular purpose), while *Aguilar* fell on the third prong (excessive entanglement).
5. 509 U.S. 1 (1993). See, for example, Perry A. Zirkel, "Is the 'Wall of Separation' Like the Walls of Jericho?," *Phi Delta Kappan*, September 1993, pp. 88-90.
6. 474 U.S. 481 (1986).
7. There are only two other examples in the elementary/secondary school context: *West Virginia State Board of Education* v. *Barnette* (1943), which reversed *Minersville School District* v. *Gobitis* (1940); and *Brown* v. *Board of Education*, 373 U.S. 483 (1954), which reversed *Gong Lum* v. *Rice* (1927). For a summary of these decisions, see Perry A. Zirkel, Sharon Nalbone Richardson, and Steven S. Goldberg, *A Digest of Supreme Court Decisions Affecting Education*, 3rd ed. (Bloomington, Ind.: Phi Delta Kappa Educational Foundation, 1995).
8. For analyses of the Supreme Court's establishment clause jurisprudence in terms of the members of the Court, see Julie Underwood and Julie Mead, "Establishment of Religion Analysis," *Journal of Law and Education*, Winter 1996, pp. 55-82; and Perry A. Zirkel and Faith MacMurrie, "A Scalogram Analysis of Supreme Court Establishment Clause Cases in Education," *West's Education Law Reporter*, 16 October 1986, pp. 1-10.
9. Mark Walsh, "ED Gives Advice on Title I Aid to Church Schools," *Education Week*, 6 August 1997, p. 26.
10. See, for example, *Cefalu* v. *East Baton Rouge Sch. Dist.*, 117 F.3d 166 (5th Cir. 1997).
11. See, for example, *Witters* v. *Washington Dep't of Serv. for the Blind*, 771 P.2d 1119, *cert. denied*, 493 U.S. 850 (1989). K

This case pertains to Chapter 2, The Church-State Distinction.

AGOSTINI v. FELTON
65 U.S.L.W. 3605 (1997).

NATURE OF CASE: Appeal of decision affirming the denial of a motion seeking relief from a permanent injunction (barring a school board from sending public school teachers into parochial schools to provide remedial education to disadvantaged children).

GENERAL RULE OF LAW: Under certain circumstances, public school teachers may provide remedial education to parochial students on parochial school grounds without violating the Establishment Clause of the First Amendment.

PROCEDURE SUMMARY:
Plaintiffs: The New York City Board of Education (headed by its Chancellor, Betty-Louise Felton), and parents (P) of disadvantaged parochial school students.
Defendants: Rachel Agostini (D) and five other federal taxpayers.
U.S. District Court Decision: Denied plaintiffs' request for relief from injunction issued in *Aguilar v. Felton.*
Second Circuit Court of Appeals Decision: Affirmed denial of relief.

FACTS: The Board of Education of the City of New York (P), a local educational agency (LEA) under Title I of the federal Elementary and Secondary Education Act of 1965 (the Act), 20 U.S.C., §§ 6301 et seq., has been required to provide "full educational opportunity" to every school-age child, regardless of his or her economic background, under the terms of the Act. Title I channeled federal funds, through the states, to LEAs, which in turn used the funds to provide remedial education, guidance, and job counseling to eligible children. The intended goal was that of assisting these children in meeting state student performance standards.

LEAs were not prohibited from providing services to children enrolled in private schools within its jurisdiction; however, the provision of services under such circumstances was subject to several restrictions. Services were required to be provided on a per-pupil, rather than schoolwide, basis. Additionally, the services were required to be "secular, neutral and nonideological in nature," and to be provided through public employees or others who were independent of private schools/religious institutions. Finally, each LEA was required to retain complete control over funds as well as title to all educational materials.

Within the jurisdiction of the NYC Board of Education (the Board), 10% of the total number of students eligible for services under the Act went to private schools; 90% of those private schools were secular in nature. Originally, the Board arranged to bus Title I-eligible students to public schools for after-school remedial education. When that program failed for logistical reasons, the Board then moved the after-school instruction directly onto private school campuses. The remedial instructors were all public employees, as contemplated by the Act, and were specifically admonished not to introduce any religious matter into their teaching or become involved in any way with the religious activities of the private schools.

In 1978, six federal taxpayers (P) sued the Board in federal district court, asserting that the Board's Title I program violated the Establishment Clause of the First Amendment to the U.S. Constitution. They sought an injunction prohibiting the Board from pursuing its remedial education plan (placing public employees in private religious schools).

The district court permitted the parents of several Title I–eligible parochial students to join the Board as defendants in the lawsuit and thereafter denied the plaintiffs' request for an injunction. The federal Second Circuit Court of Appeals overturned the district court's decision.

The U.S. Supreme Court, in *Aguilar v. Felton*, 473 U.S. 402, 413, affirmed the federal appellate (circuit) court, holding that the Board's Title I program necessitated an "excessive entanglement of church and state in the administration of [Title I] benefits." 473 U.S., at 414. The Court then remanded the case to the district court, which promptly enjoined the Board from using public funds for any program that authorized public

school teachers and counselors to provide services on the premises of sectarian schools.

In response to the injunction, the Board modified its program so that it could continue to serve Title I–eligible private school students. It once again provided instruction at public schools (as it had originally but unsuccessfully) as well as at leased sites and in vans it converted into classrooms in the vicinity of the sectarian schools. Computer-aided instruction was offered on private school premises since this program did not require public employees to be physically present at the sites.

Between the 1986-87 and 1993-94 school years, the Board spent approximately $93 million complying with the Act, as modified under the injunction issued in *Aguilar v. Felton*. These funds were deducted from the entire grant of money available under Title I of the Act, before any of it was passed on to Title I–eligible students throughout the United States. The *Aguilar* costs thus reduced the amount of funds provided to all LEAs for remedial education. In plain terms, 20,000 disadvantaged children from New York City, and 183,000 such children nationwide, experienced a decline in Title I services.

In late 1995, the Board and a new group of parents of disadvantaged parochial school students (P) filed a motion in federal district court seeking relief from the Supreme Court's *Aguilar* decision, claiming that the Court's decisional law had changed to the point that what once had been determined to be illegal was now legal. Both the district court and the Second Circuit Court of Appeals, while recognizing that Establishment Clause decisional law had indeed changed over the years, nevertheless upheld the denial of the motion for relief.

ISSUE: Is the *Aguilar* decision, which held that permitting public school teachers to provide remedial education to disadvantaged parochial school children on the grounds of their private schools has the improper effect of advancing a religion with public funds, still valid law?

HOLDING AND DECISION: No. The *Aguilar* decision in no longer valid law. Permitting public school teachers to provide remedial education to disadvantaged parochial school children in the case's context is no longer seen to have the improper effect of advancing a religion.

Implicit in the decision to overturn *Aguilar* are the following points:

1. The general principles used to evaluate whether government aid violates the Establishment Clause have *not* changed since *Aguilar* was decided. The Court continues to ask whether the government acted with the purpose of advancing or inhibiting religion, just as it continues to explore whether government aid has the "effect" of advancing or inhibiting religion.

2. However, what *has* changed is the Court's understanding of the criteria used in assessing whether government aid to religion has an impermissible effect of advancing religion. Cases decided by the Court after *Aguilar* have modified its approach to assessing establishment cases in two significant respects:

a. First, the presumption (developed in *Ball* and *Meek*) that placement of public employees on parochial school grounds "inevitably results in the impermissible effect of state-sponsored indoctrination [of a religion]" is abandoned. Put another way, no longer will it be presumed that any public employee who works on the premises of a religious school inculcates religion in his or her work. Here, the Court cites the *Zobrest v. Catalina Foothills School District* case for its holding "expressly disavowing the notion that 'the Establishment Clause [laid] down [an] absolute bar to the placing of a public employee in a sectarian school.' " *Agostini*, 1997 ___ U.S. ___, 117 S.Ct. 1997, 2010 (1997), citing *Zobrest*, 509 U.S. 1, 13. In *Zobrest*, the Court refused to presume that a publicly employed interpreter for the deaf would be pressured by pervasively parochial surroundings to inculcate religion by adding to or subtracting from the lectures being translated. Instead, it decided that in the absence of evidence to the contrary, the interpreter would dutifully discharge his or her duties as a full-time public employee by accurately translating what was said.

b. Second, no longer will it be presumed (as it was in *Ball*) that all government aid that directly aids the educational function of religious schools is invalid. Specifically relying on its 1986 holding in *Witters v. Washington Dept. of Servs. for Blind*, 474 U.S. 481, in which the Establishment Clause was found not to bar a state from is-

suing a vocational tuition grant to a blind person who wished to use her grant to attend a Christian college, where the tuition grants in question were "made available generally without regard to the sectarian-nonsectarian or public-nonpublic nature of the institution benefited" (*Witters*, 474 U.S. 481, 487 (1986)), the Supreme Court reasoned that the Title I funding that "benefited" the parochial schools in *Agostini* must be viewed in the same light — i.e., that the funding was an incidental benefit to parochial schools that came about only because disadvantaged students happened to attend parochial schools within the Board's jurisdiction, just as funding indirectly benefiting the Christian college at issue in *Witters* came about merely because a recipient of the funding wished to attend that particular college. In each case, the indirect funding benefit to parochial institutions came about through the "genuinely independent" and private choices of individuals. (Remember, none of the Title I funds at issue in *Agostini* were disbursed directly to parochial schools.)

c. Aside from looking at the criteria by which an aid program identifies its beneficiaries for purposes of determining whether the state is responsible for subsidizing religion, it is also necessary to look at whether the criteria by which a program identifies its beneficiaries creates a financial incentive to undertake religious indoctrination. ___ U.S. ___, 117 S.Ct. 1997, 2014 (1997). Such an incentive cannot be present if aid is allocated on the basis of neutral, secular criteria that neither favor nor disfavor religion, and is made available to religious and secular beneficiaries on a nondiscriminatory basis. *Id.* Applying such reasoning to the NYC Board's Title I program, it is apparent that remedial services to disadvantaged students are allocated on the basis of criteria that neither favor nor disfavor religion. All children who meet the program's eligibility requirements may avail themselves of services, no matter where they go to school or what their religious beliefs may be.

3. Finally, *Aguilar*'s conclusion that the NYC Title I program resulted in an excessive entanglement between church and state is no longer valid law. The *Aguilar* court had specifically noted that the NYC program (1) required pervasive monitoring by public employees to insure no governmental inculcation of religion, (2) required administrative cooperation between the Board and parochial schools, and (3) potentially increased the risk of political divisiveness. Under the current understanding of the Establishment Clause, the last two considerations do not, by themselves, create an "excessive" entanglement anymore, given that they are present wherever Title I services may be offered, in both parochial and non-parochial school settings. The assumption underlying the first consideration has been undermined: after *Zobrest*, the Court will no longer presume that public employees will inculcate religion simply because they happen to be in a sectarian environment.

COMMENT: The Court summarized its majority decision with the following: "We therefore hold that a federally funded program providing supplemental, remedial instruction to disadvantaged children on a neutral basis is not invalid under the Establishment Clause when such instruction is given on the premises of sectarian schools by government employees pursuant to a program containing safeguards such as those present here." ___ U.S.___, 117 S.Ct. 1997, 2016 (1997). This decision has already been applauded by those commentators who decried the fact that the *Aguilar* injunction had essentially forced the Board to spend upwards of $100 million to rent vans for use as classrooms — merely to avoid the appearance of public teachers setting foot in religious schools. Others who believe in the strict separation of church and state have yet to weigh in, but it is likely that a few, at least, will see this decision as eroding the principle underlying the Establishment Clause (prohibiting the government from establishing a religion) while giving only a minor nod to those favoring the Free Exercise Clause (guaranteeing the free exercise of religion to all). Query whether the two clauses are necessarily at odds with one another.

School administrators will see the decision as beneficial, but it remains to be seen -- and given the somewhat confusing nature of this opinion, certainly cannot be predicted — whether this decision signals a continuing relaxation of strict Establishment Clause criteria.

HJR

13

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HJR 13

Revision Date: 3/2/99
Title: UNIVERSITY ENDOWMENT FOR RESEARCH
Sponsor: Rep. THERRIAULT
Requester:

Dept. Affected None
BRU
Component
Component Serial No.

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	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						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
TOTAL	0.0	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)*

Prepared by

Rep. Fred Dyson
Co-Chair
House HESS

Phone

Phone

Date

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

MEMORANDUM

DATE: March 3, 1999

TO: Members of the House Health, Education and Social Services Committee

FROM: Representative Gene Therriault

SUBJECT: House Joint Resolution 13

I would like to submit for consideration a possible Committee Substitute for House Joint Resolution 13. The substitute is in response to a resolution passed earlier this week by the Exxon Valdez Oil Spill Trustee Council.

The original HJR 13 urged the Trustee Council, which allocates money obtained through settlement of the Exxon Valdez oil spill litigation, to establish a $100,000,000 endowment for the sciences at the University of Alaska. However, in a meeting March 1, 1999, the Trustee Council passed a resolution to set aside approximately $115,000,000, and use the annual earnings to fund a combination of research, monitoring and general restoration. Because the Council's resolution encompasses the intent of HJR 13, the CS for HJR 13 has been amended to support the Trustee Council resolution and to encourage the Council to use a portion of the earnings to endow chairs at the University of Alaska in relevant areas of research, instruction and public service.

The Substitute incorporates an additional resolve regarding the manner in which EVOS funds can be invested. To provide a little background, the United States and the State of Alaska settled civil claims against Exxon in October 1991 for damages caused by the oil spill. Exxon agreed to pay $900 million over ten years to the governments jointly. The United States required the trust funds, despite the fact that they were joint funds with Alaska, to be kept in accounts in the US Treasury. By order of the US District Court for the District of Alaska, all settlement funds have been paid into the Registry of the Court and deposited in the Court Registry Investment System (CRIS). CRIS is a cash management tool for handling court registry funds. It provides courts an easy and safe way to manage case-related funds that are periodically deposited with the court. CRIS was not designed to actively manage funds.

Email: Representative_Gene_Therriault@legis.state.ak.us

The federal law requiring EVOS funds to be deposited in CRIS causes two problems. First, all funds deposited in CRIS are assessed a fee of ten percent of interest earnings. Since 1991, the fund has been assessed more than $2 million in fees. These fees are in addition to investment management fees. According to an independent auditor hired by the Trustee Council, the fees basically cover the services of one individual who determines what portion of funds are available for investment and directs a commercial bank to purchase government securities. The bank performs all record-keeping and bookkeeping services. The auditors found that the "fees charged for this service are clearly disproportionate to the costs incurred by the Court Clerk for this service."

The second problem is the fund's low rate of return. By law, funds deposited in Court Registry accounts can only be invested in U.S. government Treasury securities. The twelve month average rate of return for the period ending June 30, 1997 for the CRIS Fund was 5.12%, before fees. In contrast, the twelve month average rate of return ending June 30, 1997 for the State of Alaska Employees Retirement Fund, which consists of multiple asset classes, was 18%.

In its March 1 resolution the Trustee Council is seeking flexibility to move the joint funds out of the Registry of the Court and invest funds in appropriate accounts to maximize the revenues while maintaining the safety of the investments. The CS for HJR 13 supports this effort and urges the Alaska Congressional delegation to work with the Trustee Council to achieve this.

1-LS0314\H
Ford
3/4/99

CS FOR HOUSE JOINT RESOLUTION NO. 13( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES THERRIAULT, Davies, Whitaker, Mulder, Harris

A RESOLUTION

Relating to using oil spill settlement funds to create a long-term research and monitoring endowment.

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

WHEREAS the biological resources of the northern Gulf of Alaska were affected by the Exxon Valdez oil spill; and

WHEREAS the Exxon Valdez oil spill disrupted the economic and social lives of many of the local residents in the Prince William Sound area; and

WHEREAS a spill of the magnitude of the Exxon Valdez oil spill not only affects the wildlife and fish habitat, but also has economic, social, and psychological effects in rural Alaska where traditional life styles of local populations, including the Native population, may be severely disrupted; and

WHEREAS baseline scientific data is inadequate to assess positively the damage of the Exxon Valdez oil spill, to manage major spills, and to realistically restore the environment; and

WHEREAS Alaska has more coastline than any other state in the union, making it imperative that Alaska take the lead in using the accumulation of scientific knowledge and

promoting the advancement of scientific technology now as well as in the future; and

WHEREAS, with scientific advancements in the decades ahead, eventual enhancement of many biological resources will be possible; and

WHEREAS the mission of the Exxon Valdez Oil Spill Trustee Council is to efficiently restore the environment injured by the spill to a healthy, productive ecosystem, while taking into account the importance of quality of life and the need for viable opportunities to establish and sustain a reasonable standard of living; and

WHEREAS, because the Exxon Valdez Oil Spill Trustee Council is in charge of restoring, rehabilitating, replacing, enhancing, or acquiring equivalent resources and services in the oil spill region, the accumulation of scientific knowledge to manage a future oil spill must be a high priority in the council's program; and

WHEREAS, although significant research projects have been supported by the council, many important areas of inquiry remain that can be effectively addressed only over an extended period of time; additionally, there are significant research projects relating to spill technology, restoration methods, and ecosystem preservation that need to be pursued and extended for maximum public benefit; and

WHEREAS the Exxon Valdez Oil Spill Trustee Council restoration plan includes adequate provisions for establishing a sound future-oriented program of research and top-level study that would accumulate and spread knowledge of the North to the world; and

WHEREAS the University of Alaska has taken a leadership role in many of these areas of study and is strongly committed to working in rural Alaska as well as to attracting students from rural Alaska; and

WHEREAS the University of Alaska is a statewide system with locations in Valdez, Cordova, Petersburg, Homer, Seward, Kodiak, Juneau, Anchorage, Fairbanks, Bethel, Dillingham, and many other locations in rural Alaska; and

WHEREAS the University of Alaska is currently conducting research in fisheries and oceanography; and

WHEREAS endowed academic chairs would provide the continuing quality scientific investigation, scientific publications, and excellence in training that will be needed by the agencies and the industry responsible for resource management and development into perpetuity; and

WHEREAS the establishment of selected endowed chairs in relevant instructional, research or public service programs would further ensure that the lessons learned from the Exxon Valdez tragedy will continue to be explored and discussed in classrooms, laboratories, public seminars, and community outreach programs; and

WHEREAS a high caliber of endowed professors attract the highest quality graduate students and most often have a competitive edge in securing grants and contracts; and

WHEREAS endowed university research is normally broad in scope, produces peer-reviewed publications, has long-term continuity, and produces an outflow of trained professionals; and

WHEREAS the University of Alaska already has an appropriate foundation for managing endowed chairs, thus eliminating the cost of a new bureaucracy, and has the resources to enhance an endowment in time with additional funds acquired from other agencies and from industry; and

WHEREAS the Exxon Valdez Oil Spill Trustee Council expends money obtained from settlement of oil spill litigation; and

WHEREAS, by October 2002, as a result of the past and anticipated future deposits into the restoration reserve, it is estimated that the principal and interest in the reserve, together with remaining unobligated settlement funds, will be approximately $170,000,000 unless, before that time, ongoing negotiations concerning the Karluk and Sturgeon rivers and adjacent lands result in a habitat acquisition agreement that obligates some of these funds; and

WHEREAS, absent a purchase agreement on the Karluk and Sturgeon rivers, $170,000,000 is the total of the funds estimated to be available to support long-term restoration based on projected investment returns allowable through the federal court registry under the court's existing authority and thus reasonably anticipated as available for restoration purposes by the Exxon Valdez Oil Spill Trustee Council starting with fiscal year 2003; and

WHEREAS the limits of the existing investment authority of the Exxon Valdez Oil Spill Trustee Council have resulted in the loss of millions of dollars in potential earnings, and, to effectively address restoration needs in the future and support a comprehensive program that maintains its value over time, the council's investment authority must be amended by the Congress;

BE IT RESOLVED that the Alaska State Legislature supports the recent action of the

Exxon Valdez Oil Spill Trustees to create a long-term research and monitoring endowment using $115,000,000 of the expected reserve; and be it

FURTHER RESOLVED that the Alaska State Legislature encourages the Exxon Valdez Oil Spill Trustee Council to use a portion of the research funds to establish endowed chairs at the University of Alaska in relevant areas of research, instruction, and public service; and be it

FURTHER RESOLVED that the Alaska State Legislature supports the Exxon Valdez Oil Spill Trustee Council's efforts to remove the trust funds from the United States Treasury in order to achieve efficiencies and maximize earnings as supported by recommendations from its internal auditors and the General Accounting Office auditors, and urges the Alaska Congressional delegation to work with the Exxon Valdez Oil Spill Trustee Council to achieve these goals.

COPIES of this resolution shall be sent to the Honorable Tony Knowles, Governor of Alaska; the Exxon Valdez Oil Spill Trustee Council; Mark Hamilton, President of the University of Alaska; Michael J. Burns, President of the Board of Regents of the University of Alaska; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

DRAFT

DRAFT 3/1/99 (amended)

RESOLUTION
of the
Exxon Valdez Oil Spill Trustee Council
concerning the
Restoration Reserve and Long-term Restoration

WHEREAS, in November 1994, following an extensive public process, the *Exxon Valdez* Oil Spill Trustee Council ("Trustee Council") adopted the *Restoration Plan* to guide a comprehensive and balanced program to restore resources and services injured by the oil spill;

WHEREAS, since that time the Trustee Council has used the *Restoration Plan* to guide development of the annual work plans as well as the acquisition and protection of large and small habitat parcels important to the long-term recovery of injured resources and services;

WHEREAS, the *Restoration Plan* identified a series of large parcel purchases and the Trustee Council has been successful in obtaining habitat protection agreements with willing-seller landowners to provide permanent protection for approximately 635,000 acres;

WHEREAS, the *Restoration Plan* recognized that complete recovery from the oil spill would not occur for decades and that through long-term observation and, as needed, restoration actions, injured resources and services could be fully restored;

WHEREAS, the *Restoration Plan* specifically recognized establishment of the Restoration Reserve to provide a secure source of funding for restoration into the future beyond the last annual payment from the Exxon Corporation;

WHEREAS, the Trustee Council has sponsored an extensive public involvement process to provide opportunity for comment on possible future uses of the Restoration Reserve including public meetings in communities throughout the spill impact region and also in Anchorage, Fairbanks and Juneau;

WHEREAS, a large volume of public comment regarding the Restoration Reserve has been solicited and received urging a wide range of uses for remaining settlement funds including a strong showing of support for additional habitat protection efforts as well as other restoration efforts;

WHEREAS, numerous Native tribal members and other community residents from the spill area have indicated a strong interest in continued support for community-based efforts consistent with those that have been previously funded by the Trustee Council such as subsistence restoration, Traditional Ecological Knowledge, youth area watch, cooperative management, and local stewardship efforts;

WHEREAS, the Public Advisory Group (PAG) has reviewed and discussed long-term restoration needs and use of the Restoration Reserve at considerable length and the views of the PAG members have been communicated to the Trustee Council;

WHEREAS, upon consideration of the restoration mission as provided by the settlement and the *Restoration Plan*, past restoration program efforts and accomplishments, public comments received by the Trustee Council, the views of the Public Advisory Group members, and the most current information regarding the status of recovery of the resources and services injured by the oil spill, the Trustee Council has identified substantial and continuing long-term restoration needs;

WHEREAS, full recovery of many injured resources and services is not yet complete and long-term restoration, conservation and prudent management of these resources and services will require a substantial on-going investment to improve our understanding of the biology and marine and coastal ecosystems that support the resources as well as the people of the spill region;

WHEREAS, in order to prudently use the natural resources of the spill area requires increased knowledge of critical ecological information about the northern Gulf of Alaska that can only be provided through a long-term research and monitoring program;

WHEREAS, together with scientific research and monitoring, a continuing commitment to habitat protection and general restoration actions, where appropriate, will help ensure the full recovery of injured resources and services;

WHEREAS, consistent with the *Restoration Plan*, restoration needs identified by the Trustee Council require a long-term comprehensive and balanced approach that includes a complementary commitment to scientific research and monitoring; applied science to inform and improve the management of injured resources and services; continued general restoration activities where appropriate; support for community-based efforts to restore and enhance injured resources and services; and protection for additional key habitats;

WHEREAS, by October 2002, as a result of the past and anticipated future deposits into the Restoration Reserve, it is estimated that the principal and interest in the reserve, together with remaining unobligated settlement funds, will be approximately $170 million unless, prior to that time, on-going negotiations concerning the Karluk and Sturgeon rivers and adjacent lands or other habitat protection efforts result in a habitat acquisition agreement that obligates some of these funds;

WHEREAS, absent a purchase agreement on the Karluk and Sturgeon rivers, $170 million is the total of the funds estimated to be available to support long-term restoration based on projected investment returns allowable through the Court Registry under its existing authority and thus reasonably anticipated as available for restoration purposes by the Trustee Council starting with FY 2003 ("estimated funds remaining on October 1, 2002"); and

WHEREAS, the limits of the existing investment authority of the Trustee Council have resulted in the loss of millions of dollars in potential earnings and to effectively address restoration needs in the future and support a comprehensive program that maintains its

value over time, the Trustee Council's investment authority must be amended by Congress,

THEREFORE BE IT RESOLVED, that the Trustee Council has determined that recovery from the *Exxon Valdez* oil spill remains incomplete and there is need for a continuing long-term, comprehensive and balanced restoration program consistent with the *Restoration Plan*;

BE IT FURTHER RESOLVED, that funds in the Restoration Reserve and other remaining unobligated settlement funds available on October 1, 2002 (for expenditure starting in FY 2003) be allocated in the following manner consistent with the draft "Outline of Action Under Existing Authority" dated 3/1/99 and attached to this resolution:

- $55 million of the estimated funds remaining on October 1, 2002 and the associated earnings thereafter will be managed as a long-term funding source with a significant proportion of these funds to be used for small parcel habitat protection and it is recognized that any funding that may be authorized for purchase of lands along or adjacent to the Karluk or Sturgeon Rivers or other habitat acquisitions would be made from within this allocation; and

- the remaining balance of funds on October 1, 2002 will be managed so that the annual earnings, estimated at approximately 5% per year, will be used to fund annual work plans that include a combination of research, monitoring, and general restoration including those kinds of community-based restoration efforts consistent with efforts that have been previously funded by the Trustee Council, such as subsistence restoration, Traditional Ecological Knowledge, Youth Area Watch, cooperative management, and local stewardship efforts, as well as local community participation in on-going research efforts;

BE IT FURTHER RESOLVED, that the Restoration Office and the Chief Scientist, under the direction of the Executive Director, shall begin to develop a long-term research and monitoring program for the spill region that will inform and promote the full recovery and restoration, conservation and prudent management of spill-area resources; and

BE IT FURTHER RESOLVED, that it is the intent of the Trustee Council that this long-term reserve for research and monitoring be designed to ensure the conservation and protection of marine and coastal resources, ecosystems, and habitats in order to aid in the overall recovery of those resources injured by the *Exxon Valdez* oil spill and the long-term health and viability of the spill area marine environment;

BE IT FURTHER RESOLVED, that in developing a long-term restoration research and monitoring program for the spill region, the Executive Director shall solicit the views of the Public Advisory Group, community facilitators, resource management agencies, researchers and other public interests as well as coordinate restoration program efforts with other marine research initiatives including the North Pacific Research Board;

BE IT FURTHER RESOLVED, that the Executive Director shall work with the Alaska Congressional delegation and appropriate state and federal agencies to obtain the necessary investment authority to increase the earnings on remaining settlement funds, so that the Trustee Council will be able to conduct an effective restoration program that maintains its value over time; and

BE IT FURTHER RESOLVED, that in developing long-term implementation options for consideration by the Trustee Council, the Executive Director shall:

- investigate possible establishment of new or modified governance structures to implement long-term restoration efforts,
- explore alternative methods to ensure meaningful public participation in restoration decisions, and
- report back to the Trustee Council by September 1, 1999 regarding these efforts.

Dated this 1st day of March, 1999, in Anchorage, Alaska.

DAVE GIBBONS
Trustee Representative
Alaska Region
USDA Forest Service

BRUCE M. BOTELHO
Attorney General
State of Alaska

MARILYN HEIMAN
Special Assistant to the
Secretary for Alaska
U.S. Department of the Interior

STEVEN PENNOYER
Director, Alaska Region
National Marine Fisheries Service

FRANK RUE
Commissioner
Alaska Department of
Fish and Game

MICHELE BROWN
Commissioner
Alaska Department of
Environmental Conservation

DRAFT

Executive Director
WORKING DRAFT 3/1/99

DRAFT OUTLINE OF ACTION UNDER EXISTING AUTHORITY

Assumptions:

- Use of the Restoration Reserve funds will commence with FY 2003 (October 2002)
- The Trustee Council will allocate an additional $36 M to the Restoration Reserve (annual $12 M payments in FY 2000, 2001 and 2002)
- Additional restoration program expenditures between March 1999 to October 2002, exclusive of contractual land payments and other habitat commitments, will amount to not more than $35 M
- Remaining unobligated balance of restoration funds in October 2002 will be $170 M including funds that may be needed for a possible Koniag Karluk-Sturgeon acquisition
- Trustee Council receives no new investment authority and continues to invest settlement funds in treasury instruments that yield approximately 5%

Elements of a Long-Term Restoration Program:

- Consistent with the *Restoration Plan*, the core elements of a long-term restoration effort would focus on research/monitoring, including community-based restoration, and habitat protection
- Starting in FY 2003, restoration efforts would be funded from the earnings of remaining funds
- Earnings estimated at approximately 5% per year from treasury investments (nominal yield)
- The approximately $170M in restoration funds remaining on October 1, 2002 will be allocated into two parts:
  - ✓ $55M for habitat protection, including a possible Koniag Karluk-Sturgeon acquisition
  - ✓ remainder (estimated at $115M plus, under the current assumptions) for research-monitoring, general restoration and community-based projects (e.g., subsistence, TEK, stewardship)
- Absent changes in the investment authority and consequent increased yield on investments, there would be no inflation-proofing with the consequent loss of purchase power over time in proportion to prevailing inflation rates (in order to support an annual restoration program of effective size)
- Cost of program management apportioned according to relative expense (public involvement, agency participation, peer review, habitat acquisition support, administration, etc.)

Habitat Protection:

- $55M of remaining funds on October 1, 2002 (FY 2003) for Habitat Protection would include any amounts needed to complete the Koniag Karluk-Sturgeon acquisition
- After December 2001 (the end of the current easement), the $16.5 M previously allocated for the Koniag Karluk-Sturgeon acquisition, if not obligated at that point, would be available for other habitat protection

- Habitat Protection funds would be managed as a long-term funding source generating annual earnings estimated at 5% per year for habitat protection (nominal yield, no inflation proofing)
- The intent of the Trustee Council is that half of the Habitat Protection funds would be used over a long period for small parcels; the remainder, if opportunities arise and with the agreement of the six trustees, would be used for large parcel purchases
- Issues that require further consideration:
  - ✓ priority, criteria and decision-making process for specific parcel selection
  - ✓ possible role of non-governmental organization to implement program after October 2002
  - ✓ extent of public involvement in future program

<u>Research, Monitoring and General Restoration</u>:

- Remaining balance of funds (estimated at $115M plus under the current assumptions) for Restoration Research, Monitoring, and General Restoration would be managed so that earnings-only would be used to support annual work plans starting with FY 2003
- Annual earnings estimated at 5% per year (nominal yield, no inflation proofing)
- Annual work plan would support continuing restoration and enhancement of oil spill injured resources including long-term research-monitoring, development of improved management tools, synthesis of results, general restoration activities, and community-based restoration projects such as subsistence restoration, Traditional Ecological Knowledge, Youth Area Watch, cooperative management, and local stewardship efforts as well as local community participation in on-going research efforts
- Issues that require further consideration:
  - ✓ whether changes in the annual work plan process are appropriate in light of reduced scale
  - ✓ means and extent of scientific peer review
  - ✓ means and extent of public involvement in process
  - ✓ whether a new organization or governance structure is needed

3/1/99

Executive Director WORKING DRAFT Recommendation

SUMMARY OF PAST AND ESTIMATED FUTURE USES OF SETTLEMENT

(In $millions)

REIMBURSEMENTS FOR SPILL RESPONSE	213.1

RESTORATION MANAGEMENT	FFY 92-99	FFY 00-02	FFY 03+	
Science Management, Public Involvement & Administration	24.7	5.1	TBD	(a)

RESTORATION IMPLEMENTATION	FFY 92-99	FFY 00-02	Remaining Funds	(b)	TOTAL	
Research, Monitoring, General Restoration	145.0	25.4	115.0		285.4	39.8%
Habitat Protection	372.1	4.5	55.0		431.6	60.2%
	517.1	29.9	170.0		717.0	100.0%

(a) To date, Restoration Office science management, public involvement and administration has cost approximately 5% of restoration program expenditures overall. Beyond FFY 02, science management, public involvement and administration costs will be allocated in proportion to program area costs.

(b) Estimate of remaining funds includes Restoration Reserve (with $12 million per year to be placed into the reserve FFY 00 - FFY 02), interest accrued, the $16.5 million committed to a Konlag purchase through 2001 plus additional funds currently unallocated.

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

House Joint Resolution 13

Sponsor: Representative Gene Therriault

Sponsor Statement

House Joint Resolution 13, "Relating to using oil spill settlement funds to create an endowment for the sciences at the University of Alaska," urges the Exxon Valdez Oil Spill (EVOS) Trustee Council to establish a $100,000,000 endowment for the sciences at the University.

The EVOS Trustee Council allocates money obtained from settlement of the Exxon Valdez spill litigation. Over the years, EVOS funds have largely been used to purchase land for habitat preservation, and have been lacking in the area of research. I believe this has left a critical gap in our understanding of this spill and how to respond in the future. Endowing scientific chairs at the University will help increase available baseline data, enhance the biological resources of the northern Gulf of Alaska, and significantly improve spill-related technology, restoration methods and ecosystem preservation. For example, it is widely understood that many aspects of the Exxon Valdez oil spill response, such as high-pressure washing of beaches and rock washing, may have caused more long-term harm than benefit. We also need to know if types of marine ecosystems are extra sensitive to certain cleanup activities, and if so, how we should respond to a spill in those areas.

An endowment of this nature will fulfill the intent of the Exxon Valdez oil settlement and the mission of the Trustee Council, which is to restore, rehabilitate, replace, enhance, or acquire equivalent resources and services in the oil spill region. I believe a self-perpetuating fund that allows the university maximum flexibility, such as that proposed in House Joint Resolution 13, is the ideal mechanism for such an effort.

Email: Representative_Gene_Therriault@legis.state.ak.us

University of Alaska President
Mark R. Hamilton
Support for Creating Endowed Chairs and Research Endowment with the EVOS Restoration Reserve

[Up]

September 28, 1998

Exxon Valdez Oil Spill Trustee Council
645 "G" Street
Anchorage, AK 99501

Dear Trustees:

Beginning in 1993, the University of Alaska, along with a significant portion of the Alaska public, has been requesting the Trustee Council maximize the long-term impact of the Exxon settlement through the establishment of a research endowment and the creation of University endowed chairs in appropriate disciplines. Now, in 1998, with over 85% of the EVOS Restoration Reserve expended, no research endowment in place, and no endowed chairs established, I urge you to seriously reconsider these proposals.

Although significant research projects have been supported by the Council, many important areas of inquiry remain that can only effectively be addressed over an extended period of time. Additionally, there are significant areas of applied endeavor relating to spill technology, restoration methods, and ecosystem preservation that have been learned from work thus far that now needs to be pursued and extended for maximum public benefit.

The establishment of an endowment with a major portion of the remaining Reserve will provide a modest annual flow of funds that will allow, through direct grants and leveraging of additional state, federal and private funds, the continuation of important basic and applied research on the coastal ecosystem of the EVOS impacted area. Additionally, the establishment of selected endowed chairs in relevant instructional, research and/or public service programs would further assure that the lessons learned from the Exxon tragedy will continue to be explored and discussed in classrooms, laboratories, public seminars, and community outreach programs.

Although, it seems most appropriate for the EVOS endowment to be established through the University of Alaska, it would be my recommendation that proposals for annual funding be accepted from all sources, including federal and state government. To secure the maximum benefit for the state and particularly the EVOS impacted area, the earnings of the endowment should support priorities established by the advisory group representing regional interests, including those of major industries, state and federal government, scientific representatives, and regional fisheries and aquaculture associations.

I have tremendous respect for the difficult and controversial task that you have performed on behalf of Alaska and the magnificent region that was impacted by the Exxon oil spill. I urge you now to give your support to the proposal for establishment of a permanent endowment to assure that the spill response technology, environmental restoration and monitoring programs, and public education projects that you have initiated and supported will continue long into the future.

Sincerely,
Mark R. Hamilton
President

Representative Eric Croft
Letter of Support for University Endowment
from EVOS Restoration Reserve Fund

October 15, 1998

Ms. Molly McCammon, E.D.
Exxon Valdez Oil Spill Trustee Council
645 G. Street, Suite 401
Anchorage, AK 99501

Dear Molly,

It was a pleasure speaking with you following the Legislative Budget and Audit Committee meeting earlier this month. I'm glad you viewed the committee's rejection of the Afognak purchase as a victory, and plan to proceed with executive approval despite the committee's disapproval.

I'm also interested in another proposal proffered to the Trustee Council: establishing endowed research centers and chairs at the University of Alaska with EVOS Restoration Reserve Funds.

Such endowment would greatly assist the council in accomplishing its mission to "effectively restore the environment injured by the spill to a healthy, productive ecosystem, while taking into account the importance of quality of life and need for viable opportunities to establish and sustain a reasonable standard of living." Every dollar would provide a return investment for our students, researchers, business and industry, impacted communities and our environment.

Please tell me what consideration the council has given to this proposal, and how inclined they are to support it. Thanks for all your efforts.

Sincerely,

Representative Eric Croft

William R. Wood

President Emeritus
University of Alaska
Support for creating a University Endowment
with EVOS funds
[Up]

Festival Fairbanks
A non-profit Community Service Organization

September 16, 1998

EVOS Trustee Council
Restoration Office
645 G. Street, Suite 401
Anchorage, AK 99501

Having spent a good many years working with, listening to, and learning from scientists and long-time residents of Alaska and other polar regions, I share their concern about the future of the North. Now past ninety-one, my own interest in the work of the Exxon Valdez Oil Spill Commission is more than casual.

Your assignment is of critical importance to the future of the North, its people, and the proper direction of the region's potential special contribution to the rest of the world. You represent the major opportunity to assure that something genuinely meaningful and long-lasting is undertaken.

What to try and why? There is no simplistic, one-shot solution that will make much difference, if any. Many "nice to have" proposals will be advanced; few are apt to be fundamental and long term. Obviously, however, there is a continuing need to know, to learn all that is possible about the many facets of the macro- and micro-environments of the North and their relationships.

Such an educational undertaking to succeed must reach out to future generations. The process should be one to stimulate the intellect rather than centered only on emotion. It should provide endless occasions to observe, to analyze, to weigh and consider, to cope with problems practically, to make reason-based decisions to do or not to do. The exercise is long-term and vital.

I strongly endorse, therefore, suggestions that the EVOS Restoration Plan include adequate provision for establishing a sound future-oriented program of research and top-level instruction of a few who would be in key positions to accumulate and spread knowledge of the North to the many.

This might best be done through "endowed chairs" at a major university located in the region to be understood, protected, and utilized wisely.

The endowed chairs could be in various disciplines. Mostly scientific, but not all. The creative arts that focus on natural forms add an essential dimension to full understanding and appreciation.

Of course, botany, chemistry, zoology, geology, physics, mathematics, and all of the geophysical, marine and oceanography disciplines, so important in Alaska.

But more. Work in anthropology, art, architecture, music, drama, dance, creative writing all have a contribution to make. The opportunity should provide for a multi-dimensional thrust. A cluster of six or seven such endowed chairs for associated programs would build a concentration of talent, an essential critical mass, each unit strong enough to compliment the others and together make a major difference in perception and understanding toward accomplishing the basic goals of the Commission.

For this assemblage of the "top of the best for the top of the world," I suggest the University of Alaska, a land-grant, space-grant institution, with some very special tools in place: a world scale library, a state-of-the-art supercomputer, a rocket launching range, a synthetic aperture radar facility, a research vessel, coastal laboratories, and research stations with considerable remote monitoring capability.

There is no other institution quite like the University of Alaska. It is becoming a well-recognized international research center and a source of information specializing in knowledge of the arctic and sub-arctic. It is the right place at the right time for the endowed chairs suggested to carry on the mission of the Commission.

Respectfully,

Wm. R. Wood
President (Emeritus)
University of Alaska

Anchorage Mayor Rick Mystrom

Letter of Support for establishing a University Endowment
from EVOS funds.
[Up]

September 11, 1998

EVOS Trustee Council
645 G Street, Suite 401
Anchorage, Alaska 99501

Dear Trustees:

I concur with UAA Chancellor Lee Gorsuch and the Anchorage Assembly and wish to add my support for establishing a research endowment from the EVOS funds within the University of Alaska.

There are numerous benefits to be gained for both the Trustee Council and the City of Anchorage from such an endowment. Our mutual interests and needs mesh very well with the purpose and capability of UAA.

Anchorage is centrally located near two main areas damaged by the spill. Cook Inlet and Prince William Sound are known spill damaged areas continuing to recover. The road to Whittier will soon be completed and will make Prince William Sound much more accessible. Anchorage is a logical choice for spill-based operations since logistics and other costs associated with research and other spill related work could be minimized. Also, several Native Corporations have offices located in Anchorage that over-see spill damaged areas.

I am pleased to endorse the concept of the establishment of a University endowment. It promises numerous benefits for the people of Anchorage and all Alaskans and also serve the mission of the Trustee Council.

Sincerely,

Rick Mystrom
Mayor

****

Letter of Support from
Alaska Senator Frank H. Murkowski
for creating a University of Alaska endowment
from the EVOS Restoration Reserve fund
[Up]

United States Senate

Committee on Energy and Natural Resources
Washington, DC

Senator Frank H. Murkowski
Chairman

September 22, 1998

Ms. Molly McCammon
Executive Director
EVOS Trustee Council
645 G. Street, Suite 401
Anchorage, Alaska 99501

Dear Molly:

I strongly believe it is time to focus attention of the remaining Exxon Valdez Oil Spill (EVOS) funds toward a long term understanding of the Prince William Sound ecosystem and not on a short term goal of habitat acquisition. Therefore, I want to voice my strong support for creating an endowment for the University of Alaska from EVOS Restoration Reserve funds. The creation is an excellent way to combine the goals of the Trustee Council with the capabilities of the University.

In this regard, I am very proud of the efforts by Alaskans to create an endowment. Recent resolutions passed by the cities of Anchorage and Fairbanks show that Alaskans understand the value of their University in meeting the needs of Alaskan communities. Letters of support from UAA Chancellor Lee Gorsuch, UAF Chancellor Joan Wadlow, UAF Alumni, and University faculty and students show that the University wants to serve the public and has the capability to do so. The many of other letters of support from Mayor Mystrom, and the Voice of the Times provide further confirmation that creating a University endowment is the right thing to do.

I hope you will consider the growing numbers of Alaskans who are expressing their opinion in support of endowed chairs and centers within the University of Alaska at your earliest convenience.

Thank you for consideration of this request.

Sincerely,

Frank H. Murkowski
Chairman

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POSITION STATEMENT

UAF Alumni Letter of Support for Establishing an Endowment at the University of Alaska with EVOS Funds July 20, 1998

[Up]

July 20, 1998

EVOS Trustee Council
Restoration Office
645 G Street, Suite 401
Anchorage, AK 99501

On behalf of the University of Alaska Alumni Association, I want to express our support for using the funds from the Exxon Valdez Oil Spill (EVOS) civil claims settlement between the state and federal government and the Exxon Corporation to endow academic and research chairs at the University of Alaska.

The University of Alaska is the premier research institution in Alaska with facilities and researchers necessary for the future research on the effects, prevention and further clean up of oil spills and other environmental disasters such as the Exxon Valdez spill. The smart thing to do with these funds is to use them in Alaska, at the State's research university. This endowment would greatly assist the Council in accomplishing its mission to "effectively restore the environment injured by the spill to a healthy, productive ecosystem, while taking into account the importance of quality of life and need for viable opportunities to establish and sustain a reasonable standard of living."

-"Jake" Poole, UAF Alumni Association President, July 20, 1998

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Board Passes Resolution to Endow Chairs from EVOS

-by Chip Wagoner
--UAF Alumnus newsletter, January 1996.

What does the UAF Alumni Association Board, the American Ornithologists' Union, the Wildlife Society, the Pacific Seabird Group, the Alaska District of the American Institute of Fishery Research Biologists and the American Bald Eagle Foundation all have in common? All have endorsed using funds from the Exxon Valdez Oil Spill (EVOS) civil claims settlement between the state and federal governments and the Exxon Corporation to endow academic and research chairs at the University of Alaska.

The settlement funds are managed by the EVOS Trustee Council composed of six state and federal governmental officials. The Council's mission is to "efficiently restore the environment injured by the spill to a healthy, productive ecosystem, while taking into account the importance of quality of life and need for viable opportunities to establish and sustain a reasonable standard of living."

The Alumni Board joined University of Alaska President Jerome Komisar and James King '49, a member of the EVOS Trustee Council Public Advisory Group, in urging the Council to provide for the long term needs to monitor and study the impacted resources, communities and populations by endowing academic chairs at the University of Alaska. As a public at large member of the advisory group, Jim King is proposing that the Trustee Council ask the EVOS Restoration Office and the University of Alaska to prepare a detailed plan to use a portion of the restoration reserve to endow chairs designed to fulfill the

EVOS settlement obligation.

The UAF Alumni Board asks you to help both the university and the resources of Prince William Sound by writing to the EVOS Trustee Council at 645 G St., Suite 401, Anchorage AK 99501 and supporting this endowment."

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UAA Chancellor Lee Gorsuch's Letter of Support for a University endowment with EVOS funds

[Up]

April 9, 1998

EVOS Trustee Council
645 G Street, Suite 401
Anchorage, Alaska 99501

Dear Trustees:

I would like to lend support for establishing a research endowment as well as endowed chairs within the University of Alaska system. This is an excellent opportunity for the university and the council to continue work together to accomplish our mutual objectives and goals.

For example, an endowed research chair at UAA provide a means top continue spill-related research in perpetuity. Additional income could be obtained from the patenting of processes for spill restoration and cleanup techniques. Development of educational courses for spill prevention, restoration, and preservation techniques would also serve the needs of our communities, including spill damaged areas, as well as generate additional income from other oil-damaged areas throughout the world also needing similar expertise.

There are numerous faculty on UA campuses prepared to continue to work with the council in advancing its long-term objectives. A research endowment as well as endowed chairs would generate significant long-term value, not only for Prince William Sound, but to our overall understanding of marine ecosystems and their potential response to oil spills. Numerous benefits exist for everyone and I will do all that I can to support this endeavor.

Sincerely,

Edward Lee Gorsuch
Chancellor

****

1998 Resolution

for creating a University endowment with EVOS funds

--Submitted by the Greater Fairbanks Chamber of Commerce Board of Directors to the EVOS Trustee Council, **Passed September 14, 1998**

[Up]

RESOLUTION 98-0914

A RESOLUTION BY THE GREATER FAIRBANKS CHAMBER OF COMMERCE URGING THE EXXON VALDEZ OIL SPILL COUNCIL TO WORK WITH THE UNIVERSITY OF ALASKA ON A PLAN TO CREATE A GENERAL ENDOWMENT TO THE UNIVERSITY AND TO ENDOW A SUBSTANTIAL NUMBER OF ACADEMIC CHAIRS IN THE SCIENCES TO FULFILL THE LONG TERM GOALS OF THE SETTLEMENT.

WHEREAS, the biological resources of the northern Gulf of Alaska were impacted by the Exxon Valdez oil spill; and

WHEREAS, the Exxon Valdez oil spill disrupted the economic and social life of many of the local residents in the Prince William Sound area; and

WHEREAS, baseline scientific data was inadequate to positively assess the damage, manage major spills and are inadequate to realistically restore the environment; and

WHEREAS, future accidents and oil spills in this area and other areas of Alaska waters are a probability; and

WHEREAS, Alaska has more coast line than any other state in the union, making it imperative that the State of Alaska take the lead in utilizing the accumulation of scientific knowledge and promoting the advancement of scientific technology now as well as in the future; and

WHEREAS, with scientific advancements in the decades ahead eventual enhancement of many of the biological resources will be possible; and

WHEREAS, the Exxon Valdez Oil Spill Trustee Council is in charge of restoring, rehabilitating, replacing, enhancing or acquiring equivalent resources and services in the oil spill region, the accumulation of scientific knowledge to manage any future oil spills must be placed in high priority within the Council's program; and

WHEREAS, any spill of this magnitude not only effects the wildlife and fish habitat, it has economic, social and psychological effects in rural Alaska where local populations, including the native population, traditional life styles may be severely disrupted; and

WHEREAS, the University of Alaska has taken a leadership role in many of these areas of study and is strongly committed to working in rural Alaska as well as attracting students from rural Alaska; and

WHEREAS, the University of Alaska, is a statewide system with locations in Valdez, Cordova, Petersburg, Homer, Seward, Kodiak, Juneau, Anchorage, Fairbanks, Bethel, Dillingham, in addition to many other locations in Rural Alaska; and

WHEREAS, the University of Alaska currently is doing research in fisheries and oceanography and has

a research vessel; and

WHEREAS, a general endowment will permit the University to fund specific projects and studies that may only require a limited time to answer, and to be flexible to fund new studies as new questions or problems arise; and

WHEREAS, endowed academic chairs will provide continuing quality scientific investigation, scientific publications, and excellence in training that will be needed by the agencies and industry responsible for resource management and development into perpetuity; and

WHEREAS, endowed chairs attract the highest quality applicants because they are not affected by the annual fluctuations of the University budget process; and

WHEREAS, high caliber of endowed professors attract the highest quality graduate students and most often have a competitive edge in securing grants and contracts; and

WHEREAS, concentrating a major center for the advancement of sciences at the University of Alaska is in the best interests of all Alaskans, since agency and industry research is normally directed to the public and may suffer from short term funding; and

WHEREAS, endowed university research is normally broader in scope, produces peer-reviewed publications, has long term continuity and produces an outflow of trained professionals; and

WHEREAS, the University of Alaska already has an appropriate Foundation for managing endowed chairs, thus eliminating the cost of a new bureaucracy; and

WHEREAS, the combination of a general endowment and endowed chairs allows the University of Alaska both flexibility and long term funding with an irrevocable commitment to continue the study of all of the effects of this spill and any future spills that may happen in Alaskan waters or any other waters on this earth.

NOW THEREFORE BE IT RESOLVED THAT the Greater Fairbanks Chamber of Commerce urges the Exxon Valdez Oil Spill Trustee Council to instruct their Restoration Team to establish a general endowment to the University of Alaska and to endow a substantial number of chairs in the sciences that will fulfill the intent of the settlement; and

BE IT FURTHER RESOLVED THAT the Greater Fairbanks Chamber of Commerce urges that funding be included in the Restoration Plan and Environmental Impact Statement prepared this year by the Restoration Team.

BE IT FURTHER RESOLVED THAT, this resolution be distributed to:

Alaska U.S. Congressional Delegation
The Honorable Tony Knowles
Alaska State Interior Delegation
University of Alaska President
University of Alaska Board of Regents
Exxon Valdez Oil Spill Council

PASSED on September 14, 1998 by the Greater Fairbanks Chamber of Commerce Board of Directors.

January 13, 1999

Voice of The Times
Anchorage Daily News

"Public support needed for spill endowment"

by Grant C. Baker

[Up]

The 10th anniversary of the 1989 Exxon Valdez Oil Spill (EVOS) is approaching soon. A spill symposium will be held from March 23-26 at the Egan Civic and Convention Center to commemorate the event.

Status of restoration programs will be presented. The programs are funded by the $900 million settlement Alaska made with Exxon in 1991. Each year, a payment is made. The last settlement payment will be received from Exxon in 2001.

A portion of the settlement payments have been set aside each year to create a restoration reserve fund. The reserve is expected to be worth about $140 million in 2002.

As the final payment grows near, the EVOS Trustee Council has the problem of deciding how to spend the reserve. Oil-damaged areas still need to be restored. Work is needed to fix sporadic and depressed fishery stocks, oiled seabed contamination and the lack of effective oil cleanup methods.

During the same time period since the spill, the financial woes of the University of Alaska have also been heard. The recent low price of oil worsens the problem for the University.

There seems to be a mutual solution to their problems. The needs of the EVOS Trustee Council mesh very well with the mission of the university. Thus, the reserve represents a rare opportunity for both to solve their problems by creating a university research endowment.

Universities across the country have recognized the importance of endowments for their future survival. An Internet search turns up hundreds of Web sites about university endowments.

In 1997, the top 300 university endowments ranged from about $11 billion to a low of $67 million. In comparison, the University of Alaska has an endowment worth about $30 million.

How do university endowments work? First, an initial amount of money is placed into an account. The account earns interest or a rate of return from investments each year. Over the past four years, the average rate of return for 500 university endowments has been about 15 percent.

Part of the earnings is used each year to support things such as research and technology development. This is commonly about 5 percent of the endowment fund. Earnings that remain are left in the account. Each year the account grows and so does the annual amount that can be used. In many ways, an endowment for the University of Alaska would be like the Alaska Permanent Fund.

For example, suppose a $100 million EVOS endowment is established today for the university. Assume for the sake of discussion that a 15 percent rate of return is used. Over the next 20 years, the endowment will increase nearly six-fold and be worth about $600 million. An additional $300 million would have been generated to conduct research.

However, the greatest benefit of an endowment may be the snowballing of opportunities it creates.

Earnings from a $100 million endowment can fund about 25 permanent endowed research chairs. World-class experts are selected to do the work funded by the endowed chairs. Twenty-five experts in fields such as fisheries, biology, chemistry, and environmental engineering would create a very special university.

World-class experts attract funding from many sources including private industry, and state and federal agencies. Relationships with existing funding sources are enhanced and new funding sources are established. Additional income can be generated from patents and other intellectual properties. For example, Stanford University received about $120 million from patents and special programs in 1997.

Thus, a broad funding base is generated with long lasting stability for the university and the community. An outstanding environment of teaching and learning is established. That is a natural attraction for students.

An endowment may be structured to do whatever the Trustee Council needs done. As a cooperative effort between the university and the Trustee Council, a customized endowment can be constructed to superbly fulfill the purpose of the EVOS settlement funds.

Public support for an endowment is growing. Resolutions of support have come from the Anchorage Assembly and the Greater Fairbanks Chamber of Commerce. Anchorage Mayor Rick Mystrom, Republican and Democratic legislators, students, and many others have submitted letters of support.

But, the Trustee Council is not yet convinced. It has not committed to the endowment idea.

An endowment can be the key to getting the University on track to become self-supporting. University officials and the Trustee Council need to be shown how well an endowment matches their needs. They need to be urged to get together and make an endowment happen.

Public comments of support are needed soon. The Trustee Council is scheduled to meet on January 21-22 to discuss how the Restoration Reserve will be spent.

The mailing address for the Trustee Council is 645 G St. Suite 401, Anchorage, AK 99501. Addresses and phone numbers for individual Trustee Council members, legislators, and university officials may be obtained from the Internet WEB site at:

http://www.alaska.net/~baker/evos.htm

As the 10th anniversary of the spill approaches, the Trustee Council would serve itself and Alaskans well by making sure a university endowment happens as part of the spill legacy.

Dr. Grant C. Baker is a faculty member of the University of Alaska Anchorage, an alumnus of the University of Alaska Fairbanks, and a Prince William Sound commercial fisherman.

Wildlife still hurt by spill

2/10/99

Recovery slow for many species

By MAUREEN CLARK
The Associated Press

Ten years after the tanker Exxon Valdez spilled 11 million gallons of crude oil into Prince William Sound, only two of the nearly two dozen species hurt by the disastrous spill are fully recovered, according to the state-federal panel overseeing restoration of the spill area.

The Exxon Valdez Oil Spill Trustee Council on Tuesday updated the official status of the birds, fish and marine mammals hurt by the spill.

The council added river otters to its list of species considered recovered. They join bald eagles, which were declared recovered 2½ years ago.

The March 24, 1989, spill fouled 1,300 miles of shoreline and killed hundreds of thousands of seabirds and thousands of otters, seals and other animals. It also disrupted salmon and herring fisheries for several years.

Environmentalists used the trustees' update as an opportunity to call for Washington lawmakers to oppose Exxon Corp.'s $77.2 billion takeover of Mobil Corp.

"We're having trouble holding Exxon accountable," said Rikki Ott, a biologist and activist from Cordova.

Exxon should be required to pay a $5.2 billion jury verdict resulting from the spill before the company gets any bigger, Ott said. Exxon's appeal of the 1994 award is before the 9th U.S. Circuit Court of Appeals.

Exxon officials in Irving, Texas, had no comment Tuesday on the trustees' findings or on calls to halt the takeover, spokesman Ed Burwell said.

The trustee council had been considering adding pink salmon to the list of recovered species, but decided against that, said Stan Senner, science coordinator for the council.

"There is a great deal of concern about lingering effects of oil in subtidal areas," Senner said. Scientists studying the effects of the spill have found that even small quantities of oil can damage salmon eggs.

Please see Page B-3, SPILL

SPILL: Species still recovering

Continued from Page B-1

Along with pink salmon in the "recovering" category are mussels, red salmon, and the common murre, a small seabird. About 20,000 oiled murres were found dead in the months after the spill — three-fourths of all the dead birds recovered in the period.

The trustees voted Tuesday to boost the status of several species from "not recovering" to "recovering." They include clams, Pacific herring, sea otters, black oyster catchers, and marbled murrelets. The marbled murrelet is listed as a threatened species in Washington, Oregon, California and British Columbia.

Several species continue to show little or no clear improvement since the spill, the council said. They include the common loon, cormorants, harbor seals, harlequin ducks, killer whales and pigeon guillemots.

Very little is known about some species hurt by the spill, so the status of their recovery is unknown, Senner said. Those include cutthroat trout, Dolly Varden, Kittlitz's murrelet and rockfish.

HJR

36

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HJR 36

Revision Date: 4/14/99
Title: American Psychological Association Report
Sponsor: Rep Fred Dyson
Requester:

Dept. Affected
BRU
Component
Component Serial No.

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	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						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
TOTAL	0.0	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)*

Prepared by

Rep. Fred Dyson
Co-Chair
House HESS

Phone

Phone

Date

Psychological Bulletin
1998, Vol. 124, No. 1, 22–53

Then use for (3) this

0033-2909/98/$3.00

A Meta-Analytic Examination of Assumed Properties of Child Sexual Abuse Using College Samples

Bruce Rind
Temple University

Philip Tromovitch
University of Pennsylvania

Robert Bauserman
University of Michigan

Many lay persons and professionals believe that child sexual abuse (CSA) causes intense harm, regardless of gender, pervasively in the general population. The authors examined this belief by reviewing 59 studies based on college samples. Meta-analyses revealed that students with CSA were, on average, slightly less well adjusted than controls. However, this poorer adjustment could not be attributed to CSA because family environment (FE) was consistently confounded with CSA, FE explained considerably more adjustment variance than CSA, and CSA-adjustment relations generally became nonsignificant when studies controlled for FE. Self-reported reactions to and effects from CSA indicated that negative effects were neither pervasive nor typically intense, and that men reacted much less negatively than women. The college data were completely consistent with data from national samples. Basic beliefs about CSA in the general population were not supported.

Child sexual abuse (CSA) has received considerable attention since the late 1970s from mental health care professionals, legislative, judicial, and law enforcement personnel, the media, and the lay public (Rind & Tromovitch, 1997). Much of this attention has focused on possible effects of CSA on psychological adjustment, as is shown in the professional literature and popular press (Pope & Hudson, 1995) and in the information and entertainment media (Esman, 1994; Kutchinsky, 1992; West & Woodhouse, 1993). The media have frequently presented lurid CSA cases combined with high prevalence estimates, creating the image that CSA produces intensely negative effects for all of its victims (Esman, 1994; Kutchinsky, 1992; West & Woodhouse, 1993). Many publications in the popular press and the professional literature have similarly portrayed CSA as a "special destroyer of adult mental health" (Seligman, 1994, p. 232), and some have attempted to explain much or all of adult psychopathology as a consequence of CSA (Esman, 1994; Nash, Hulsey, Sexton, Harralson, & Lambert, 1993). Examples in the professional literature include McMillen, Zuravin, and Rideout (1995, p. 1037), who commented that "child sexual abuse is a traumatic event for which there may be few peers," and Rodriguez, Ryan, Rowen, and Foy (1996), who combined estimates of national prevalence rates of CSA with selected examples of empirical research to argue that posttraumatic stress disorder is a common sequel of CSA in the general population. Opinions expressed in the media and by many popular press and professional writers imply that CSA has certain basic properties or qualities irrespective of the population of interest. These implied properties are (a) CSA causes harm, (b) this harm is pervasive in the population of persons with a history of CSA, (c) this harm is likely to be intense, and (d) CSA is an equivalent experience for boys and girls in terms of its widespread and intensely negative effects. The purpose of the current review was to examine these implied basic properties. Our goal was to address the question: In the population of persons with a history of CSA, does this experience cause intense psychological harm on a widespread basis for both genders?

An important first step is to discuss terminology. The term *child sexual abuse* has been used in the psychological literature to describe virtually all sexual interactions between children or adolescents and significantly older persons, as well as between same-age children or adolescents when coercion is involved. The indiscriminate use of this term and related terms such as *victim* and *perpetrator* has been criticized because of concerns about scientific validity (e.g., Kilpatrick, 1987; Nelson, 1989; Okami, 1990; Rind & Bauserman, 1993). Kilpatrick argued that researchers have often failed to distinguish between "abuse" as harm done to a child or adolescent and "abuse" as a violation of social norms, which is problematic because it cannot be assumed that violations of social norms lead to harm. Similarly, Money (1979) observed that our society has tended to equate "wrongfulness" with harmfulness in sexual matters, but harmfulness cannot be inferred from wrongfulness. Nelson argued that the indiscriminate use of terms suggesting force, coercion, and harm reflects and maintains the belief that these interactions are always harmful, thereby threatening an objective appraisal of them. Rind and Bauserman demonstrated experimentally that appraisals of nonnegative sexual interactions between adults and

Bruce Rind, Department of Psychology, Temple University; Philip Tromovitch, Graduate School of Education, University of Pennsylvania; Robert Bauserman, Department of Psychology, University of Michigan.

We thank Ralph Rosnow for his meta-analytic advice and comments on an earlier draft and Steve Wexler for his helpful comments.

Correspondence concerning this article should be addressed to Bruce Rind, Department of Psychology, Temple University, Philadelphia, Pennsylvania 19122. Electronic mail may be sent to rind@vm.temple.edu.

cal studies, which often include high proportions of patients with incestuous CSA, causality is therefore more problematic. In the college samples, however, close family CSA was the exception, not the rule. Only 16% of SA students had close family CSA; the percentage of cases of paternal incest is even lower because the overall value includes sibling incest. These considerations do not prove causal direction in the college population but suggest that in most cases the direction is more likely to go from family environment to CSA. Finally, the college samples did not underrepresent abuse severity. Compared with the general population, as indicated by studies based on national samples, SA students experienced as much intercourse, close family CSA, and multiple episodes of CSA; moreover, college students were just as likely to have experienced CSA as persons in the general population. Briere's arguments seem most appropriate for clinical samples with large proportions of incest cases. In this situation, Briere's (1988, p. 84) argument that "abuse without family dysfunction may have little construct validity" may be applicable; in the general population and in the college population, however, this argument is less valid. These considerations support the validity of using statistical control in the studies under review.

Aside from validity issues, however, the statistical control analyses do not rule out causality for several reasons. First, in a minority of cases, CSA–symptom relations remained significant after statistical control. Second, when nonsignificance did result from statistical control, low power rather than a zero effect may have been responsible. Third, a small minority of students with a history of CSA did report self-perceived lasting harm, implying genuine negative effects of CSA for these persons. Fourth, for male participants, unwanted CSA was associated with greater symptomatology. If unwanted CSA had been contrasted with willing CSA only, instead of a combination of unwanted and willing CSA, then consent would likely have moderated CSA–symptom relations more strongly. These results suggest that unwanted CSA does have negative effects, although confounding variables must still be considered. Despite these caveats, the current results imply that the claim that CSA inevitably or usually produces harm is not justified.

The finding that family environment is more important than CSA in accounting for current adjustment in the college population is consistent with the results of several recent studies using participants from noncollege populations (e.g., Eckenrode et al., 1993; Ney et al., 1994). Eckenrode et al. categorized children and adolescents obtained from a large representative community sample in a small-sized city in New York state into six groups: not abused, CSA, physical abuse, neglect, CSA and neglect, and physical abuse and neglect. They found that SA children and adolescents performed as well in school as nonabused controls in all areas measured, including standardized test scores, school performance, and behavior. Neglect and physical abuse, on the other hand, were associated with poorer performance and more behavior problems. Ney et al. (1994) separated their mostly clinical sample of children and adolescents into categories of CSA, physical abuse, physical neglect, verbal abuse, emotional neglect, and combinations of these. They found that the combination of abuse that correlated most strongly with adjustment problems was physical abuse, physical neglect, and verbal abuse. In the top 10 worst combinations, verbal abuse appeared seven times, physical neglect six times, physical abuse and emotional neglect five times each, whereas CSA appeared only once.

The greater importance of nonsexual negative childhood experiences in explaining later adjustment was clearly demonstrated in a study of a large, representative sample of female college students throughout the United States. Wisniewski (1990) used path analyses to assess the relative contributions of CSA and family environment to current adjustment. She concluded that the data did not support CSA "as a specific explanation of current emotional distress [but instead are] best interpreted as supportive of other factors such as family violence . . . as having the greatest impact" (p. 258). Other researchers who used college samples and used statistical control reached similar conclusions regarding the role of family violence, rather than CSA, in explaining current adjustment problems (e.g., Higgins & McCabe, 1994; Pallotta, 1992). One reason CSA may have been overshadowed by other childhood experiences such as verbal and physical abuse in explaining adjustment is that participants may have experienced the latter type of events more frequently than CSA. Nevertheless, the results from these studies highlight the relatively greater importance of family environment compared with CSA in accounting for adjustment problems—a point that has been ignored or underemphasized in much of the CSA literature to date.

Pervasiveness and Intensity of Negative Effects or Correlates

Self-reported effects from CSA revealed that lasting psychological harm was uncommon among the SA college students. Perceived temporary harm, although more common, was far from pervasive. In short, the self-reported effects data do not support the assumption of wide-scale psychological harm from CSA. This conclusion is further suggested by students' self-reported reactions. The finding that two thirds of SA men and more than one fourth of SA women reported neutral or positive reactions is inconsistent with the assumption of pervasive and intense harm. It is not parsimonious to argue that boys or girls who react neutrally or positively to CSA are likely to experience intense psychological impairment. To argue that positive or neutral reactions are consistent with intense harm, it seems logical to first demonstrate that negative reactions are consistent with intense harm. However, the magnitude of the CSA–adjustment relation was small for women, despite the reporting of negative reactions by a majority of SA women. This low intensity finding for generally negative CSA experiences is inconsistent with an expectation of intense harm from nonnegative CSA experiences.

Moderators

Multiple regression analyses showed that the intensity of the relationship between CSA and adjustment varied reliably as a function of gender, level of consent, and the interaction of these

ally, it should be noted, because of its salience, the revelation, or even fear of revelation, of CSA events may inflate a SA person's perception of negative aspects of family environment, particularly in retrospective measures.

two factors. It is noteworthy that neither the level of contact nor the interaction between gender and level of contact was related to intensity. These latter results failed to provide support for the common belief that contact sex is more harmful than noncontact sex or that contact sex for girls is especially harmful. These conclusions, however, should be viewed cautiously because of the overlapping nature of the two levels of the contact variable (i.e., contact only versus contact and noncontact sex). This same caveat applies to consent because its two levels (unwanted versus willing and unwanted) were overlapping as well. The finding that most women (72%) reacted negatively to their CSA at the time it occurred implies that most of this CSA was unwanted and that the overlap between the two levels of consent was high. Thus, even though consent did not moderate intensity for women, a true difference as a function of consent may have been obscured. The finding that level of consent did moderate intensity for men is consistent with less overlap between the two levels of consent for men, because the majority of men (67%) reacted nonnegatively at the time. Importantly, CSA was not related to adjustment for men in the willing and unwanted level of the consent variable.

In separate moderator analyses, we examined how aspects of the CSA experience moderated self-reported reactions and effects, as well as symptoms. Although these results should be viewed cautiously because they were usually based on a small number of samples, we found that only force and incest moderated outcomes. The largest relation occurred between force and self-reported reactions or effects, but force was unrelated to symptoms. Incest moderated both symptoms and self-reported reactions and effects. Penetration, duration, and frequency did not moderate outcomes. The near-zero correlation between penetration and outcome is consistent with the multiple regression analysis finding that contact sex did not moderate adjustment. This result provides empirical support for Finkelhor's (1979, p. 103) observation that our society's view of intercourse as the most damaging form of CSA is "a well-ingrained prejudice" unsupported by research. Composite measures consisting of various combinations of moderators (e.g., incest, force, penetration) showed no association with symptoms in four of five studies that constructed such measures. This finding is consistent with Laumann et al.'s (1994) failure to find an association between their composite variable (consisting of penetration, number of older partners–abusers, relatedness of partner–abuser, frequency of contacts, age when having contacts, duration of contacts) and adjustment for SA respondents in their study of a U.S. national sample. It is important to note, however, that these nonsignificant results may be attributable to the additive nature of the composite variables. Composites based on two-way or higher order interactions of moderators might have been more likely to yield significant results, particularly if the interactions included incest and force.

Child Sexual Abuse as a Construct Reconsidered

In light of the current findings, it is appropriate to reexamine the scientific validity of the construct of CSA as it has been generally conceptualized. In most studies examined in the current review, CSA was defined based on legal and moral, rather than empirical and phenomenological, criteria. This approach may form a defensible rationale for legal restrictions of these behaviors, but is inadequate and may be invalid in the context of scientific inquiry (Okami, 1994). In science, *abuse* implies that particular actions or inactions of an intentional nature are likely to cause harm to an individual (cf. Kilpatrick, 1987; Money & Weinrich, 1983). Classifying a behavior as abuse simply because it is generally viewed as immoral or defined as illegal is problematic, because such a classification may obscure the true nature of the behavior and its actual causes and effects.

The history of attitudes toward sexuality provides numerous examples. Masturbation was formerly labeled "self-abuse" after the 18th century Swiss physician Tissot transformed it from a moral to a medical problem (Bullough & Bullough, 1977). From the mid-1700s until the early 1900s the medical profession was dominated by physicians who believed that masturbation caused a host of maladies ranging from acne to death (Hall, 1992; Money, 1985), and medical pronouncements of dangerousness were accompanied by moral tirades (e.g., Kellogg, 1891). This conflation of morality and science hindered a scientifically valid understanding of this behavior and created iatrogenic victims in the process (Bullough & Bullough, 1977; Hall, 1992; Money, 1985). Kinsey et al. (1948) argued that scientific classifications of sexual behavior were nearly identical with theological classifications and the moral pronouncements of English common law in the 15th century, which were in turn based on medieval ecclesiastic law, which was itself built on the tenets of certain ancient Greek and Roman cults and Talmudic law. Kinsey et al. noted that "[e]ither the ancient philosophers were remarkably well-trained psychologists, or modern psychologists have contributed little in defining abnormal sexual behavior" (p. 203). Behaviors such as masturbation, homosexuality, fellatio, cunnilingus, and sexual promiscuity were codified as pathological in the first edition of the American Psychiatric Association's (1952) *Diagnostic and Statistical Manual of Mental Disorders.* The number and variety of sexual behaviors labeled pathological has decreased, but mental health professionals continue to designate sexual behaviors as disorders when they violate current sexual scripts for what is considered acceptable (Levine & Troiden, 1988). This history of conflating morality and law with science in the area of human sexuality by psychologists and others indicates a strong need for caution in scientific inquiries of sexual behaviors that remain taboo, with child sexual abuse being a prime example (Rind, 1995).

As discussed previously, abuse implies that harm is likely to result from a behavior. The results for SA male college students, using this scientific conceptualization of abuse, highlight the questionable validity of the construct CSA as defined and used in the studies examined in the current review. For these male college students, 37% viewed their CSA experiences as positive at the time they occurred; 42% viewed these experiences as positive when reflecting back on them; and in the two studies that inquired about positive self-perceived effects, 24% to 37% viewed their CSA experiences as having a positive influence on their current sex lives. Importantly, SA men across all levels of consent (i.e., both willing and unwanted experiences) did not differ from controls in current psychological adjustment, although SA men with unwanted experiences only did, implying that willingness was associated with no impairment to psychological adjustment. The positive reports of reactions and effects,

.long with normal adjustment for willing participants, are scientifically inconsistent with classifying these male students as having been abused. Their experiences were not associated with harm, and there appears to be no scientific reason to expect such an association (i.e., predicting psychologically harmful effects from events that produced positive reactions lacks face validity). On the other hand, a minority of SA men did report retrospectively recalled negative reactions, negative current reflections, and negative self-perceived effects; moreover, unwanted CSA was associated with adjustment problems. Assuming that negative reactions were associated with unwanted CSA, the term *abuse* may be scientifically valid for the latter students. Combining positive and negative responders into a single category of abuse may incorrectly suggest harm for the former and simultaneously dilute harm for the latter (Bauserman & Rind, 1997).

Some researchers have questioned their original definitions of sexual abuse after assessing their results. For example, Fishman (1991) borrowed from Finkelhor's (1979) definition to classify sexual abuse of boys mostly on the basis of age discrepancies (i.e., sex between a boy of 12 or less and someone at least 5 years older, or between a boy aged 13 to 16 with someone at least 10 years older), stating that age differences implied sufficient discrepancy in developmental maturity and knowledge to indicate victimization. He found that SA men in his study did not differ from controls on measures of adjustment and reported a wide range of reactions to and effects from their CSA experiences (mostly positive or neutral). In-depth interviews confirmed and elaborated the quantitative findings, leading Fishr in to question his original assumptions. He noted that the men's stories altered his universal beliefs about the impact of inappropriate sexual experiences on children, and stated that "to impose a confining definition onto someone's experience does nothing to alter the realities of that experience for the person" (pp. 284–285). Fishman concluded by arguing for the use of language of a more neutral nature rather than labels such as abuse, victim, and molestation—in short, for use of empirical and phenomenological criteria in conceptualizing early sexual relations, rather than legal or moral criteria.

The foregoing discussion does not imply that the construct CSA should be abandoned, but only that it should be used less indiscriminately to achieve better scientific validity. Its use is more scientifically valid when early sexual episodes are unwanted and experienced negatively—a combination commonly reported, for example, in father–daughter incest.[7] In general, findings from the current review suggest that sociolegal definitions of CSA have more scientific validity in the case of female children and adolescents than for male children and adolescents, given the higher rate of unwanted negative experiences for women. Nevertheless, as Long and Jackson (1993) argued, because some women perceive their early experiences as positive, do not label themselves as victims, and do not show evidence of psychological impairment, it is important for researchers to be cautious in defining abuse for both men and women in attempts to validly examine the antecedents and effects of these experiences.

Summary and Conclusion

Beliefs about CSA in American culture center on the viewpoint that CSA by nature is such a powerfully negative force that (a) it is likely to cause harm, (b) most children or adolescents who experience it will be affected, (c) this harm will typically be severe or intense, and (d) CSA will have an equivalently negative impact on both boys and girls. Despite this widespread belief, the empirical evidence from college and national samples suggests a more cautious opinion. Results of the present review do not support these assumed properties; CSA does not cause intense harm on a pervasive basis regardless of gender in the college population. The finding that college samples closely parallel national samples with regard to prevalence of CSA, types of experiences, self-perceived effects, and CSA–symptom relations strengthens the conclusion that CSA is not a propertied phenomenon and supports Constantine's (1981) conclusion that CSA has no inbuilt or inevitable outcome or set of emotional reactions.

An important reason why the assumed properties of CSA failed to withstand empirical scrutiny in the current review is that the construct of CSA, as commonly conceptualized by researchers, is of questionable scientific validity. Overinclusive definitions of abuse that encompass both willing sexual experiences accompanied by positive reactions and coerced sexual experiences with negative reactions produce poor predictive validity. To achieve better scientific validity, a more thoughtful approach is needed by researchers when labeling and categorizing events that have heretofore been defined sociolegally as CSA (Fishman, 1991; Kilpatrick, 1987; Okami, 1994; Rind & Bauserman, 1993).

One possible approach to a scientific definition, consistent with findings in the current review and with suggestions offered by Constantine (1981), is to focus on the young person's perception of his or her willingness to participate and his or her reactions to the experience. A willing encounter with positive reactions would be labeled simply *adult–child sex*, a value-neutral term. If a young person felt that he or she did not freely participate in the encounter and if he or she experienced negative reactions to it, then *child sexual abuse*, a term that implies harm to the individual, would be valid. Moreover, the term *child* should be restricted to nonadolescent children (Ames & Houston, 1990). Adolescents are different from children in that they are more likely to have sexual interests, to know whether they want a particular sexual encounter, and to resist an encounter that they do not want. Furthermore, unlike adult–child sex, adult–adolescent sex has been commonplace cross-culturally and historically, often in socially sanctioned forms, and may fall within the "normal" range of human sexual behaviors (Bullough, 1990; Greenberg, 1988; Okami, 1994). A willing encounter between an adolescent and an adult with positive reactions on the part of the adolescent would then be labeled scientifically as *adult–adolescent sex*, while an unwanted encounter with negative reactions would be labeled *adolescent sexual abuse*. By drawing these distinctions, researchers are likely to achieve

[7] Two of the three outliers identified in the sample-level meta-analysis involved samples consisting largely of incest cases (Jackson et al., 1990; Roland et al., 1989). The CSA experiences of these women, associated with relatively large effect sizes, may capture more accurately the essence of abuse in a scientific sense—that is, more persuasive evidence of harm combined with the likely contextual factors of being unwanted and perceived negatively.

a more scientifically valid understanding of the nature, causes, and consequences of the heterogeneous collection of behaviors heretofore labeled CSA.

Finally, it is important to consider implications of the current review for moral and legal positions on CSA. If it is true that wrongfulness in sexual matters does not imply harmfulness (Money, 1979), then it is also true that lack of harmfuiness does not imply lack of wrongfulness. Moral codes of a society with respect to sexual behavior need not be, and often have not been, based on considerations of psychological harmfulness or health (cf. Finkelhor, 1984). Similarly, legal codes may be, and have often been, unconnected to such considerations (Kinsey et al., 1948). In this sense, the findings of the current review do not imply that moral or legal definitions of or views on behaviors currently classified as CSA should be abandoned or even altered. The current findings are relevant to moral and legal positions only to the extent that these positions are based on the presumption of psychological harm.

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APA Public Communications

Statement on Childhood Sexual Abuse

Childhood Sexual Abuse Causes Serious Harm to its Victims

The American Psychological Association (APA), through its members, sponsored initiatives and publishing, has a long record in the area of the prevention and treatment of child abuse and neglect including sexual abuse. In the legislative arena, for example, APA has played an active role in advocating for programs expanding child abuse prevention, treatment and research. And, through its Coordinating Committee on Child Abuse and Neglect, APA has been a leader in helping the mental health profession document and treat the ill effects of childhood abuse.

In 1990, the APA Council of Representatives passed a resolution calling for a national strategy to prevent and treat child abuse and neglect and called such action a matter of the highest urgency. **APA's position is, therefore, very clear: The sexual abuse of children is wrong and harmful to its victims.** As a publisher of psychological research, APA publishes thousands of research reports every year. But, publication of the findings of a research project within an APA journal is in no way an endorsement of a finding by the Association.

The article which is the basis for this controversy, *A Meta-Analytic Examination of Assumed Properties of Child Sexual Abuse Using College Samples,* is one of hundreds of studies which appear in the psychological literature on the effects of childhood sexual abuse. Unfortunately, the findings of this meta-analysis (a meta-analysis studies the data of multiple previous research projects on the subject) are being misreported by some in the media. The actual findings are that for this segment of the population (college students) being the victim of childhood sexual abuse was found to be *less* damaging to them than generally believed. However, one overall statement of the results was that students who were the victims of child sexual abuse **were, on average, slightly less well-adjusted** than students who were not victimized as children. One important follow-up question raised by the study is what happens to these students as they enter adulthood and start families of their own. Do they further experience detrimental effects of their childhood experiences later in life?

Those who are reporting that the study says that childhood sexual contact with adults is not harmful to children are misreporting the findings. **The facts are that the majority of the psychological literature reveals that childhood sexual abuse has serious and long-term negative effects on its victims.**

No responsible mental health organization, including the American Psychological Association, endorses pedophilia or denies its negative effects on children. Any statement that suggests otherwise is a serious distortion of the truth. The American Psychiatric Association writes: "An adult who engages in sexual activity with a child is performing a criminal and immoral act which never can be considered normal or socially acceptable behavior." This statement is fully consistent with the policies of the American Psychological Association and with the views of mental health professionals throughout the nation.

For copies of the *APA Policy Statement on the Psychological Issues Related to Child Abuse and Neglect,* the *Report of the APA Coordinating Committee on Child Abuse and Neglect* or for citations from the psychological literature on childhood sexual abuse contact:

Public Communications Office
American Psychological Association
(202) 336-5700
publiccom@apa.org
http://www.apa.org

March 23, 1999

The American Psychological Association (APA), in Washington, DC, is the largest scientific and professional organization representing psychology in the United States and is the world's largest association of psychologists. APA's membership includes more than 155,000 researchers, educators, clinicians, consultants and students. Through its divisions in 50 subfields of psychology and affiliations with 58 state, territorial and Canadian provincial associations, APA works to advance psychology as a science, as a profession and as a means of promoting human welfare.

March 23, 1999

Backpedaling on pedophilia
By Kathleen Parker
Special to the Sentinel
Published in The Orlando Sentinel on April 11, 1999.

The American Psychological Association has asked me to correct a misconception regarding a recent column I wrote about a new study that suggests maybe pedophilia ain't so bad.I don't usually write follow-up columns on request, but Lord knows where Iwould be without the psychological community; I don't want those guys mad at me. Thus, humbly, I submit the following adjustment, if not a correction.

The column in question was about a study produced last year -- and published in an APA "Psychological Bulletin" -- that urged new terminology in discussions of adult-child sex. Basically, the study's authors concluded that we've been too judgmental in such relationships, that sometimes children actually enjoy having sex with adults; our terms should be more "value-neutral." Although the study had been in circulation for several months, it didn't become a topic of public discussion until radio-host Dr. Laura Schlessinger raised it on her show. Dr. Laura said she feared that the psychological community was trying to normalize pedophilia. I picked up on the story around the same time when a reader e-mailed me a copy of the study. I quoted the authors' findings accurately but fumbled, apparently, when I described the study as having been "released by the APA."

To normal people like you and me, that means that the APA, uh, released a study -- as in made it public. To the APA, it means that I'm suggesting that the APA either conducted the study or is endorsing adult-child sex, or both. Let's get this straight once and for all so we can get back to what really matters, which is that certain psychologists seem to be trying to normalize pedophilia. The APA did not conduct the study, did not endorse its conclusions and is categorically, irrefutably and unequivocally against adult-child sex.

An APA press release to that effect reads as follows: "As a publisher of psychological research, APA publishes thousands of research reports every year. But, publication of the findings of a research project within an APA journal is in no way an endorsement of a finding by the Association." Noted. The release goes on to confirm the American Psychological Association's agreement with a position statement on adult-child sex issued by the American Psychiatric Association: "An adult who engages in sexual activities with a child is performing a criminal and immoral act which never can be considered normal or socially acceptable behavior." Agreed.

Now back to the study. In case you missed it, the University of Michigan researchers combined 59 studies in what's called a "meta-analysis" to determine how college students deal with child sexual abuse. The researchers found that being the victim of childhood sexual abuse was found to be less damaging to them than generally believed. Ergo (my words here), what's the big deal? Let's stop getting so hysterical about pedophilia and just have fun. In the researchers' own words: "Sex between adults and willing minors should be described in more positive terms. . . . A willing encounter . . . would be labeled simple 'adult-child sex,' a value-neutral term. . . A willing encounter between an adolescent and an adult with positive reactions ... would be labeled scientifically as 'adult-adolescent sex.' " Still with me here? My pithy response to the study was, and I paraphrase,phooey! Children aren't ever in a position to decide whether they should have sex with an adult, even if they think they are. As the close relative of several college students, I wouldn't conclude anything about their future lives as adults, based on their current perceptions.

The APA -- which, let me repeat, did not endorse this study and does not condone adult-child sex -- pointed out an "interesting follow-up question" raised by the study, which is: "What happens to these students as they enter adulthood and start families of their own? Do they further experience detrimental effects of their childhood experiences later in life?" You can bank on it, and psychologists will be the ones making the deposits.

[Posted 04/09/1999 4:06 PM EST]

Alaska State Legislature

- Interim (May-Dec) -
10928 Eagle River Rd Suite 140
Eagle River, Alaska 99577
☎ (907) 694-6683
FAX (907) 694-1015

- Session (Jan -May) -
Alaska State Capitol
Juneau Alaska 99801-1182
☎ (907) 465-2199
FAX (907) 465-4587

Toll free (800) 342-2199

- E-mail -
Representative_Fred_Dyson
@ltgov.state.ak.us

- Internet -
http://www.akrepublicans.org

REPRESENTATIVE FRED DYSON

HJR 36
Sponsor Statement

"Relating to rejecting the conclusions in a recent article published by the American Psychological Association that suggests that sexual relationships between adults and children might be positive for children; and urging the President of the United States and the United States Congress to similarly reject these conclusions."

In Western culture, child protection has become an increasing concern. State and Federal laws have been enacted to reflect the growing need to protect our children.

In 1998, the Alaska State Legislature continued and codified more protection for our children. These laws made a clear statement that adult sexual exploitation of child is criminal and damaging to children. Our laws now make it clear that parents who persist in molesting their children are unfit parents.

Recently, the American Psychological Association (APA) published a research paper entitled, "A Meta-Analytic Examination of Assumed Properties of Child Sexual Abuse Using College Samples," on the long-term impact of child sexual abuse (CSA). This paper, by Bruce Rind (Temple University), Philip Tromovitch (University of Pennsylvania), and Robert Bauserman (University of Michigan), appears to be a rigorous literature study. Peer review has identified several questionable assumptions and methodologies in this research paper.

The APA published paper suggests, in the conclusions, that many survivors of CSA have little or no long-term effects of the abuse. The paper further suggests that for some "willing" children, sexual abuse victims may actually benefit from the experience.

Since the article was published, the APA has vigorously tried to distance themselves from the paper's conclusions. They maintain that they have, in the past, published dozens of papers showing CSA is significantly or profoundly damaging to the victims.

Our own state research indicates that CSA is an enormous individual and societal problem. This resolution rejects some of the conclusions and suggestions in this paper. It is our desire that this paper be considered in the context of the wealth of research on this subject and that policy makers not give it more credence than deserved.

HOUSE COMMITTEE RE[redacted]

(7)

Date Referred to Committee: April 7, 1999 FURTHER REFERRALS:

Date of Committee Action: _____

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: HJR 36

HOUSE JOINT RESOLUTION NO. 36 AMERICAN PSYCHOLOGICAL ASSOCIATION REPORT

Relating to rejecting the conclusions in a recent article published by the American Psychological Association that suggests that sexual relationships between adults and children might be positive for children; and urging the President of the United States and the United States Congress to similarly reject these conclusions.

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) _____ [ ] fiscal note(s) _____

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

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

CHAIR'S SIGNATURE _____

SB

27

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

No. 1
Bill Version: SB 27
(S) Publish Date: 2-25-99

Revision Date:
Title: An Act relating to school records and driver license records of certain children
Sponsor: Senator Leman
Requestor: (S) HES

Department Affected: Administration
BRU: Motor Vehicles
Component:
COMPONENT SERIAL NO. 2348

Expenditures/Revenues: (Thousands of Dollars)
Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2000	FY 2001	FY2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	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						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 99) cost: $

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill allows parents who are financially responsible for the actions of a minor driver to obtain the driving record of that minor. This bill has no fiscal impact on DMV.

Prepared by: Charles R. Hosack
Division: Motor Vehicles
Phone: 269-5559
Date:

Approved by Commissioner: Robert Poe Jr.
Agency: Department of Administration
Date: 2/19/99

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FISCAL NOTE No. 2

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Bill Version: SB 27.
(S) Publish Date: 2-25-99

Revision Date/Time (Note if correction)
Dept. Affected: Education
Title: School Records and Driver License Records of Certain Children
BRU: Teaching and Learning Support
Component:
Sponsor: Senator Leman
Requester:
Component Serial No.:

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous	*	*	*	*	*	*
TOTAL OPERATING	0.0	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						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

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

Section 1 of this bill directs districts to provide a copy of a child's record, upon the request of a parent or guardian of a child under 18 years of age currently, or previously, enrolled in a school district.

* It is impossible to determine what the cost to the school districts will be.

Prepared by: Barbara Thompson
Phone: 465-8727
Division: Teaching and Learning Support
Date/Time: 2/12/99 1:43 PM
Approved by Commissioner: Shirley J. Holloway, Ph.D.
Date: 2/19/99
Agency: Department of Education

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SENATOR LOREN LEMAN

Northwest Anchorage

716 W 4th Ave, Suite 520, Anchorage, AK 99501 (907) 258-8189
Session: State Capitol, Juneau, AK 99801 (907) 465-2095
Web Site: http://www.ak republicans.org/Leman.htm
Email: Senator_Loren_Leman@legis.state.ak.us

Sponsor Statement - CS for SB 27 (FIN)

"An Act relating to school records and driver license records of certain children."

Senate Bill 27 ensures parents will have access to important records about their minor children, and also requires school districts to share information with other districts about potentially dangerous transfer students.

The Division of Motor Vehicles will not allow a parent or legal guardian to review a minor's driving record. AS 28.15.151(f) declares that "information and records under this section are... confidential and private." An exception in the law allows DMV to provide a certified abstract of an individual's driving record to a municipal, state, or federal administrative or judicial agency. However, no exception exists to allow parental access.

Denying parents this information is unfair and nonsensical given that state law requires a parent or legal guardian to sign a minor's application for a driver's license. Furthermore, state law holds the parent or guardian who signed the application liable for any damage caused by negligence or wilful misconduct of the minor while operating a motor vehicle [AS 28.15.071(b)].

A driving record includes information that could help parents determine whether their child is driving safely: accident reports; convictions of vehicle, driver, and traffic offenses; and any actions taken upon the driver's license, such as suspension.

SB 27 also requires school districts to make copies of a minor child's school record available to parents. Although most districts in Alaska voluntarily make school records available, parents have no explicit right under state law to review this information. However, it is the federal government's policy to deny funding to any educational agency or institution that denies parental access to school records. SB 27 adds clarity to Alaska law by clearly stating that parents have this right.

Finally, SB 27 requires school districts to transfer certain information about a child who moves from one school district to another. If a student has committed an offense that is punishable as a felony, or if the student has committed any offense involving the use of a deadly weapon, this information must be included in the student record information that follows the child from one district to another. This provision will help school districts protect their students from potentially dangerous young offenders.

Public officials are often heard imploring parents to become more involved in the lives of their children. However, rather than helping parents do their job, government sometimes creates obstacles. By removing a few of these legal impediments, SB 27 takes a small step toward helping parents meet their responsibilities.

Prepared by Mike Pauley, Staff Aide to Senator Loren Leman (465-3841)
Last updated: March 25, 1999

March 22, 1999

Representative Norman Rokeberg
State Capitol
Juneau, AK 99801

Dear Mr. Rokeberg,

I would like to offer this letter as a means of support and to say thank you for listening and taking action on behalf of a citizen and voter from your district.

Sometime last fall (1998) I received a notice from the Municipality of Anchorage advising me of a $300.00 fine my minor daughter received while driving. It was her second citiation in as many years and I felt quite concerned and pressed to check into her driving record. She had not informed me or her father of these citations, we heard about them through the mail.

I called the DMV in Anchorage and was told that in order to get a copy of my minor daughters' driving record that I would have to get her written permission. Needless to say, I was outraged. Parents are held accountable to the strictest standards when it comes to their childrens' actions, but on the other hand minor children have little to no accountability to their parents.

This law needs to be changed. It is unreasonable and sadly outdated. Please support House Bill entitled

"An Act relating to driver license records of certain children."

Thank you,

Carolyn Hogan

Carolyn Hogan
PO Box 221544
Anchorage, AK 99522-1544

(907) 349-4881

payment of the required fee, obtain a duplicate license. A person who recovers an original license for which a duplicate has been issued shall immediately surrender the duplicate to the department. (§ 19 ch 178 SLA 1978)

Sec. 28.15.150. Records. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.151. Records to be kept by the department. (a) The department may maintain a file of

(1) every driver's license application, license or permit and duplicate driver's license issued by it;

(2) every license that has been suspended, revoked, canceled, limited, restricted, or denied, and the reasons for those actions; and

(3) all accident reports required to be forwarded to the department under this title.

(b) The department may also maintain a file of all accident reports, abstracts of court records of convictions of vehicle, driver, and traffic offenses, and other information which the department considers necessary to carry out the purposes of this chapter.

(c) The department shall, upon request, subject to the applicable provisions of AS 12.62 and (f) of this section and without charging a fee, furnish a municipal, state, or federal administrative or judicial agency with a certified abstract of the driving record of a driver. The abstract must include a listing of accidents in which the driver has been determined by the department or a court of competent jurisdiction to have been liable, convictions of vehicle, driver, and traffic offenses, any actions taken upon the driver's license, and information relating to financial responsibility.

(d) The department shall, upon request and payment of a fee determined by the commissioner, furnish a driver or a person designated by the driver with an abstract or the original copy of the computer printed record of the driver's record as provided in (c) of this section.

(e) *[Repealed, § 2 ch 144 SLA 1980.]*

(f) Except as provided otherwise in this section, information and records under this section are declared confidential and private. (§ 19 ch 178 SLA 1978; am §§ 1, 2 ch 144 SLA 1980)

Opinions of attorney general. — Most, but not all, information pertaining to motor vehicle accidents contained in Department of Transportation and Public Facilities files or the computer data base is public information and should be released upon request. However, certain information regarding particular accidents, including individual names and specific driver's license information, must remain confidential by operation of statute. March 30, 1988, Op. Att'y Gen.

Collateral references. — Inspection of motor vehicle records, right as to, 84 ALR2d 1261.

Sec. 28.15.160. Court reports. [Repealed, § 19 ch 178 SLA 1978.]

Article 2. Cancellation, Suspension, Revocation or Limitation of Drivers' Licenses.

Section
161. Cancellation of driver's license
165. Administrative revocations and disqualifications resulting from chemical sobriety tests and refusals to submit to tests
166. Administrative review of revocation
171. Suspending privileges of a person licensed in another jurisdiction; reporting convictions, suspensions, disqualifications, and revocations
181. Court suspensions, revocations, and limitations
183. Administrative revocation of license to drive
184. Administrative review of revocation of a minor's license
185. Court revocation of a minor's license to drive
187. Administrative revocation of a license to drive for use of false identification
189. Administrative review of revocation of license for use of false identification
191. Court reports to department
201. Limitation of driver's license
211. Periods of limitation, suspension or revocation; opportunity for hearing and surrender of license
219. Definitions

Sec. 28.15.161.
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Gifts Act) or a living will under AS 18.12 (Living Wills and Do Not Resuscitate Orders) by displaying posters in the offices in which applications are taken, by providing a brochure or other written information to each person who applies in person or by mail, and, if requested, by providing oral advice.

(e) *[Repealed, § 17 ch 70 SLA 1984.]*

(f) At the time of application for a driver's license or an instruction permit, or renewal of a driver's license or an instruction permit, the department shall provide the applicant written information explaining the state's financial responsibility and mandatory motor vehicle insurance laws and potential penalties for failure to comply with those laws.

(g) Upon request, the department shall provide a social security number provided under this section to the child support enforcement agency created in AS 25.27.010, or the child support agency of another state, for child support purposes authorized by law. (§ 19 ch 178 SLA 1978; am §§ 5, 17 ch 70 SLA 1984; am § 9 ch 43 SLA 1988; am § 22 ch 108 SLA 1989; am § 20 ch 80 SLA 1997; am §§ 51, 52 ch 132 SLA 1998)

Delayed amendment. — Under § 54(b), ch. 132, SLA 1998, effective July 1, 2001, subsection (g) is repealed and subsection (b) is amended to delete "social security number," from paragraph (b)(1).

Cross references. — For purpose, findings, and nonseverability provisions related to the 1998 amendments affecting this section, see §§ 1 and 56, ch. 132, SLA 1998 in the 1998 Temporary and Special Acts.

Effect of amendments. — The 1997 amendment, effective September 11, 1997, in subsection (d), added "or a living will" at the end of the first sentence and inserted "or a living will under AS 18.12 (Living Wills and Do Not Resuscitate Orders)" in the second sentence.

The 1998 amendment, effective June 26, 1998, inserted "social security number," in paragraph (b)(1) and added subsection (g).

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 99.

60 C.J.S., Motor Vehicles, § 156.

Sec. 28.15.070. Examination. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.071. Application of minors. (a) The application of a person under the age of 18 years for an instruction permit or driver's license must be signed by the father, mother, guardian, or spouse who is 18 years of age or older, or if there is no parent, guardian, or spouse, then by another responsible adult who is willing to assume the obligation imposed under this section upon a person signing the application. The application must be signed and verified before a person authorized to administer oaths, or be signed in the presence of an authorized representative of the department.

(b) Any negligence or wilful misconduct of a person under the age of 18 years when driving a motor vehicle in this state is imputed to the person who signed the application of the person for a permit or license, and that person is jointly and severally liable for damage caused by the negligence or wilful misconduct of the person under the age of 18 years, except as provided in (c) of this section.

(c) If a minor deposits, or there is deposited on behalf of the minor, proof of financial responsibility for the minor's driving of a motor vehicle, in the form and amount required in AS 28.20, then the department may accept the application of the minor signed as required under (a) of this section, and, while proof of financial responsibility is maintained, the parent, guardian, spouse, or other responsible adult is not subject to the liability imposed under (b) of this section.

(d) A person who signs the application of a minor for a driver's license may file with the department a verified written request that the license of the minor be canceled. When the license is canceled, the person who signed the application is relieved from liability under (b) of this section.

(e) This section does not apply to a person under 18 years of age who is legally emancipated under AS 09.55.590 or a similar law in another jurisdiction. (§ 19 ch 178 SLA 1978; am §§ 11, 12 ch 60 SLA 1986; am § 2 ch 119 SLA 1990)

Effect of amendments. — The 1990 amendment, effective January 1, 1991, added subsection (e).

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found by the trial court to negatively affect the child's best interests or to merit a change in custody. Lee v. Cox, 790 P.2d 1359 (Alaska 1990).

Error in denying father evidentiary hearing. — Superior court abused its discretion by denying the father an evidentiary hearing, where he made a prima facie showing that circumstances had changed in the years following orders which had terminated his visitation rights and restrained him from contacts with his child. Carter v. Brodrick, 816 P.2d 202 (Alaska 1991).

Modification of visitation order. — The change in circumstances required for modification of visitation rights need not rise to the level sufficient to warrant a change of custody. Hermosillo v. Hermosillo, 797 P.2d 1206 (Alaska 1990).

Actions by a custodial parent which substantially interfere with the noncustodial parent's visitation rights are sufficient to constitute a change in circumstances which may justify and require a modification of the visitation order, if such modification is in the best interest of the child. Hermosillo v. Hermosillo, 797 P.2d 1206 (Alaska 1990).

Collateral references. — Putative father's right to visit illegitimate child, 15 ALR3d 887.

Right of jailed or imprisoned parent to visit from minor child, 15 ALR4th 1234.

Withholding visitation rights for failure to make alimony or support payments, 65 ALR4th 1155.

Post adoption visitation by natural parent, 78 ALR4th 218.

Sec. 25.20.115. Attorney fee awards in custody and visitation matters. In an action to modify, vacate, or enforce that part of an order providing for custody of a child or visitation with a child, the court may, upon request of a party, award attorney fees and costs of the action. In awarding attorney fees and costs under this section, the court shall consider the relative financial resources of the parties and whether the parties have acted in good faith. (§ 3 ch 130 SLA 1990)

NOTES TO DECISIONS

Applicability. — This section applied in a custody proceeding brought by a nonbiological parent in an attempt to modify a custody order made prior to the determination that he was not the biological father. B.J. v. J.D., 950 P.2d 113 (Alaska 1997).

Explicit findings required. — In making an award of attorney's fees and costs under this section, a court must make explicit findings as to the parties' relative financial resources and whether the parties acted in good faith. S.L. v. J.H., 883 P.2d 984 (Alaska 1994).

The parties' relative financial resources do not necessarily take primacy over the presence or absence of good faith when considering whether or not to award attorney's fees and costs under this section. S.L. v. J.H., 883 P.2d 984 (Alaska 1994).

Collateral references. — Right to attorney's fees in proceeding, after absolute divorce, for modification of child custody or support order, 57 ALR4th 710.

Excessiveness or adequacy of attorneys' fees in domestic relations cases, 17 ALR5th 366.

Sec. 25.20.120. Closure of custody proceedings and records. At any stage of a proceeding involving custody of a child the court may, if it is in the best interests of the child, close the proceeding to the public or order the court records closed to the public temporarily or permanently. The court may modify or vacate an order under this section at any time. (§ 6 ch 88 SLA 1982)

NOTES TO DECISIONS

Broad gag order must be justified by compelling circumstances. — In a child custody hearing, a gag order which goes beyond assuring confidentiality of the file and anonymity of the parties must be justified by compelling circumstances and drawn as narrowly as possible to protect against particular evils. S.N.E. v. R.L.B., 699 P.2d 875 (Alaska 1985).

Sec. 25.20.130. Access to records of the child. A parent who is not granted custody under AS 25.20.060 — 25.20.130 has the same access to the medical, dental, school, and other records of the child as the custodial parent. (§ 6 ch 88 SLA 1982)

Sec. 25.20.140. Action for failure to permit visitation with minor child. (a) When a court order is specific as to when a custodian of a minor child must permit

request regarding flagged records, including any knowledge as to the whereabouts of the child. Upon notification by the Department of Public Safety that the person who was listed as a missing child has been found, the school or school district shall remove the flag from the person's record. (§ 1 ch 202 SLA 1990)

Sec. 14.30.710. Required records upon transfer. Within 14 days after enrolling a child as a transfer student from this or another state in an elementary or secondary school, the school or school district shall request directly from the child's previous school a certified copy of the child's record. An elementary or secondary school or a school district in this state requested to forward a copy of a transferring child's record to another school shall comply with the request within 10 days after receiving the request unless the record has been flagged under AS 14.30.700. Upon receipt of a request for a record that has been flagged, the school or school district shall immediately notify the Department of Public Safety. Unless directed to do so by the Department of Public Safety, a school or a school district may not forward a copy of a flagged record. (§ 1 ch 202 SLA 1990)

Sec. 14.30.720. Definitions. In AS 14.30.700 — 14.30.720,

(1) "child" means a person under 18 years of age;

(2) "school district" means a municipal school district or a regional educational attendance area. (§ 1 ch 202 SLA 1990)

Sec. 14.30.750. Alaska school counseling program grant fund. [Repealed, § 12 ch 42 SLA 1997.]

Chapter 33. School Safety Patrols.

Section
10. Requirements for school safety patrols
20. Organization of a patrol
30. Duties of a patrol
40. Guidance for patrols
50. Cooperation with law-enforcement authorities
60. Immunity from liability

Collateral references. — 68 Am. Jur. 2d Schools, §§ 252-254.

78A C.J.S. Schools and School Districts, §§ 725, 781, 793.

Coverage and exceptions under student accident policy. 74 ALR2d 1253.

Tort liability of public schools and institutions of higher learning for accident occurring during school athletic events. 35 ALR3d 725.

Tort liability of public schools and institutions of higher learning for injuries caused by acts of fellow students. 36 ALR3d 330.

Permitting child to walk to school unattended as contributory negligence of parents in action for injury or death of child. 62 ALR3d 541.

Sec. 14.33.010. Requirements for school safety patrols. The school b borough or city school district or regional educational attendance area, or a p denominational school may require that school safety patrols be established pupils to cross streets and highways adjacent to schools in safety. (§ 1 ch 68 S am § 53 ch 98 SLA 1966; am § 25 ch 46 SLA 1970; am § 27 ch 124 SLA 1975

Sec. 14.33.020. Organization of a patrol. (a) If a school board, or a p denominational school determines that a safety patrol should be established for the principal of the school shall appoint pupils in the school to serve as membe patrol.

(b) A pupil may not be appointed a patrol member unless the pupil's pa guardian give written consent to the pupil's membership in the patrol.

(c) The principal shall designate a teacher or teachers in the school to supervise the operation of the patrol.

cess, for the purpose of audit examination, to any records maintained by a recipient that may be related, or pertinent to, grants, subgrants, cooperative agreements, loans, or other arrangements to which reference is made in subsection (a), or which may relate to the compliance of the recipient with any requirement of an applicable program.

(Jan. 2, 1968, P. L. 90-247, Title IV, Part C, Subpart 4, § 443 [437], as added Nov. 1, 1978, P. L. 95-561, Title XII, Part C, § 1231(c), 92 Stat. 2346; Oct. 20, 1994, P. L. 103-382, Title II, Part A, § 212(b)(1), Part D, § 248, 108 Stat. 3913, 3924.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior 20 USCS § 1232f was redesignated § 406A of Act Jan. 2, 1968, P. L. 90-247, by Act Nov. 1, 1978, P. L. 95-561, Title XII, Part C, § 1231(c), 92 Stat. 2346, and has been reclassified as 20 USCS § 1221e-1a, prior to repeal by Act Oct. 20, 1994.

Amendments:

1994. Act Oct. 20, 1994 (effective on enactment, as provided by § 3(a)(2) of such Act, which appears as 20 USCS § 1221 note), in subsec. (a), substituted "grant, subgrant, cooperative agreement, loan, or other arrangement" for "grant, subgrant, contract, subcontract, loan, or other arrangement (other than procurement contracts awarded by an administrative head of an educational agency)", substituted "three" for "five", and inserted "financial or programmatic"; and, in subsec. (b), substituted "to any records maintained by a recipient that may be related, or pertinent to, grants, subgrants, cooperative agreements, loans, or other arrangements" for "to any records of a recipient which may be related, or pertinent to, the grants, subgrants, contracts, subcontracts, loans, or other arrangements".

Redesignation:

This section, enacted as § 437 of Act Jan. 2, 1968, P. L. 90-247, Title IV, Part C, Subpart 4, was redesignated § 443 of such Act by Act Oct. 20, 1994, P. L. 103-382, Title II, Part A, § 212(b)(1), 108 Stat. 3913 (effective on enactment as provided by § 3(a)(2) of such Act, which appears as 20 USCS § 1221 note).

Other provisions:

Effective date and application of section. Act Nov. 1, 1978, P. L. 95-561, Title XII, Part E, § 1261, 92 Stat. 2356, which appears as 20 USCS § 1232c note, provided that this section shall take effect with respect to appropriations for fiscal year 1980 and subsequent fiscal years.

CROSS REFERENCES

This section is referred to in 20 USCS §§ 1232d, 1232e.

§ 1232g. Family educational and privacy rights

(a) Conditions for availability of funds to educational agencies or institutions; inspection and review of education records; specific information

to be made available; procedure for access to education records; reasonableness of time for such access; hearings; written explanations by parents; definitions. (1)(A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

(B) No funds under any applicable program shall be made available to any State educational agency (whether or not that agency is an educational agency or institution under this section) that has a policy of denying, or effectively prevents, the parents of students the right to inspect and review the education records maintained by the State educational agency on their children who are or have been in attendance at any school of an educational agency or institution that is subject to the provisions of this section.

(C) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

(i) financial records of the parents of the student or any information contained therein;

(ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;

(iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (D), confidential recommendations—

(I) respecting admission to any educational agency or institution,

(II) respecting an application for employment, and

(III) respecting the receipt of an honor or honorary recognition.

(D) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (C), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purpose for which they were specifically

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intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4)(A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which—

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

(B) The term "education records" does not include—

(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

(ii) records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement;

(iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or

(iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.