ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10278 HOUSE JUDICIARY

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Sec. 41.35.080. Permits.

The commissioner may issue a permit for the investigation, excavation, gathering, or removal from the natural state, of any historic, prehistoric, or archeological resources of the state. A permit may be issued only to persons or organizations qualified to make the investigations, excavations, gatherings or removals and only if the results of these authorized activities will be made available to the general public through institutions and museums interested in disseminating knowledge on the subjects involved. If the historic, prehistoric or archeological resource involved is one which is, or is located on a site which is, sacred, holy, or of religious significance to a cultural group, the consent of that cultural group must be obtained before a permit may be issued under this section.

Sec. 41.35.090. Notice required of private persons.

Before any construction, alteration, or improvement of any nature is undertaken on a privately owned, officially designated state monument or historic site by any person, the person shall give the department three months notice of intention to construct on, alter, or improve it. Before the expiration of the three-month notification period, the department shall either begin eminent domain proceedings under AS 41.35.060(b) or undertake or permit the recording and salvaging of any historic, prehistoric, or archeological information considered necessary.

Sec. 41.35.100. Excavation and removal of historic, prehistoric, or archeological remains on private land.

Before any historic, prehistoric, or archeological remains are excavated or removed from private land by the department, the written approval of the owner shall first be secured. When the value of the private land is diminished by the excavation or removal, the owner of the land shall be compensated for the loss at a monetary sum mutually agreed on by the department and the owner or at a monetary sum set by the court.

Sec. 41.35.230. Definitions.

In AS 41.35.010 - 41.35.240, unless the context otherwise requires,

(1) "commission" means the Alaska Historical Commission established in AS 41.35.300 ;

(2) "historic, prehistoric and archeological resources" includes deposits, structures, ruins, sites, buildings, graves, artifacts, fossils or other objects of antiquity which provide information pertaining to the historical or prehistorical culture of people in the state as well as to the natural history of the state.

CITY OF
FAIRBANKS

March 27, 2001

Representative Jim Whitaker
Alaska State Capital
Room 411
Juneau, AK 99801-1182

Re: House Bill 187

Dear Honorable Representative Whitaker:

I am writing you in support of your sponsorship of House Bill 187. Your proposed bill will be a deterrent and a protector for the City of Fairbanks' cemeteries, and for all cemeteries throughout Alaska.

As you are well aware, the City of Fairbanks is responsible for Clay Street Cemetery and for Birch Hill Cemetery. In the past, there have been numerous occasions where graves and monuments of the deceased, as well as, personal items belonging to families of the deceased have been vandalized, stolen, or desecrated. Clay Street Cemetery, a historical site where many "old timers" have been laid to rest, has unfortunately been vandalized repeatedly. For example, Mary Pedro, Felix Pedro's wife has had her headstone broken, painted, and removed many times by vandals. Birch Hill, the city's current and active cemetery has also experienced numerous vandal attacks. Deterring this destructive behavior has been difficult with the current laws. Also, our budgetary situation eliminates any possibility of placing a 24-hour guard at these locations.

As the "Cemetery Desecration Laws in Other States" report explains, there are currently Federal laws protecting certain sections of cemeteries, i.e., the Archaeological Resources Protection Act of 1979, the Native American Graves Protection and Repatriation Regulations Act of 1990, and the Veterans' Cemeteries Protection Act of 1997. However, your House Bill 187 will be a deterrent to all vandals, in all sections, of Alaskan cemeteries. Once enacted, your bill will change the law for those people obtaining perverse enjoyment by desecrating a cemetery, from a misdemeanor to committing a crime of criminal mischief in the second degree.

Representative Whitaker, since Alaska is a multi-cultural state, I trust you will share with your fellow representatives the importance of individuals expressing their cultural heritage through their various ways of grieving and burying their deceased. Additionally, I urge your colleagues, in the House of Representatives, to understand the monetary value associated with the loss of a family member is nil, when compared to the emotional loss a family suffers when a loved one passes and later discovers the grave site has been

desecrated. It is appalling that these misguided people who have desecrated burial sites are only charged with a misdemeanor. That is why I urge your colleagues to support House Bill 187 to change the law from a misdemeanor, to committing a crime of criminal mischief in the second degree for deplorable behavior relating to the destruction, desecration, and vandalism of cemeteries and graves.

Thank you for your continued support of the City of Fairbanks and the great State of Alaska.

Respectfully,

CITY OF FAIRBANKS

David Jacoby
Public Works Director
2121 Peger Road
Fairbanks, AK 99709
(907) 459-6896

Letters 01\Jacoby\HB 187.wpd\ga

Municipality of Anchorage

P.O. Box 196650
Anchorage, Alaska 99519-6650
Telephone: (907) 343-6814

George P. Wuerch, Mayor

MEMORIAL PARK CEMETERY
(535 East 9th Avenue)
http://www.ci.anchorage.ak.us/cemetery

April 2, 2001

Representative Jim Whitaker
State Capitol, Room 411
Juneau, AK 99801-1182

The Honorable Jim Whitaker,

Subject: Letter of Support, House Bill No. 187

The Municipality of Anchorage and more specifically the staff of the Anchorage Memorial Park Cemetery offer our support to House Bill Number 187, "An Act relating to the destruction, desecration, and vandalism of cemeteries and graves".

Many of the major acts of destruction, desecration, and vandalism that permeated our cemetery in the past have been mitigated by the 1992 installation of our fence. Still today, the families and friends of our loved ones occasionally suffer the indignity of stolen statues and pushed over headstones. Also, minor acts of vandalism and desecration of graves continue at an alarming rate. Since this is a public cemetery and access is uncontrolled during the day, these acts generally take the form of stealing decorations or moving decorations from one grave to another. Additionally, in the summer we are continually persuading the inebriates who traverse our cemetery not to drink alcoholic beverages or perform "personal" acts on and around the graves.

Purposeful cemetery damage in any form is a disgraceful, cowardly act. We support any action to increase the penalty for these despicable acts perpetrated against the loved ones of our community and hold those responsible at bay.

If I can be of any further assistance in this matter, please don't hesitate to call me at 907-343-6814.

Respectfully,

Donald B. Warden
Cemetery Director

cc: Tim Rogers, MOA Legislative Team

MUNICIPALITY OF ANCHORAGE

Anchorage Memorial Park Cemetery

Fax Relay Form

DATE: April 2, 2001 **TIME:** 3:17 PM

TO: Jos Govaars **PHONE:** 465-3004
FAX: 465-2070

FROM: Don Warden **PHONE:** 343-6814
Cemetery Director **FAX:** 343-6826

RE: Letter of Support for HB 187

Number of pages including cover sheet: **2**

Message: Mr. Govaars,

I offer this Letter of Support for HB 187 in the hopes that it will assist Representative Whitaker in the approval process.

Please pass on my personal thanks to him for sponsoring such a worthwhile Bill. Although not often on the "radar" screens of many folks until it happens to one of their loved ones, it is nevertheless very important legislation that will hopefully reduce the occurrence of a despicable act.

I have faxed a signed copy of this letter to (907) 465-2070 and mailed an original to Representative Jim Whitaker, State Capitol, Room 411, Juneau, AK 99801-1182.

If I can be of any further assistance, please don't hesitate to ask. Again, thank you and Representative Whitaker very much.

Donald B. Warden

cc: Tim Roger, MOA Legislative Team

To: Rep. Jim Whitaker
Alaska State Capitol Room 411
Juneau, Alaska 99801

Re: HB 187

Dear Sir:

I am very interested in going on record in support of HB 187. "An act relating to the destruction, desecration, and vandalism of cemeteries and graves."

I am involved with the restoration, preservation, and protection of cemeteries and gravesites in Alaska. Since 1986 I have restored over 15 historical cemeteries and received the 1988 volunteer of year award from the State of Alaska for this service. I have also received recognition locally, statewide, nationally and internationally for my work in this area. Therefore I feel that I have many years of first hand experience in cemetery preservation and maintenance.

Sir, for many years, vandalism, desecration, and cemetery destruction har taken its toll on cemeteries and gravesites all across Alaska. On a daily basis cemeteries and gravesites are disappearing due to neglect and destruction. When a community neglects its historical gravesites and ignores their duty to preserve, protect, and honor their ancestors a grave concern occurs as some community members begin to feel that it is ok to vandalize and destroy our sacred cultural heritage sites.

Another grave concern is theft of grave artifacts associated with cemetery desecration and neglect. Currently there is a lucrative market of Alaska Native artifacts and headstones with Alaska Native symbols on them. As c caretaker of cemeteries and sacred sites often I have to tell family members that their ancestors were desecrated and/or destroyed from vandals. The families of the deceased are victims of this abuse and often times their pleas go unnoticed as there are few laws in Alaska that relates to the desecration, destruction, and vandalism of cemeteries and graves.

Rep. Whitaker, thank you for sponsoring HB 187 this bill will help to preserve, protect and honor our ancestors for many years to come. I fully support HB 187 on grave concerns.

Respectfully

Robert Sam
Cemetery Caretaker
Sitka Alaska

Subject: FW: cemetery legislation
Date: Wed, 11 Apr 2001 11:59:33 -0800
From: "Ann Ringstad" <ann.ringstad@alaska.edu>
To: "Jim Whitaker" <representative_jim_whitaker@legis.state.ak.us>,
"Janet Seitz" <janet.seitz@legis.state.ak.us>

-----Original Message-----
From: Maribeth Murray [mailto:ffmsm@uaf.edu]
Sent: Monday, April 09, 2001 1:28 PM
To: Ann Ringstad
Subject: cemetery legislation

Dear Ms. Ringstad

I have reviewed the legislation regarding the changes to the cemetery portion. There is no need for concern here as these proposals are already covered by Federal NAGPRA legislation and the Historic Preservation Act.

Maribeth Murray
Assistant Professor, Anthropology, UAF

Sec. 11.46.482. Criminal mischief in the second degree.

(a) A person commits the crime of criminal mischief in the second degree if, having no right to do so or any reasonable ground to believe the person has such a right,

(1) with intent to damage property of another, the person damages property of another in an amount of $500 or more;

(2) the person tampers with an oil or gas pipeline or supporting facility or an airplane or helicopter with reckless disregard for the risk of harm to or loss of the property; or

(3) the person recklessly creates a risk of damage in an amount exceeding $100,000 to property of another by the use of widely dangerous means.

(4) *[Repealed, § 11 ch 71 SLA 1996.]*

(5) *[Repealed, § 11 ch 71 SLA 1996.]*

(b) Criminal mischief in the second degree is a class C felony.

(§ 4 ch 166 SLA 1978; am § 13 ch 102 SLA 1980; am § 1 ch 2 SLA 1991; am § 11 ch 71 SLA 1996)

Cross references. For liability for destruction of property by minors, see AS 34.50.020.

Effect of amendments. The 1991 amendment, effective July 3, 1991, added former paragraph (a)(5) and made related stylistic changes.

The 1996 amendment, effective June 20, 1996, in subsection (a), repealed paragraphs (4) and (5).

Legislative history reports. For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 29, 1980.

NOTES TO DECISIONS

For case construing former AS 11.20.520, making malicious destruction of property a crime, see Hensel v. State, 604 P.2d 222 (Alaska 1979).

Knowledge of value of damage not necessary. - A person who intentionally damages the property of another is strictly liable for the value of the property damaged and is not required to know that the damage exceeds $500 in value in order to be liable under this section.

Cost of repair. - Because damage can be determined by cost of repair and, in turn, cost of repair can be established without determining the value of the damaged property, AS 11.46.980(a), requiring use of market value, does not apply when the prosecution relies on evidence of cost of repair to prove the amount of damage in a criminal mischief case. Willett v. State, 826 P.2d 1142 (Alaska Ct. App. 1992).

For case construing former AS 11.20.525, making stealing, removing or damaging parts of an

aircraft a crime, see Catlett v. State, 585 P.2d 553 (Alaska 1978).

Conviction and sentence upheld. - See Andrejko v. State, 695 P.2d 246 (Alaska Ct. App. 1985).

Sentence upheld. - See Austin v. State, 627 P.2d 657 (Alaska Ct. App. 1981).

Applied in Deal v. State, 657 P.2d 404 (Alaska Ct. App. 1983).

Quoted in Shewey v. State, 739 P.2d 196 (Alaska Ct. App. 1987); Young v. State, 848 P.2d 267 (Alaska Ct. App. 1993).

Stated in Wertz v. State, 611 P.2d 8 (Alaska 1980).

Cited in State v. Grogan, 628 P.2d 570 (Alaska 1981); Tritt v. State, 625 P.2d 882 (Alaska Ct. App. 1981); Deal v. State, 659 P.2d 625 (Alaska Ct. App. 1983); Crouse v. State, 736 P.2d 783 (Alaska Ct. App. 1987); Coleman v. State, 846 P.2d 141 (Alaska Ct. App. 1993); Stough v. State, P.3d (Alaska Ct. App. 2000).

Collateral references. 52 Am. Jur. 2d, Malicious Mischief, § 1 et seq.

Sec. 12.55.035. Fines.

(a) Except as provided in AS 12.55.036, upon conviction of an offense, a defendant may be sentenced to pay a fine as authorized in this section or as otherwise authorized by law.

(b) Except as provided in AS 12.55.036, upon conviction of an offense, a defendant who is not an organization may be sentenced to pay, unless otherwise specified in the provision of law defining the offense, a fine of no more than

(1) $75,000 for murder in the first or second degree, attempted murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree;

(2) $50,000 for a class A, B, or C felony;

(3) $5,000 for a class A misdemeanor;

(4) $1,000 for a class B misdemeanor;

(5) $300 for a violation.

(c) Except as provided in AS 12.55.036, upon conviction of an offense, a defendant that is an organization may be sentenced to pay a fine not exceeding the greater of

(1) an amount that is

(A) $500,000 for a felony offense or for a misdemeanor offense that results in death;

(B) $200,000 for a class A misdemeanor offense that does not result in death;

(C) $25,000 for a class B misdemeanor offense that does not result in death;

(D) $10,000 for a violation;

(2) two times the pecuniary gain realized by the defendant as a result of the offense; or

(3) two times the pecuniary damage or loss caused by the defendant to another, or to the property of another, as a result of the offense.

(d) If a defendant is sentenced to pay a fine, the court may grant permission for the payment to be made within a specified period of time or in specified installments.

(e) In imposing a fine under (c) of this section, in addition to any other relevant factors, the court shall consider

(1) measures taken by the organization to discipline an officer, director, employee, or agent of the organization;

(2) measures taken by the organization to prevent a recurrence of the offense;

(3) the organization's obligation to make restitution to a victim of the offense, and the extent to which imposition of a fine will impair the ability of the organization to make restitution; and

(4) the extent to which the organization will pass on to consumers the expense of the fine.

(f) In imposing a fine, the court may not reduce the fine by the amount of a surcharge or otherwise consider the applicability of a surcharge to the offense.

(§ 12 ch 166 SLA 1978; am § 17 ch 45 SLA 1982; am § 26 ch 143 SLA 1982; am § 4 ch 59 SLA 1988; am § 18 ch 85 SLA 1988; am §§ 1, 2 ch 142 SLA 1990; am § 2 ch 71 SLA 1992; am §§ 2 - 4 ch 79 SLA 1994; am § 3 ch 56 SLA 1998)

Cross references. For classification of offenses, see AS 11.81.250; for sentences of imprisonment for felonies, see AS 12.55.125; for sentences of imprisonment for misdemeanors, see AS 12.55.135.

Effect of amendments. The 1992 amendment, effective September 14, 1992, deleted the last two sentences in subsection (a).

The 1994 amendment, effective July 1, 1994, substituted "Except as provided in AS 12.55.036, upon" for "Upon" at the beginning of subsections (a)-(c).

The 1998 amendment, effective August 27, 1998, added subsection (f).

Sec. 12.55.125. Sentences of imprisonment for felonies.

(a) A defendant convicted of murder in the first degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years. A defendant convicted of murder in the first degree shall be sentenced to a mandatory term of imprisonment of 99 years when

(1) the defendant is convicted of the murder of a uniformed or otherwise clearly identified peace officer, fire fighter, or correctional employee who was engaged in the performance of official duties at the time of the murder;

(2) the defendant has been previously convicted of

(A) murder in the first degree under AS 11.41.100 or former AS 11.15.010 or 11.15.020;

(B) murder in the second degree under AS 11.41.110 or former AS 11.15.030; or

(C) homicide under the laws of another jurisdiction when the offense of which the defendant was convicted contains elements similar to first degree murder under AS 11.41.100 or second degree murder under AS 11.41.110;

(3) the court finds by clear and convincing evidence that the defendant subjected the murder victim to substantial physical torture; or

(4) the defendant is convicted of the murder of and personally caused the death of a person, other than a participant, during a robbery.

(b) A defendant convicted of attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 10 years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years when the defendant is convicted of the murder of a child under 16 years of age and the court finds by clear and convincing evidence that the defendant (1) was a natural parent, a stepparent, an adopted parent, a legal guardian, or a person occupying a position of authority in relation to the child; or (2) caused the death of the child by committing a crime against a person under AS 11.41.200 - 11.41.530. In this subsection, "legal guardian" and "position of authority" have the meanings given in AS 11.41.470.

(c) A defendant convicted of a class A felony may be sentenced to a definite term of imprisonment of not more than 20 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, five years;

(2) if the offense is a first felony conviction

(A) other than for manslaughter and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, or knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, seven years;

(B) for manslaughter and the conduct resulting in the conviction was knowingly directed towards a child under the age of 16, seven years;

(3) if the offense is a second felony conviction, 10 years;

(4) if the offense is a third felony conviction and the defendant is not subject to sentencing under (l) of this section, 15 years.

(d) A defendant convicted of a class B felony may be sentenced to a definite term of imprisonment of not more than 10 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a second felony conviction, four years;

(2) if the offense is a third felony conviction, six years.

(3) *[Repealed, § 6 ch 6 SLA 1996.]*

(e) A defendant convicted of a class C felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a second felony conviction, two years;

(2) if the offense is a third felony conviction, three years.

(3) *[Repealed, § 6 ch 6 SLA 1996.]*

(4) if the offense is a first felony conviction, and the defendant violated AS 08.54.720(a)(15), one year.

(f) If a defendant is sentenced under (a) or (b) of this section,

(1) imprisonment for the prescribed minimum or mandatory term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) imprisonment for the prescribed minimum or mandatory term may not be reduced, except as provided in (j) of this section.

(g) If a defendant is sentenced under (c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(4), or (i) of this section, except to the extent permitted under AS 12.55.155 - 12.55.175,

(1) imprisonment may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) terms of imprisonment may not be otherwise reduced.

(h) Nothing in this section or AS 12.55.135 limits the discretion of the sentencing judge except as specifically provided. Nothing in (a) of this section limits the court's discretion to impose a sentence of 99 years imprisonment, or to limit parole eligibility, for a person convicted of murder in the first or second degree in circumstances other than those enumerated in (a).

(i) A defendant convicted of sexual assault in the first degree or sexual abuse of a minor in the first degree may be sentenced to a definite term of imprisonment of not more than 30 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, eight years;

(2) if the offense is a first felony conviction, and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 10 years;

(3) if the offense is a second felony conviction, 15 years;

(4) if the offense is a third felony conviction and the defendant is not subject to sentencing under (*l*) of this section, 25 years.

(j) A defendant sentenced to a (1) mandatory term of imprisonment of 99 years under (a) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving one-half of the mandatory term without consideration of good time earned under AS 33.20.010, or (2) definite term of imprisonment under (l) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving the greater of (A) one-half of the definite term or (B) 30 years. A defendant may not file and a court may not entertain more than one motion for modification or reduction of a sentence subject to this subsection, regardless of whether or not the court granted or denied a previous motion.

(k) A first felony offender convicted of an offense for which a presumptive term of imprisonment is not specified under this section

(1) may be sentenced to a term of unsuspended imprisonment that exceeds the presumptive term for a second or third felony offender convicted of the same crime if the offender is convicted of criminally negligent homicide and the victim is a child under the age of 16;

(2) except as provided in (1) of this subsection, may not be sentenced to a term of unsuspended imprisonment that exceeds the presumptive term for a second felony offender convicted of the same crime unless the court finds by clear and convincing evidence that an aggravating factor under AS 12.55.155(c) is present or that circumstances exist that would warrant a referral to the three-judge panel under AS 12.55.165.

(*l*) Notwithstanding any other provision of law, a defendant convicted of an unclassified or class A felony offense, and not subject to a mandatory 99-year sentence under (a) of this section, shall be sentenced to a definite term of imprisonment of at least 40 years but not more than 99 years when the defendant has been previously convicted of two or more most serious felonies and the prosecuting attorney has filed a notice of intent to seek a definite sentence under this subsection at the time the defendant was arraigned in superior court. If a defendant is sentenced to a definite term under this section,

(1) imprisonment for the prescribed definite term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) imprisonment for the prescribed definite term may not be reduced, except as provided in (j) of this section.

(m) Notwithstanding (a)(4) and (f) of this section, if a court finds that imposition of a mandatory term of imprisonment of 99 years on a defendant subject to sentencing under (a)(4) of this section would be manifestly unjust, the court may sentence the defendant to a definite term of imprisonment otherwise permissible under (a) of this section.

(§ 12 ch 166 SLA 1978; am § 18 ch 45 SLA 1982; am §§ 28 - 30 ch 143 SLA 1982; am § 8 ch 78 SLA 1983; am §§ 1 - 3 ch 92 SLA 1983; am § 5 ch 59 SLA 1988; am § 4 ch 37 SLA 1989; am §§ 23 - 25 ch 79 SLA 1992; am § 5 ch 3 SLA 1994; am §§ 1, 2, 6 ch 6 SLA 1996; am §§ 3 - 7 ch 7 SLA 1996; am § 8 ch 30 SLA 1996; am § 4 ch 33 SLA 1996; am §§ 9 - 11 ch 54 SLA 1999; am § 1 ch 65 SLA 1999; am §§ 1, 2 ch 49 SLA 2000)

Cross references. For classification of felonies and misdemeanors, see AS 11.81.250; for authorized fines, see AS 12.55.035; for reduction of sentence for good behavior, see AS 33.20.010; for effect of the enactment of (j) of this section on Alaska Rule of Criminal Procedure 35, see § 34, ch. 79, SLA 1992 in the Temporary and Special Acts; for findings related to the addition of subsection (*l*), see § 1, ch. 7, SLA 1996 in the Temporary and Special Acts; for the effect of amendments to (j) of this section made by ch. 7, SLA 1996 on Alaska Rule of Criminal Procedure 35, see § 20, ch. 7, SLA 1996 in the Temporary and Special Acts.

For applicability provisions relating to the 1999 amendment of subsection (b) by § 9, ch. 54, SLA 1999, and relating to the 1999 amendment of subsections (c) and (k), see § 16, ch. 54, SLA 1999 in the 1999 Temporary & Special Acts. For applicability provisions relating to the 1999 amendment of subsection (b) by § 1, ch. 65, SLA 1999, see § 2, ch. 64, SLA 1999 in the 1999 Temporary & Special Acts.

For applicability provisions relating to the 2000 amendment of subsection (a) by sec. 1, ch. 49, SLA 2000, and the addition of subsection (m) by sec. 2, ch. 49, SLA 2000, see sec. 3, ch. 49, SLA 2000 in the 2000 Temporary & Special Acts.

Effect of amendments. The 1992 amendment, effective September 14, 1992, in subsection (a), added the second sentence and paragraphs (1) to (3); added the second sentence in subsection (h); and added subsections (j) and (k).

The 1994 amendment, effective May 30, 1994, inserted "conspiracy to commit murder in the first degree," in subsection (b).

The first 1996 amendment, effective June 27, 1996, substituted "correctional employee" for "correctional officer" in paragraphs (a)(1) and (c)(2) and repealed paragraphs (d)(3) and (e)(3).

The second 1996 amendment, effective June 27, 1996, in paragraphs (c)(4) and (i)(4), inserted "and the defendant is not subject to sentencing under (*l*) of this section"; in subsection (f), inserted "or mandatory" in paragraphs (1) and (2), and in paragraph (3), deleted "otherwise" preceding "reduced" and added ", except as provided in (j) of this section"; in (j), inserted "(1)," "once," and all of the language following "AS 33.20.010"; and added subsection (*l*).

The third 1996 amendment, effective May 16, 1996, inserted a section reference in subsection (g).

The fourth 1996 amendment, effective May 23, 1996, made a section reference substitution in paragraph (e)(4).

The first 1999 amendment, effective June 5, 1999, in subsection (b), inserted "solicitation to commit murder in the first degree" in the first sentence and added the third and fourth sentences; and added subparagraph (c)(2)(B), the subparagraph (c)(2)(A) designation, paragraph (k)(1), the paragraph (k)(2) designation, and "except as provided in (1) of this subsection" at the beginning of paragraph (k)(2).

The second 1999 amendment, effective September 20, 1999, in subsection (b) deleted "murder in the second degree," following "convicted of" in the first sentence and added the second sentence.

The 2000 amendment, effective August 9, 2000, added paragraph (a)(4) and made related stylistic changes, and added subsection (m).

Editor's notes. Section 7, ch. 6, SLA 1996 provides that the repeal of (d)(3) and (e)(3) and the amendments to (a) and (c) of this section made by ch. 6, SLA 1996 apply "to all offenses committed on or after June 27, 1996." Section 19, ch. 7, SLA 1996 provides that references to prior or previous convictions in ch. 7, SLA 1996, which amended subsections (c), (f), (i), and (j) and added subsection (*l*), "apply to all convictions occurring before, on, or after June 27, 1996."

Subsection (b) was amended by § 9, ch. 54, SLA 1999, with an effective date of June 5, 1999, and was further amended by § 1, ch. 65, SLA 1999, with a later effective date of September 20, 1999. Thus, on and after June 5 and before September 20, 1999, subsection (b) read as follows: "A defendant convicted of murder in the second degree, attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years when the defendant is convicted of the murder of a child under 16 years of age and the court finds by clear and convincing evidence that the defendant (1) was a natural parent, a stepparent, an adopted parent, a legal guardian, or a person occupying a position of authority in relation to the child; or (2) caused the death of the child by committing a crime against a person under AS 11.41.200 - 11.41.530. In this subsection, "legal guardian" and "position of authority" have the meanings given in AS 11.41.470."

HB

189

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: April 19, 2001 **FURTHER REFERRALS:**

Date of Committee Action: 4-21-01

The JUDICIARY Committee considered: **HB 189**

HOUSE BILL NO. 189 **REPEAL TERM LIMITS/TERM LIMITS PLEDGES**

"An Act repealing statutory provisions relating to term limits and term limit pledges."

Recommends it be replaced with _____CS_____(_____) [ ] Same Title [ ] New Title
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____

[ ] attach amendments
[ ] add new referral to _____ Committee
[ ] Letter of Intent _____Committee

List of Abbrev. For Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LAA
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *For Chief Clerk's Office Use Only				
FN# *	List by Dept(s):	Fiscal	Indet.	Zero

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN #	Fiscal	Indet.	Zero
GOV	1			✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
				✓	
John Cook		✓			
				✓	
Jeannette James		✓			
			✓		
Chair: Tom Roberts		✓			
Chair:					

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-4990
Fax: (907) 465-2040

Heather M. Nobrega
Counsel to Committee

Sponsor Statement for HB 189

On February 28, 2001, in a case entitled *Cook v. Gralike, et al.*, the United States Supreme Court ruled that printing term limit pledges on the ballot next to a Congressional candidate's name is unconstitutional. The Missouri act which was struck down required "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" to be printed on ballots by the names of members failing to take certain legislative acts in support of the proposed term limit amendment. It also provided that "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" be printed by the names of the non-incumbent candidates refusing to take a "Term Limit" pledge to bring about a specified "Congressional Term Limits Amendment."

Through the Elections Clause, the Constitution delegated to the States the power to regulate the "Times, Places, Manner of holding Elections for Senators and Representatives," subject to a grant of authority to Congress to "make or alter such Regulations." The states may regulate the incidents of such elections, including balloting, only within the exclusive delegation of power under the Elections Clause.

The Supreme Court found that the requirement of printing on the ballot a candidate's lack of acceptance of a term limit pledge was not a procedural regulation. It did not regulate the time of elections; it did not regulate the place of elections; nor did it regulate the manner of elections. Rather, the court found, the requirement was plainly designed to favor candidates who are willing to support the particular form of a term limits amendment, and to disfavor those who either oppose term limits entirely or who would prefer a different proposal. The Court stated that:

> ...it seems clear that the adverse labels handicap candidates at the most crucial state in the election process-the instant before the vote is cast. The labels imply that the issue 'is an important-perhaps paramount-consideration in the citizen's choice, which may decisively influence the citizen to cast his ballot' against candidates branded as unfaithful. Thus far from regulating the procedural mechanisms of elections, the Missouri act attempts to dictate electoral outcomes. Such 'regulation' of congressional elections simply is not authorized by the 'Elections Clause.'

Alaska statutes AS 15.15.500-575 require that "VIOLATED VOTER INSTRUCTION ON TERM LIMITS" be printed on the ballot adjacent to the name of any respective state senator or representative who failed to take appropriate action in support of a congressional term limit amendment to the constitution, during the preceding term of office. The same shall be printed

on the ballot adjacent to the name of any United States Senator or Representative who also fails to take appropriate action during the preceding term.

Non-incumbent candidates for United States Senator and Representative, and state senator and representative who decline to take a "Term Limits' pledge shall have "DECLINED TO TAKE PLEDGE TO SUPPORT TERM LIMITS" printed adjacent to their name on every primary and general election ballot.

Any candidate for the United States Congress and the Alaska Legislature is permitted to submit to the lieutenant governor an executed copy of the Term Limits Pledge set for in AS 15.15.560(b). The lieutenant governor shall place on every election ballot "Signed TERM LIMITS pledge: Will serve no more than [3 terms] [2 terms]" next to the name of any candidate who has ever executed the Term Limits Pledge. In addition, "Broke TERM LIMITS pledge" shall be placed on every ballot next to the name of any candidate, who at any time executes the applicable Term Limits Pledge, and thereafter qualifies as a candidate for a term that would exceed the number of terms or years set for in the applicable Term Limits Pledge.

Since the Alaska statutes are so similar to those of Missouri, this United States Supreme Court ruling suggests that our statutes are unconstitutional. This bill will repeal these unconstitutional statutes.

The committee urges your support of this bill.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 13, 2001

MAR 13 2001

SUBJECT: Impact of Cook v. Gralike on Alaska Statutes
Work Order No. 22LS-0706)

TO: Representative Norman Rokeberg
Attn: Heather Martel Nobrega

FROM: Kathryn L. Kurtz KK
Legislative Counsel

You asked about the legality of AS 15.15.550 - 575 in light of the recent U.S. Supreme Court decision in Cook v. Gralike.[1] The case also draws the validity of AS 15.15.500 - 535 into question, so I will discuss both articles in this memo.

In Cook v. Gralike, the U.S. Supreme Court invalidated Missouri statutes requiring that the phrase "declined to pledge to support term limits" be printed next to the name of every nonincumbent congressional candidate who refused to take a term limit pledge, and that "disregarded voters' instruction on term limits" be printed next to the name of any Senator or Representative who failed to take certain actions in support of the proposed congressional term limits amendment to the Constitution of the United States. Missouri tried to defend these provisions by saying that they were authorized under the elections clause of the federal constitution, which permits states to regulate the time, place, and manner of holding elections for senators and representatives.[2] The court held that "[s]uch 'regulation' of congressional elections simply is not authorized by the Elections Clause."[3]

This ruling suggests that those portions of AS 15.15.500-575 which pertain to congressional candidates are unconstitutional under the federal elections clause, since they are so similar to the invalidated Missouri statutes.

The impact of Cook v. Gralike on AS 15.15.500 - 575 as they relate to candidates for state office is less clear. The majority of the court invalidated the Missouri statute because it exceeded the range of state action permitted under the federal elections clause.

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[1] Cook v. Gralike, 2001 U.S. Lexis 1953, ___ U.S. ___ (February 28, 2001).

[2] *See* Art. I, sec. 4, cl. 1, Constitution of the United States.

[3] Cook v. Gralike, 2001 U.S. Lexis at 30.

That clause does not restrict the state's power to regulate elections for state legislature, so the majority opinion does not appear to invalidate AS 15.15.500 - 575 as they relate to candidates for state legislature. However, the concurring opinion and other state and federal court opinions do call the validity of these provisions into question.

Justices Rehnquist and O'Connor concurred with the Supreme Court's opinion (meaning they agreed with the result reached by the majority, but not the reasoning in the majority opinion). These two justices argued that it violated the first amendment right of a political candidate "to have his name appear [on the ballot] unaccompanied by pejorative language required by the State," and that the state was not entitled to select which issues were worth discussing on the ballot.[4] This reasoning is not controlling precedent, since it is the opinion of two justices and not the majority of the court. But the first amendment argument, unlike the elections clause argument relied on by the majority, is clearly applicable to elections for state offices.

Prior to the decision in Cook v. Gralike, a number of federal and state courts had considered the constitutionality of similar term limits provisions. Most held that such provisions violated Article V of the Constitution of the United States by coercing legislators into proposing or ratifying the term limits amendment.[5] A few invalidated the provisions on additional grounds.[6] In Simpson v. Cenarrusa,[7] the Idaho Supreme Court invalidated the "declined to pledge to support term limits" ballot legend as violative of the candidate's right to free speech, because it compels the candidate to take a stand on the term limits issue. Idaho applied the "declined to pledge to support term limits" ballot label to candidates for state legislature as well as Congress. Similarly, a federal district court invalidated South Dakota's ballot labels because of their chilling effect on free speech.[8]

So, although the majority opinion in Cook v. Gralike does not appear to invalidate AS 15.15.500 - 575 as they concern candidates for state legislature, the concurring opinion and opinions from lower courts around the country do draw into question the validity of these provisions.

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[4] *Id.* at 38, 41-42.

[5] *Id.* at 14, 15 n. 2.

[6] *See id.*

[7] Simpson v. Cenarrusa, 944 P.2d 1372, 1375 (Idaho 1997).

[8] Barker v. Hazeltine, 3 F.Supp.2d 1088 (S.D. 1998).

The term limits pledge section in the Alaska statutes includes a severability clause, AS 15.15.570.[9] Under this clause, even if a court holds part of the section (for example, the part dealing with congressional elections) invalid, the remaining portions retain their vitality. Thus, it is possible that a court would invalidate those portions of AS 15.15.500 - 575 providing for ballot labels, and leave the rest untouched. Idaho, which has a similar severability provision, invalidated ballot labels but left statutes providing for the use of labels in voter education materials intact as they had not been specifically challenged.[10]

If I may be of further assistance, please advise.

KLK:lmb
01-088.lmb

[9] Note that there is an implied severability clause in every Alaska statute which does not have an express severability clause. AS 01.10.030.

[10] Valkenburgh v. Citizens for Term Limits, 15 P.3d 1129, 1136 (Idaho 2000).

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 189
(H) Publish Date: 4/19/01

Revision Date/Time (Note if correction):
Dept. Affect: OOG
Title: An Act repealing statutory provisions relating to term limits and term limit pledges
BRU: Elective Operations
Component: Elections
Sponsor: House Judiciary Committee
Requester: House State Affairs Committee
Component Number: 21

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
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 (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

Prepared by: Gail Fenumiai
Phone 465-3935
Division: Division of Election
Date/Time 04/18/2001 4:06PM
Approved by: Lieutenant Governor Fran Ulmer
Date 04/18/2001
Agency: Office of the Lieutenant Governor

For distribution information, call the Governor's Legislative Office

(Rev 2/7/2001 OMB)

COMMITTEE COPY

Article 2. CONGRESSIONAL TERM LIMITS

Section

Revisor's notes. AS 15.15.500 - 15.15.535 were enacted by 1996 Ballot Measure No. 4 and codified by the revisor of statutes in 1996.

Effective dates. 1996 Ballot Measure No. 4, which proposed enactment of law codified as AS 15.15.500 - 15.15.535, was approved by a majority of the voters in the November 5, 1996 election. It was certified on November 27, 1996 and took effect February 25, 1997.

Opinions of attorney general. Under the authority of AS 44.62.060(b), the proposed regulations implementing AS 15.15.510, 15.15.515, 15.15.520, and 15.15.525 from Ballot Measure No. 4, SLA 1996, are disapproved on the basis that the requirements imposed by those statutes impose additional qualifications for Congressional office beyond those set out in the United States Constitution. May 1, 1998 Op. Att'y Gen.

Sec. 15.15.500. Findings and declarations.

The People of the State of Alaska find and declare as follows:

(a) The People of Alaska voted by more than 62 percent to limit the terms of U.S. Representatives to three terms and limit U.S. Senators to two terms.

(b) The U.S. Supreme Court has ruled that an amendment to the U.S. Constitution is necessary to limit terms of members of Congress.

(c) There are two methods to propose amendments to the U.S. Constitution that must then be ratified by three-fourths of the States, or 38. These methods are (1) for two-thirds of both houses of the United States Congress to so vote or (2) for 34 states to apply for an amendment convention to so vote.

(d) The Congress has refused to propose such an amendment, and by a clear majority defeated the same term limits passed by over 62 percent of the Voters of Alaska in 1994.

(e) The Congress has a clear conflict of interest in proposing term limits on themselves.

(§ 2 1996 Ballot Measure No. 4)

Sec. 15.15.505. Purpose and intent.

The purpose and intent in enacting AS 15.15.500 - 15.15.535 is to secure the following amendment under the provisions of Article V of the United States Constitution by informing voters of acts and omissions by candidates for congressional and legislative office with respect to

said constitutional amendment:

CONGRESSIONAL TERM LIMITS AMENDMENT

Section A. No person shall serve in the office of the United States Senator for more than two terms, but upon ratification, no person who has held the office of the United States Senator or who then holds the office shall serve in the office for more than one additional term.

Section B. No person shall serve in the office of United States Representative for more than three terms, but upon ratification no person who has held the office of United States Representative or who then holds the office shall serve for more than two additional terms.

Section. C. This article shall have no time limit within which it must be ratified to become operative upon the ratification of the legislatures of three-fourths of the States.

It is the further purpose and intent of AS 15.15.500 - 15.15.535 to instruct all candidates, including incumbents running for retention of office, to use all of his or her delegated powers to secure the amendment to the United States Constitution, as set forth above, and further to specifically instruct the legislature of the State of Alaska to support the following proposed application to Congress:

We, the people, and legislature of the State of Alaska, due to our desire to establish term limits on the Congress of the United States, hereby make application to Congress, pursuant to our power under Article V of the United States Constitution, to call an Article V Convention.

(§ 3 1996 Ballot Measure No. 4)

Revisor's notes. In 1996, in this section "AS 15.15.500 - 15.15.535" was substituted for "this legislation" and "this act" in order to reflect the codification of 1996 Ballot Measure No. 4.

Sec. 15.15.510. Ballot information for state legislators.

(a) All primary, special and general election ballots shall have "VIOLATED VOTER INSTRUCTION ON TERM LIMITS" printed adjacent to the name of any respective state senator or representative who during the preceding term of office:

(1) fails to vote in favor of the application set forth above when brought to a vote or;

(2) fails to second the application set forth above if it lacks for a second or;

(3) fails to vote in favor of bringing the application set forth above before any committee or subcommittee upon which he or she serves in the respective house or;

(4) fails to propose or otherwise bring to a vote of the full legislative body the application set forth above if it otherwise lacks a legislator who so proposes or brings to a vote of the full legislative body the application set forth above or;

(5) fails to vote against any attempt to delay, table or otherwise prevent a vote by the full legislative body of the application set forth above or;

(6) fails in any way to ensure that all votes on the application set forth above are recorded and made available to the public or;

(7) fails to vote against any change, addition or modification to the application set forth above or;

(8) fails to vote in favor of the amendment set forth above if it is sent to the states for ratification or;

(9) fails to vote against any amendment with longer limits if such an amendment is sent to the state for ratification.

(b) The language "VIOLATED VOTER INSTRUCTION ON TERM LIMITS" when required by any of subsections (1) through (7) shall not appear adjacent to the names of candidates for state legislature if the State of Alaska has made an application to Congress for an Article V convention pursuant to the Act and such application has not been withdrawn, or if a Congressional Term Limits Amendment has been submitted to the States for ratification.

(1) the State of Alaska has made an application to Congress for an Article V amendment pursuant to the Act and such application has not been withdrawn or;

(2) the Congressional Term Limits Amendment set forth above has been submitted to the states for ratification and has been ratified by this state or the Amendment set forth above has become part of the United States Constitution.

(c) The language "VIOLATED VOTER INSTRUCTION ON TERM LIMITS" when required by subsection (8) or (9) shall not appear adjacent to the names of candidates for state legislature if the State of Alaska has ratified the proposed Congressional Term Limits Amendment set forth above.

(d) The language "VIOLATED VOTER INSTRUCTION ON TERM LIMITS" when required by any of subsections (1) through (9) shall not appear adjacent to the names of candidates for state legislature if the proposed Congressional Term Limits Amendment set forth above has become part of the United States Constitution.

(§ 4 1996 Ballot Measure No. 4)

Opinions of attorney general. The provisions of Ballot Measure 4 of the 1996 general election (codified at AS 15.15.510, 15.15.515, 15.15.520, and 15.15.525)(requiring that candidates for public office be given the opportunity to take a term limits pledge and, if they refuse, the language "DECLINED TO TAKE PLEDGE TO SUPPORT TERM LIMITS" be printed adjacent to their name on the ballot) are unconstitutional and the implementing regulations are therefore also unconstitutional. May 1, 1998 Op. Att'y Gen.

Sec. 15.15.515. Ballot information for members of Congress.

(a) All primary, special and general election ballots shall have "VIOLATED VOTER INSTRUCTION ON TERM LIMITS" printed adjacent to the name of any United States Senator or Representative who during the preceding term of office:

(1) fails to vote in favor of the proposed Congressional Term Limits Amendment set forth above when brought to a vote or;

(2) fails to second the proposed Congressional Term Limits Amendment set forth above if it lacks for a second before any proceeding of the legislative body or;

(3) fails to propose or otherwise bring to a vote of the full legislative body the proposed Congressional Term Limits Amendment set forth above if it otherwise lacks a legislator who so proposes or brings to a vote of the full legislative body the proposed Congressional Term Limits Amendment set forth above or;

(4) fails to vote in favor of all votes bringing the Congressional Term Limits Amendment set forth above before any committee of subcommittee of the respective house upon which he or she serves or;

(5) fails to reject any attempt to delay, table or otherwise prevent a vote by the full legislative body of the proposed Congressional Term Limits Amendment set forth above or;

(6) fails to abstain or vote against any proposed constitutional amendment that would increase term limits beyond those in the proposed Congressional Term Limits Amendment set forth above regardless of any other actions in support of the proposed Congressional Term Limits Amendment set forth above or;

(7) sponsors or cosponsors any proposed constitutional amendment or law that would increase term limits beyond those in the proposed Congressional Term Limits Amendment set forth above or;

(8) fails in any way to ensure that all votes on the proposed Congressional Term Limits Amendment set forth above are recorded and made available to the public.

(b) The language "VIOLATED VOTER INSTRUCTION ON TERM LIMITS" shall not appear adjacent to the names of candidates for Congress if the Congressional Term Limits Amendment set forth above is before the states for ratification or has become part of the United States Constitution.

(§ 5 1996 Ballot Measure No. 4)

Opinions of attorney general. The provisions of Ballot Measure 4 of the 1996 general election (codified at AS 15.15.510, 15.15.515, 15.15.520, and 15.15.525)(requiring that candidates for public office be given the opportunity to take a term limits pledge and, if they refuse, the language "DECLINED TO TAKE PLEDGE TO SUPPORT TERM LIMITS" be printed adjacent to their name on the ballot) are unconstitutional and the implementing regulations are therefore also unconstitutional. May 1, 1998 Op. Att'y Gen.

Sec. 15.15.520. Ballot information on term limit pledge for non-incumbents.

(a) Non-incumbent candidates for United States Senator and Representative, and state senator and representative shall be given an opportunity to take a "Term Limits" pledge regarding Term Limits each time they file to run for such office. Those who decline to take the "Term Limits" pledge shall have "DECLINED TO TAKE PLEDGE TO SUPPORT TERM LIMITS" printed adjacent to their name on every primary and general election ballot.

(b) The "Term Limits" pledge shall be offered to non-incumbent candidates for United States Senator and Representative, and to non-incumbent candidates for state senator and representative until a Constitutional Amendment which limits the number of terms of United States Senators to no more than two and United States Representatives to no more than three shall have become part of our United States Constitution.

(c) The "Term Limits" pledge that each non-incumbent candidate, set forth above, shall be offered is as follows:

I support term limits and pledge to use all my legislative powers to enact the proposed Constitutional Amendment set forth in the Congressional Term Limits Act of 1996. If elected, I pledge to vote in such a way that the designation "VIOLATED VOTER INSTRUCTION ON TERM LIMITS" will not appear adjacent to my name.

_____

Signature of Candidate

(d) The language "DECLINED TO TAKE PLEDGE TO SUPPORT TERM LIMITS" shall not appear adjacent to the names of non-incumbent candidates for Congress or the legislature if the Congressional Term Limits Amendment set forth above has become part of the United States Constitution.

(§ 6 1996 Ballot Measure No. 4)

Opinions of attorney general. The provisions of Ballot Measure 4 of the 1996 general election (codified at AS 15.15.510, 15.15.515, 15.15.520, and 15.15.525)(requiring that candidates for public office be given the opportunity to take a term limits pledge and, if they refuse, the language "DECLINED TO TAKE PLEDGE TO SUPPORT TERM LIMITS" be printed adjacent to their name on the ballot) are unconstitutional and the implementing regulations are therefore also unconstitutional. May 1, 1998 Op. Att'y Gen.

Sec. 15.15.525. Designation.

(a) The Lieutenant Governor and state election officials shall be responsible for making a determination as to whether state and federal legislators and non-incumbent candidates shall have placed adjacent to their name on the election ballot "VIOLATED VOTER INSTRUCTION ON TERM LIMITS" or "DECLINED TO TAKE PLEDGE TO SUPPORT TERM LIMITS".

(b) The determination as to whether or not "VIOLATED VOTER INSTRUCTION ON TERM LIMITS" or "DECLINED TO TAKE PLEDGE TO SUPPORT TERM LIMITS" shall be placed adjacent to a candidate's name shall be made at a time necessary to ensure placement of that designation on the ballot after a forty-five (45) day public comment period.

(c) If the official(s) with the authority to determine whether or not the designation "VIOLATED VOTER INSTRUCTION ON TERM LIMITS" or "DECLINED TO TAKE PLEDGE TO SUPPORT TERM LIMITS" shall be placed adjacent to a candidate's name choose(s) not to place such designation adjacent to the name of a senator or representative for state or federal office, any citizen may sue within the 45 day public comment period to have such a designation made. Upon the filing of a suit, such a designation shall be made unless the candidate or the official(s) responsible for determining whether or not the designation shall appear adjacent to the candidate's name can show by clear and convincing evidence that the candidate has met the requirements set forth in this amendment and therefore should not have the designation "VIOLATED VOTER INSTRUCTION ON TERM LIMITS" or "DECLINED TO TAKE PLEDGE TO SUPPORT TERM LIMITS" adjacent to the candidate's name.

(§ 7 1996 Ballot Measure No. 4)

Revisor's notes. In the last sentence of subsection (c), "'VIOLATED VOTER INSTRUCTION ON TERM LIMITS' or 'DECLINED TO TAKE PLEDGE TO SUPPORT TERM LIMITS'" appears after the last occurrence of "designation" even though it did not appear in the voter's pamphlet because the language was included in the text of the initiative as it was filed with the Lieutenant Governor's Office.

Opinions of attorney general. The provisions of Ballot Measure 4 of the 1996 general election (codified at AS 15.15.510, 15.15.515, 15.15.520, and 15.15.525)(requiring that candidates for public office be given the opportunity to take a term limits pledge and, if they refuse, the language "DECLINED TO TAKE PLEDGE TO SUPPORT TERM LIMITS" be printed adjacent to their name on the ballot) are unconstitutional and the implementing regulations are therefore also unconstitutional. May 1, 1998 Op.

Att'y Gen.

Sec. 15.15.530. Severability.

If any portion, clause, or phrase of AS 15.15.500 - 15.15.535 is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, the remaining portions, clauses, and phrases shall not be affected, but shall remain in full force and effect.

(§ 8 1996 Ballot Measure No. 4)

Revisor's notes. In 1996, in this section "AS 15.15.500 - 15.15.535" was substituted for "this initiative" in order to reflect the 1996 codification of 1996 Ballot Measure No. 4.

Sec. 15.15.535. Short title.

AS 15.15.500 - 15.15.535 shall be known as and may be cited as "The Congressional Term Limits Act of 1996".

(§ 1 1996 Ballot Measure No. 4)

Article 3. TERM LIMITS PLEDGE FOR CONGRESSIONAL AND LEGISLATIVE CANDIDATES

Section
550. Findings and declarations.
555. Purpose and intent.
560. Term Limits Pledge.
565. Ballot information and implementation.
570. Severability.
575. Short title.

Revisor's notes. AS 15.15.550 - 15.15.575 were enacted by 1998 Ballot Measure No. 7 and codified by the revisor of statutes in 1999, at which time internal references were conformed to reflect the codification.

Effective dates. 1998 Ballot Measure No. 7, § 1, which enacted this article, took effect on March 4, 1999.

Sec. 15.15.550. Findings and declarations.

The People of the State of Alaska find and declare as follows:

(1) polls of the People of Alaska indicate that a clear majority favor federal and state legislators serving only a limited number of years;

(2) The United States Congress and the Alaska Legislature have a clear conflict of interest in proposing term limits on themselves and have consistently refused to limit their own terms;

(3) the voters of Alaska want to elect federal and state legislators that pledge to limit their own terms;

(4) the voters of Alaska want to know which candidates for the United States Congress and the Alaska Legislature support term limits and the concept of a citizen legislature.

(§ 1 1998 Ballot Measure No. 7)

Revisor's notes. In 1999, upon codification, the numbering of paragraphs (1)-(4) was substituted for (a)-(d) to conform to the style of the Alaska Statutes.

Sec. 15.15.555. Purpose and intent.

The purpose and intent in enacting AS 15.15.550 - 15.15.575 is to require the lieutenant governor to permit but not require any candidate for the United States Congress and the Alaska Legislature to submit to the lieutenant governor an executed copy of the applicable Term Limits Pledge set forth in AS 15.15.560 up until 15 days prior to the lieutenant governor's certification of the ballot in order for the ballot information set forth in AS 15.15.565(a), (b), and (c) to be included on that ballot.

(§ 1 1998 Ballot Measure No. 7)

Sec. 15.15.560. Term Limits Pledge.

(a) The lieutenant governor shall permit but not require any candidate for the United States Congress and the Alaska Legislature to submit to the lieutenant governor an executed copy of the Term Limits Pledge set forth in (b) of this section up until 15 days prior to the lieutenant governor's certification of the ballot in order for the ballot information set forth in AS 15.15.565(a), (b), and (c) to be included on that ballot.

(b) The Term Limits Pledge will be as set forth herein and will incorporate the applicable language in [ ] for the office the candidate seeks:

Term Limits Pledge for Candidates for the

United States Congress

I voluntarily pledge not to serve in the United States [House of Representatives more than 3 terms] [Senate more than 2 terms] after the effective date of this provision and authorize the Lieutenant Governor to notify the voters of this action by placing the applicable ballot information, "Signed TERM LIMITS pledge: Will serve no more than [3 terms] [2 terms]" or "Broke TERM LIMITS pledge" next to my name on every election ballot and in all state sponsored voter education material in which my name appears as a candidate for the office for which the pledge refers.

_____ _____

Signature Date

Term Limits Pledge for Candidates for the

Alaska Legislature:

I voluntarily pledge not to serve in the Alaska Legislature for more than 8 years in any 16

year period after the effective date of this provision and authorize the Lieutenant Governor to notify the voters of this action by placing the applicable ballot information, "Signed TERM LIMITS pledge: Will serve no more than 8 years" or "Broke TERM LIMITS pledge" next to my name on every election ballot and in all state sponsored voter education material in which my name appears as a candidate for the office for which the pledge refers.

_____ _____

Signature Date

(§ 1 1998 Ballot Measure No. 7)

Sec. 15.15.565. Ballot information and implementation.

(a) The lieutenant governor shall place on every election ballot and in all state sponsored voter education material the applicable ballot information, "Signed TERM LIMITS pledge: Will serve no more than [3 terms] [2 terms]" next to the name of any candidate for the office of United States Representative and United States Senator who has ever executed the Term Limits Pledge except when (c) of this section applies.

(b) The lieutenant governor shall place on every election ballot and in all state sponsored voter education material the ballot information, "Signed TERM LIMITS pledge: Will serve no more than 8 years" next to the name of any candidate for the Alaska Legislature who has ever executed the Term Limits Pledge except when (c) of this section applies.

(c) The lieutenant governor shall place on every election ballot and in all state sponsored voter education material the ballot information, "Broke TERM LIMITS pledge" next to the name of any candidate who at any time executes the applicable Term Limits Pledge and thereafter qualifies as a candidate for a term that would exceed the number of terms or years set forth in the applicable Term Limits Pledge.

(d) For the purpose of this section, service in office for more than one-half of a term shall be deemed service for a term.

(e) The state-recognized proponent(s) and sponsor(s) of the initiative that enacted AS 15.15.550 - 15.15.575 shall have standing to defend it.

(f) The lieutenant governor shall implement this section by rule as long as that rule does not alter the intent of this section.

(§ 1 1998 Ballot Measure No. 7)

Revisor's notes. In 1999, "the initiative that enacted AS 15.15.550 - 15.15.575" was substituted for "this initiative" to reflect the codification of 1998 Ballot Measure No. 7 as AS 15.15.550 - 15.15.575.

Sec. 15.15.570. Severability.

If any portion of this section is held invalid for any reason, the remaining portion to the fullest extent possible shall be severed from the void portion and given the fullest force and application.

(§ 1 1998 Ballot Measure No. 7)

Sec. 15.15.575. Short title.

AS 15.15.550 - 15.15.575 shall be known as and may be cited as The Term Limits Pledge Act of 1998.

(§ 1 1998 Ballot Measure No. 7)

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

COOK *v.* GRALIKE ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 99–929. Argued November 6, 2000— Decided February 28, 2001

In *U. S. Term Limits, Inc.* v. *Thornton*, 514 U. S. 779, the Court held that an Arkansas law prohibiting otherwise eligible congressional candidates from appearing on the general election ballot if they had already served two Senate terms or three House terms was an impermissible attempt to add qualifications to congressional office rather than a permissible exercise of the States' Elections Clause power to regulate the "Times, Places and Manner of holding Elections for Senators and Representatives," U. S. Const., Art., I, §4, cl. 1. In response, Missouri voters adopted an amendment to Article VIII of their State Constitution designed to bring about a specified "Congressional Term Limits Amendment" to the Federal Constitution. Among other things, Article VIII "instruct[s]" Missouri Congress Members to use all their powers to pass the federal amendment; prescribes that "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" be printed on ballots by the names of Members failing to take certain legislative acts in support of the proposed amendment; provides that "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" be printed by the names of nonincumbent candidates refusing to take a "Term Limit" pledge to perform those acts if elected; and directs the Missouri Secretary of State (Secretary), the petitioner here, to determine and declare whether either statement should be printed by candidates' names. Respondent Gralike, a nonincumbent House candidate, sued to enjoin petitioner from implementing Article VIII on the ground it violated the Federal Constitution. The District Court granted Gralike summary judgment, and the Eighth Circuit affirmed.

Held: Article VIII is unconstitutional. Pp. 6–15.

(a) Because petitioners' arguments that Article VIII is an exercise

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Syllabus

of the people's right to instruct their representatives reserved by the Tenth Amendment, as well as a permissible regulation of the "manner" of electing federal legislators under the Elections Clause, rely on different sources of state power, the Court reviews the distinction in kind between reserved state powers and those delegated to the States by the Constitution. The Constitution draws a basic distinction between the powers of the newly created Federal Government and the powers retained by the pre-existing sovereign States. *U. S. Term Limits*, 514 U. S., at 801. On the one hand, such retained powers proceed, not from the American people, but from the people of the several States. They remain, after the Constitution's adoption, what they were before, except insofar as they are abridged by that instrument. *Sturges* v. *Crowninshield*, 4 Wheat. 122, 193. On the other hand, the States can exercise no powers springing exclusively from the National Government's existence which the Constitution did not delegate. Pp. 6–8.

(b) Petitioners' argument that Article VIII is a valid exercise of the States' reserved power to give binding instructions to its representatives is unpersuasive for three reasons. First, the historical precedents on which she relies—concerning the part instructions played in the Second Continental Congress, the Constitutional Convention, the early Congress, the selection of United States Senators before the Seventeenth Amendment's passage, and the ratification of certain federal constitutional amendments—are distinguishable because, unlike Article VIII, none of petitioners' examples was coupled with an express legal sanction for disobedience. Second, countervailing historical evidence is provided by the fact that the First Congress rejected a proposal to insert a right of the people "to instruct their representatives" into what would become the First Amendment. Third, and of decisive significance, the means employed to issue the instructions, ballots for congressional elections, are unacceptable unless Article VIII is a permissible exercise of the States' power to regulate the manner of holding congressional elections. Pp. 8–10.

(c) The federal offices at stake arise from the Constitution itself. See *U. S. Term Limits*, 514 U. S., at 805. Because any state authority to regulate election to those offices could not precede their very creation by the Constitution, such power had to be delegated to the States, rather than reserved under the Tenth Amendment. *Id.*, at 804. No constitutional provision other than the Elections Clause gives the States authority over congressional elections. By process of elimination then, the States may regulate the incidents of such elections, including balloting, only within the exclusive delegation of their Elections Clause power. The Court disagrees with petitioners' argument that Article VIII is a valid exercise of that power in that it

Syllabus

regulates the "manner" in which elections are held by disclosing information about congressional candidates. The Clause grants to the States "broad power" to prescribe the procedural mechanisms for holding congressional elections, *e.g.*, *Tashjian* v. *Republican Party of Conn.*, 479 U. S. 208, 217, but does not authorize them to dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade important constitutional restraints, *U. S. Term Limits*, 514 U. S., at 833–834. Article VIII is not a procedural regulation. It does not control the "manner" of elections, for that term encompasses matters like notices, registration, supervision of voting, and other requirements as to procedure and safeguards which experience shows are necessary to enforce the fundamental right involved. See, *e.g.*, *Smiley* v. *Holm*, 285 U. S. 355, 366. Rather, Article VIII is plainly designed to favor candidates who are willing to support the particular form of a term limits amendment set forth in its text and to disfavor those who either oppose term limits entirely or would prefer a different proposal. Cf. *Anderson* v. *Celebrezze*, 460 U. S. 780, 788, n. 9. It not only "instruct[s]" Missouri's congressional Members to promote the passage of the specified term limits amendment, but also attaches a concrete consequence to noncompliance— the printing of an adverse label by the candidate's name on ballots. The two labels impose substantial political risk on candidates who fail to comply with Article VIII, handicapping them at the most crucial stage in the election process— the instant before the vote is cast, *Anderson* v. *Martin*, 375 U. S. 399, 402. And, by directing the citizen's attention to the single consideration of the candidates' fidelity to term limits, the labels imply that the issue is an important— perhaps paramount— consideration in the citizen's choice. *Ibid.* Article VIII thus attempts to "dictate electoral outcomes." *U. S. Term Limits*, 514 U. S., at 833–834. Such "regulation" of congressional elections is not authorized by the Elections Clause. Pp. 11–15.

191 F. 3d 911, affirmed.

STEVENS, J., delivered the opinion of the Court, in which SCALIA, KENNEDY, GINSBURG, and BREYER, JJ., joined, in which SOUTER, J., joined, as to Parts I, II, and IV, and in which THOMAS, J., joined as to Parts I and IV. KENNEDY, J., filed a concurring opinion. THOMAS, J., filed an opinion concurring in part and concurring in the judgment. REHNQUIST, C. J., filed an opinion concurring in the judgment, in which O'CONNOR, J., joined.

SUPREME COURT OF THE UNITED STATES

No. 99-929

REBECCA McDOWELL COOK, PETITIONER *v.*
DONALD J. GRALIKE AND MIKE HARMAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[February 28, 2001]

JUSTICE STEVENS delivered the opinion of the Court.

In *U. S. Term Limits, Inc.* v. *Thornton,* 514 U. S. 779 (1995), we reviewed a challenge to an Arkansas law that prohibited the name of an otherwise eligible candidate for the United States Congress from appearing on the general election ballot if he or she had already served three terms in the House of Representatives or two terms in the Senate. We held that the ballot restriction was an indirect attempt to impose term limits on congressional incumbents that violated the Qualifications Clauses in Article I of the Constitution rather than a permissible exercise of the States' power to regulate the "Times, Places and Manner of holding Elections for Senators and Representatives" within the meaning of Article I, §4, cl. 1.

In response to that decision, the voters of Missouri adopted in 1996 an amendment to Article VIII[1] of their State Constitution designed to lead to the adoption of a

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[1] We shall follow the parties' practice of referring to the amendment as "Article VIII" even though it merely added new §§15 through 22 to the pre-existing article.

specified 'Congressional Term Limits Amendment" to the Federal Constitution. At issue in this case is the constitutionality of Article VIII.

I

Article VIII 'instruct[s]" each Member of Missouri's congressional delegation 'to use all of his or her delegated powers to pass the Congressional Term Limits Amendment"set forth in §16 of the Article. Mo. Const., Art. VIII, §17(1). That proposed amendment would limit service in the United States Congress to three terms in the House of Representatives and two terms in the Senate.[2]

Three provisions in Article VIII combine to advance its purpose. Section 17 prescribes that the statement 'DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" be printed on all primary and general ballots adjacent to the name of a Senator or Representative who fails to take any one of eight legislative acts in support of the proposed amendment.[3] Section 18 provides that the

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[2] The full text of the proposed amendment is as follows:

'Congressional Term Limits Amendment

'(a) No person shall serve in the office of United States Representative for more than three terms, but upon ratification of this amendment no person who has held the office of the United States Representative or who then holds the office shall serve for more than two additional terms.

'(b) No person shall serve in the office of United States Senator for more than two terms, but upon ratification of this amendment no person who has held the office of United States Senator or who then holds the office shall serve in the office for more than one additional term.

'(c) Any state may enact by state constitutional amendment longer or shorter limits than those specified in section 'a' or 'b' herein.

'(d) This article shall have no time limit within which it must be ratified to become operative upon the ratification of the legislatures of three-fourths of the several States."

[3] Section 17(2) provides that the statement shall be printed 'adjacent to the name of any United States Senator or Representative who:

statement 'DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" be printed on all primary and general election ballots next to the name of every nonincumbent congressional candidate who refuses to take a "Term Limit" pledge that commits the candidate, if elected, to performing the legislative acts enumerated in §17.[4] And §19 directs the Missouri Secretary of State to determine and declare, pursuant to §§17 and 18, whether either

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'(a) fails to vote in favor of the proposed Congressional Term Limits Amendment set forth above when brought to a vote or;

'(b) fails to second the proposed Congressional Term Limits Amendment set forth above if it lacks for a second before any proceeding of the legislative body or;

'(c) fails to propose or otherwise bring to a vote of the full legislative body the proposed Congressional Term Limits Amendment set forth above if it otherwise lacks a legislator who so proposes or brings to a vote of the full legislative body the proposed Congressional Term Limits Amendment set forth above or;

'(d) fails to vote in favor of all votes bringing the proposed Congressional Term Limits Amendment set forth above before any committee or subcommittee of the respective house upon which he or she serves or;

'(e) fails to reject any attempt to delay, table or otherwise prevent a vote by the full legislative body of the proposed Congressional Term Limits Amendment set forth above or;

'(f) fails to vote against any proposed constitutional amendment that would establish longer term limits than those in the proposed Congressional Term Limits Amendment set forth above regardless of any other actions in support of the proposed Congressional Term Limits Amendment set forth above or;

'(g) sponsors or cosponsors any proposed constitutional amendment or law that would increase term limits beyond those in the proposed Congressional Term Limits Amendment set forth above or;

'(h) fails to ensure that all votes on Congressional Term Limits are recorded and made available to the public."

[4] The pledge, contained in §18(3), reads:

'I support term limits and pledge to use all my legislative powers to enact the proposed Constitutional Amendment set forth in the Term Limits Act of 1996. If elected, I pledge to vote in such a way that the designation DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITSwill not appear adjacent to my name."

statement should be printed alongside the name of each candidate for Congress.[5]

Respondent Don Gralike was a nonincumbent candidate for election in 1998 to the United States House of Representatives from Missouri's Third Congressional District. A month after Article VIII was amended, respondent brought suit[6] in the United States District Court for the Western District of Missouri to enjoin petitioner, the Secretary of State of Missouri, from implementing the Article, which the complaint alleges violates several provisions of the Federal Constitution.

The District Court decided the case on the pleadings, granting Gralike's motion for summary judgment. The court first held that Article VIII contravened the Qualifications Clauses of Article I of the Federal Constitution because it "has the sole purpose of creating additional qualifications for Congress indirectly and has the likely effect of handicapping a class of candidates for Congress." 996 F. Supp. 917, 920 (1998); see 996 F. Supp. 901, 905–909 (1998). The court further held that Article VIII places an impermissible burden on the candidates' First Amendment right to speak freely on the issue of term limits by

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[5] Section 19(5) permits a voter to appeal to the Missouri Supreme Court a determination that a statement should not be placed next to a candidate's name, and §19(6) allows a candidate to appeal to the State's highest court a determination that such a statement should be printed. In either case, clear and convincing evidence is required to demonstrate that the statement does not belong on the ballot adjacent to the candidate's name.

The remainder of Article VIII provides for automatic repeal of the Article should the specified Congressional Term Limits Amendment be ratified, §20; exclusive jurisdiction of challenges to the Amendment in the Supreme Court of Missouri, §21; and severance of "any portion, clause, or phrase" of Article VIII that is declared invalid, §22.

[6] Although respondent intended to run for Congress when he filed suit, under Missouri law he could not formally file a declaration for candidacy until February 1998. App. 25–26.

'[p]unish[ing] candidates for speaking out against term limits" through putting 'negative words next to their names on the ballot," and by 'us[ing] the threat of being disadvantaged in the election to coerce candidates into taking a position on the term limits issue." 996 F. Supp., at 910; see 996 F. Supp., at 920. Lastly, the court found Article VIII to be an indirect and unconstitutional attempt by the people of Missouri to interject themselves into the amending process authorized by Article V of the Federal Constitution. In doing so, the court endorsed the reasoning of other decisions invalidating provisions similar to Article VIII on the ground that negative ballot designations 'place an undue influence on the legislator to vote in favor of term limits rather than exercise his or her own independent judgment as is contemplated by Article V." 996 F. Supp., at 916; see 996 F. Supp., at 920.[7] Accordingly, the court permanently enjoined petitioner from enforcing §§15 through 19 of Article VIII.

The United States Court of Appeals for the Eighth Circuit affirmed.[8] Like the District Court, it found that Article VIII 'threatens a penalty that is serious enough to compel candidates to speak— the potential political damage of the ballot labels'; 'seeks to impose an additional qualification for candidacy for Congress and does so in a manner which is highly likely to handicap term limit opponents and other labeled candidates'; and 'coerce[s] legislators into proposing or ratifying a particular consti-

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[7] See *League of Women Voters of Me.* v. *Gwadosky*, 966 F. Supp. 52 (Me. 1997); *Donovan* v. *Priest*, 931 S. W. 2d 119 (Ark. 1996).

[8] While the appeal was pending, respondent Gralike withdrew from the 1998 election and respondent Harmon, a nonincumbent candidate in the 2000 Republican congressional primary in the Seventh District of Missouri, intervened as an appellee. In view of Harmon's participation, there is no contention that this case is moot. See *Storer* v. *Brown*, 415 U. S. 724, 737, n. 8 (1974).

tutional amendment" in violation of Article V. 191 F. 3d 911, 918, 924, 925 (1999). The Court of Appeals also observed that, contrary to the Speech or Debate Clause in Art. I, §6, cl. 1, of the Federal Constitution, Article VIII "establishes a regime in which a state officer— the secretary of state— is permitted to judge and punish Members of Congress for their legislative actions or positions." 191 F. 3d., at 922.[9]

Although the Court of Appeals' decision is consistent with the views of other courts that have passed on similar voter initiatives,[10] the importance of the case prompted our grant of certiorari. 529 U. S. 1065 (2000).

II

Article VIII furthers the State's interest in adding a

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[9] Although Judge Hansen, dissenting in part, thought that §§17 through 19 should be severed, leaving the rest of Article VIII intact, the majority declined to do so. 191 F. 3d, at 926, n. 12. Petitioner does not contend here that any parts of Article VIII should be severed if found unconstitutional, but rather urges us to uphold the provision "in its entirety." Reply Brief for Petitioner 1–2.

[10] See *Miller* v. *Moore*, 169 F. 3d 1119 (CA8 1999) (Nebraska initiative invalidated on Article V and right-to-vote grounds); *Barker* v. *Hazeltine*, 3 F. Supp. 2d 1008 (SD 1998) (South Dakota initiative invalidated on Article V, First Amendment, Speech or Debate Clause, and due process grounds); *League of Women Voters of Me.* v. *Gwadosky*, 966 F. Supp. 52 (Me. 1997) (Maine initiative invalidated on Article V grounds); *Bramberg* v. *Jones*, 20 Cal. 4th 1045, 978 P. 2d 1240 (1999) (California initiative invalidated on Article V grounds); *Morrissey* v. *State*, 951 P. 2d 911 (Colo. 1998) (Colorado initiative invalidated on Article V and Guarantee Clause grounds); *Simpson* v. *Cenarrusa*, 944 P. 2d 1372 (Idaho 1997) (Idaho initiative invalidated on Speech or Debate Clause and state constitutional grounds, but did not violate Article V); *Donovan* v. *Priest*, 326 Ark. 353, 931 S. W. 2d 119 (1996) (in preelection challenge, Arkansas initiative invalidated on Article V grounds); *In re Initiative Petition No. 364*, 930 P. 2d 186 (Okla. 1996) (Oklahoma initiative invalidated on Article V and state constitutional grounds).

term limits amendment to the Federal Constitution in two ways. It encourages Missouri congressional delegation to support such an amendment in order to avoid an unfavorable ballot designation when running for reelection. And it encourages the election of representatives who favor such an amendment. Petitioner argues that Article VIII is an exercise of the "right of the people to instruct" their representatives reserved by the Tenth Amendment,[11] and that it is a permissible regulation of the "manner" of electing federal legislators within the authority delegated to the States by the Elections Clause, Art. I, §4, cl. 1.[12] Because these two arguments rely on different sources of state power, it is appropriate at the outset to review the distinction in kind between powers reserved to the States and those delegated to the States by the Constitution.

As we discussed at length in *U. S. Term Limits*, the Constitution "draws a basic distinction between the powers of the newly created Federal Government and the powers retained by the pre-existing sovereign States." 514 U. S., at 801. On the one hand, in the words of Chief Justice Marshall, "It was neither necessary nor proper to define the powers retained by the States. These powers proceed, not from the people of America, but from the people of the several States; and remain, after the adoption of the constitution, what they were before, except so far as they may be abridged by that instrument." *Sturges* v. *Crowninshield*, 4 Wheat. 122, 193 (1819). The text of the Tenth Amendment delineates this principle:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

On the other hand, as Justice Story observed, "the

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[11] Brief for Petitioner 25, and n. 37; see Reply Brief for Petitioner 4.

[12] Brief for Petitioner 28, 38; Reply Brief for Petitioner 4, 8.

states can exercise no powers whatsoever, which exclusively spring out of the existence of the national government, which the constitution did not delegate to them." 1 Commentaries on the Constitution of the United States §627 (3d ed. 1858) (hereinafter Story). Simply put, '[n]o state can say, that it has reserved, what it never possessed." *Ibid.*

III*

To be persuasive, petitioners' argument that Article VIII is a valid exercise of the States' reserved power to give binding instructions to its representatives would have to overcome three hurdles. First, the historical precedents on which she relies for the proposition that the States have such a reserved power are distinguishable. Second, there is countervailing historical evidence. Third, and of decisive significance, the means employed to issue the instructions, ballots for congressional elections, are unacceptable unless Article VIII is a permissible exercise of the States' power to regulate the manner of holding elections for Senators and Representatives. Only a brief comment on the first two points is necessary.

Petitioner relies heavily on the part instructions played in the Second Continental Congress, the Constitutional Convention, the early Congress, the selection of United States Senators before the passage of the Seventeenth Amendment, and the ratification of certain federal constitutional amendments.[13] However, unlike Article VIII, none of petitioners' examples was coupled with an express legal sanction for disobedience.[14] At best, as an *amicus curiae* for

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* JUSTICE SOUTER does not join this Part of the Court's opinion.

[13] Brief for Petitioner 10–17.

[14] For example, the Provincial Congress of North Carolina passed the following instruction on April 12, 1776: "*Resolved*, That the Delegates for this Colony in the Continental Congress be empowered to concur with the Delegates of the other Colonies in declaring Independency,

petitioner points out, and as petitioner herself acknowledges, such historical instructions at one point in the early Republic may have had "de facto binding force" because it might have been "political suicide" not to follow them. [15] This evidence falls short of demonstrating that either the people or the States had a right to give legally binding, *i.e.*, nonadvisory, instructions to their representatives that the Tenth Amendment reserved, much less that such a right would apply to federal representatives. See *U. S. Term Limits, Inc.* v. *Thornton*, 514 U. S., at 802 (Tenth Amendment "could only reserve that which existed before"); c f. *McCulloch* v. *Maryland*, 4 Wheat. 316, 430 (1819) (rejecting argument that States had reserved power to tax corporations chartered by Congress because an "original right to tax" such federal entities "never existed").

Indeed, contrary evidence is provided by the fact that the First Congress rejected a proposal to insert a right of the people "to instruct their representatives" into what would become the First Amendment. 1 Annals of Cong. 732 (1789). The fact that the proposal was made suggests that its proponents thought it necessary, and the fact that it was rejected by a vote of 41 to 10, *id.*, at 747, suggests that we should give weight to the views of those who opposed the proposal. It was their view that binding instructions would undermine an essential attribute of Congress by eviscerating the deliberative nature of that National Assembly. See,

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and forming foreign alliances, reserving to this Colony the sole and exclusive right of forming a Constitution and Laws for this Colony . . . ." 5 American Archives 860 (P. Force ed. 1844).

[15] Brief for Professor Kris W. Kobach as *Amicus Curiae* 5, 13; see Brief for Petitioner 14, n. 13. But see 1 Annals of Cong. 744 (1789) (remarks of Rep. Wadsworth) ("I have known, myself, that [instructions] have been disobeyed, and yet the representative was not brought to account for it; on the contrary, he was caressed and re-elected, while those who have obeyed them, contrary to their private sentiments, have ever after been despised for it")

e.g., *id.*, at 735 (remarks of Rep. Sherman) ("[W]hen the people have chosen a representative, it is his duty to meet others from the different parts of the Union, and consult, and agree with them to such acts as are for the general benefit of the whole community. If they were to be guided by instructions, there would be no use in deliberation; all that a man would have to do, would be to produce his instructions, and lay them on the table, and let them speak for him"). As a result, James Madison, then a Representative from Virginia, concluded that a right to issue binding instructions would "run the risk of losing the whole system." *Id.*, at 739; see also *id.*, at 735 (remarks of Rep. Clymer) (proposed right to give binding instructions was "a most dangerous principle, utterly destructive of all ideas of an independent and deliberative body, which are essential requisites in the Legislatures of free Governments"). [16]

In any event, even assuming the existence of the reserved right that petitioner asserts (and that Article VIII falls within its ambit), the question remains whether the State may use ballots for congressional elections as a means of giving its instructions binding force.

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[16] Of course, whether the members of a representative assembly should be bound by the views of their constituents, or by their own judgment, is a matter that has been the subject of debate since even before the Federal Union was established. For instance, in his classic speech to the electors of Bristol, Edmund Burke set forth the latter view:

"To deliver an opinion is the right of all men; that of constituents is a weighty and respectable opinion, which a representative ought always to rejoice to hear; and which he ought always most seriously to consider. But authoritative instructions; mandates issued, which the member is bound blindly and implicitly to obey, to vote, and to argue for, though contrary to the clearest conviction of his judgment and conscience, these are things utterly unknown to the laws of this land, and which arise from a fundamental mistake of the whole order and tenor of our constitution." The Speeches of the Right Hon. Edmund Burke 130 (J. Burke ed. 1867).

IV

The federal offices at stake 'aris[e] from the Constit u-tion itself." *U. S. Term Limits, Inc.* v. *Thornton*, 514 U. S., at 805. Because any state authority to regulate election to those offices could not precede their very creation by the Constitution, such power 'had to be delegated to, rather than reserved by, the States." *Id.*, at 804. Cf. 1 Story §627 ('It is no original prerogative of state power to a p-point a representative, a senator, or president for the union'). Through the Elections Clause, the Constitution delegated to the States the power to regulate the 'Times, Places and Manner of holding Elections for Senators and Representatives," subject to a grant of authority to Co n-gress to 'make or alter such Regulations." Art. I, §4, cl. 1; see *United States* v. *Classic*, 313 U. S. 299, 315 (1941). No other constitutional provision gives the States authority over congressional elections, and no such authority could be reserved under the Tenth Amendment. By process of elimination, the States may regulate the incidents of such elections, including balloting, only within the exclusive delegation of power under the Elections Clause.

With respect to the Elections Clause, petitioner argues that Article VIII 'merely regulates the manner in which elections are held by disclosing information about congressional candidates."[17] As such, petitioner concludes, Article VIII is a valid exercise of Missouri's delegated power.

We disagree. To be sure, the Elections Clause grants to the States 'broad power" to prescribe the procedural mechanisms for holding congressional elections. *Tashjian* v. *Republican Party of Conn.*, 479 U. S. 208, 217 (1986); see also *Smiley* v. *Holm*, 285 U. S. 355, 366 (1932) ('It cannot be doubted that these comprehensive words embrace authority to provide a complete code for congressional elections').

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[17] Brief for Petitioner 28; see also *id.*, at 38.

Nevertheless, Article VIII falls outside of that grant of authority. As we made clear in *U. S. Term Limits*, 'the Framers understood the Elections Clause as a grant of authority to issue procedural regulations, and not as a source of power to dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade important constitutional restraints." 514 U. S., at 833–834. Article VIII is not a procedural regulation. It does not regulate the time of elections; it does not regulate the place of elections; nor, we believe, does it regulate the manner of elections.[18] As to the last point, Article VIII bears no relation to the 'manner" of elections as we understand it, for in our commonsense view that term encompasses matters like 'notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns." *Smiley*, 285 U. S., at 366; see also *U. S. Term Limits, Inc.* v. *Thornton*, 514 U. S., at 833. In short, Article VIII is not among 'the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved," *Smiley*, 285 U. S., at 366, ensuring that elections are 'fair and honest," and that 'some sort of order, rather than chaos, is to accompany the democratic process," *Storer* v. *Brown*, 415 U. S. 724, 730 (1974).

Rather, Article VIII is plainly designed to favor candidates who are willing to support the particular form of a term limits amendment set forth in its text and to disfavor those who either oppose term limits entirely or would prefer a different proposal. Cf. *Anderson* v. *Celebrezze*, 460 U. S. 780, 788, n. 9 (1983) ('We have upheld generally applicable

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[18] Petitioner once shared our belief, when, in deposition testimony before the District Court, she admitted that Article VIII does not regulate the time, place, or manner of elections. App. 58.

and evenhanded [ballot access] restrictions that protect the integrity and reliability of the electoral process itself'). As noted, the state provision does not just 'instruct" each member of Missouri's congressional delegation to promote in certain ways the passage of the specified term limits amendment. It also attaches a concrete consequence to noncompliance— the printing of the statement 'DISREGARDED VOTERS' INSTRUCTIONS ON TERM LIMITS" by the candidate's name on all primary and ge n-eral election ballots. Likewise, a nonincumbent candidate who does not pledge to follow the instruction receives the ballot designation 'DECLINED TO PLEDGE TO SUPPORT TERM LIMITS."

In describing the two labels, the courts below have em-ployed terms such as 'pejorative," 'negative," 'derogatory," 'intentionally intimidating,' " 'particularly harmful," 'p o-litically damaging," 'a serious sanction," 'a penalty," and 'official denunciation." 191 F. 3d, at 918, 919, 922, 925; 996 F. Supp., at 908; see *id.*, at 910, 916. The general counsel to petitioner's office, no less, has denominated the labels as 'the Scarlet Letter." App. 34–35. We agree with the sense of these descriptions. They convey the substantial political risk the ballot labels impose on current and prospective congressional members who, for one reason or another, fail to comply with the conditions set forth in Article VIII for passing its term limits amendment. Although petitioner now claims that the labels 'merely" inform Missouri voters about a candidate's compliance with Article VIII, she has acknowledged under oath that the ballot designations would handicap candidates for the United States Congress. *Id.*, at 66. To us, that is exactly the intended effect of Article VIII.

Indeed, it seems clear that the adverse labels handicap candidates 'at the most crucial stage in the election pro c-ess— the instant before the vote is cast." *Anderson* v. *Mar-tin,* 375 U. S. 399, 402 (1964). At the same time, 'by d i-recting the citizen's attention to the single consideration" of

the candidates'fidelity to term limits, the labels imply that the issue 'is an important— perhaps paramount— consideration in the citizens' choice, which may decisively influence the citizen to cast his ballot"against candidates branded as unfaithful. *Ibid.* While the precise damage the labels may exact on candidates is disputed between the parties, the labels surely place their targets at a political disadvantage to unmarked candidates for congressional office.[19] Thus, far

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[19]That much, apparently, also seemed clear to many Members of Congress operating under Article VIII or similar label laws adopted by other States, who consequently tailored their behavior to avoid the ballot designations. For example, in 1997, the House of Representatives voted on 11 different proposals to adopt a term limits amendment to the Constitution; 7 of those proposals were dictated by voter initiatives in 7 different States. Representative Blunt of Missouri introduced the Article VIII version to 'ensure that members of the Missouri delegation have the ability to vote for language that meets a verbatim test of [the] Missouri Amendment"and thereby avoid 'the scarlet letter provision." 143 Cong. Rec. H494 (Feb. 12, 1997). However, because each of the state initiatives provided a sanction similar to the ballot labels included in Article VIII, some Representatives explained that they were constrained to vote only for the version endorsed by the voters of their States, and to vote against differing versions proposed by congressional members from other States, even though they were supportive of term limits generally. See, *e.g.*, *id.*, at H486 (remarks of Rep. Hutchinson) ('I will vote against the bill of the gentleman from Florida [Mr. McCollum], not because I am opposed to term limits but because this particular resolution does not comply with the term limit instructions approved by the voters and the people of Arkansas'); *id.*, at H490 (remarks of Rep. Crapo) ('Last Congress I supported the McCollum term limits bill that, as I said, supported a 12-year term limit. However, in this Congress I must oppose this bill because of the initiative passed by the people of the State of Idaho which requires me to oppose any term limits measure that does not have the same set of term limit conditions that are included in the initiative that was passed in the State'). As Representative Frank of Massachusetts put it, '[e]very States' Members get to vote on their States' term limits so they make them feel better and they do not get the scarlet letter." *Id.*, at H487. Consequently, the most popular proposal for such an amendment, that of Representative McCollum of Florida, received 217 votes,

from regulating the procedural mechanisms of elections, Article VIII attempts to "dictate electoral outcomes." *U. S. Term Limits, Inc.* v. *Thornton*, 514 U. S., at 833–834. Such "regulation" of congressional elections simply is not authorized by the Elections Clause.[20]

Accordingly, the judgment of the Court of Appeals is affirmed.

It is so ordered.

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10 fewer than it had in the preceding Congress. *Id.*, at H511. As for the Missouri version, it suffered a 353-to-72 defeat. *Id.*, at H497.

[20] At the margins, the parties have fought over whether the Elections Clause is even applicable because it is a grant of power to "each State by the Legislature thereof" and Article VIII is the product of referendum. Compare Brief for Petitioner 38, n. 46, with Brief for Respondents 12–13, n. 8. Of course, "[w]henever the term 'legislature' is used in the Constitution, it is necessary to consider the nature of the particular action in view." *Smiley* v. *Holm*, 285 U. S. 355, 366 (1932). Nevertheless, we need not delve into this inquiry, as it is clear, for the reasons stated in the text, that Article VIII is not authorized by the Elections Clause.

In discussing the Elections Clause issue, respondents have also relied in part on First Amendment cases upholding "time, place, and manner" regulations of speech. Brief for Respondents 13–14. Although the Elections Clause uses the same phrase as that branch of our First Amendment jurisprudence, it by no means follows that such cases have any relevance to our disposition of this case.

SUPREME COURT OF THE UNITED STATES

No. 99-929

REBECCA McDOWELL COOK, PETITIONER *v.*
DONALD J. GRALIKE AND MIKE HARMAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[February 28, 2001]

JUSTICE KENNEDY, concurring.

I join the opinion of the Court, holding §15 *et seq.* of Article VIII of the Missouri Constitution violative of the Constitution of the United States. It seems appropriate, however, to add these brief observations with respect to Part III of the opinion. The Court does not say the States are disabled from requesting specific action from Congress or from expressing their concerns to it. As the Court holds, however, the mechanism the State seeks to employ here goes well beyond this prerogative.

A State is not permitted to interpose itself between the people and their National Government as it seeks to do here. Whether a State's concern is with the proposed enactment of a constitutional amendment or an ordinary federal statute it simply lacks the power to impose any conditions on the election of Senators and Representatives, save neutral provisions as to the time, place, and manner of elections pursuant to Article I, §4. As the Court observed in *U. S. Term Limits, Inc.* v. *Thornton*, 514 U. S. 779 (1995), the Elections Clause is a "grant of authority to issue procedural regulations," and not "a source of power to dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade important constitutional restraints." *Id.*, at 833–834. The Elections Clause thus delegates but limited power over federal elections to the

States. *Id.*, at 804. The Court rules, as it must, that the amendments to Article VIII of the Missouri Constitution do not regulate the time or place of federal elections; rather, those provisions are an attempt to control the actions of the States' congressional delegation.

The dispositive principle in this case is fundamental to the Constitution, to the idea of federalism, and to the theory of representative government. The principle is that Senators and Representatives in the National Government are responsible to the people who elect them, not to the States in which they reside. The Constitution was ratified by Conventions in the several States, not by the States themselves, U. S. Const., Art. VII, a historical fact and a constitutional imperative which underscore the proposition that the Constitution was ordained and established by the people of the United States. U. S. Const., preamble. The idea of federalism is that a National Legislature enacts laws which bind the people as individuals, not as citizens of a State; and, it follows, freedom is most secure if the people themselves, not the States as intermediaries, hold their federal legislators to account for the conduct of their office. If state enactments were allowed to condition or control certain actions of federal legislators, accountability would be blurred, with the legislators having the excuse of saying that they did not act in the exercise of their best judgment but simply in conformance with a state mandate. As noted in the concurring opinion in *Thornton*, "[n]othing in the Constitution or The Federalist Papers . . . supports the idea of state interference with the most basic relation between the National Government and its citizens, the selection of legislative representatives." 514 U. S., at 842. Yet that is just what Missouri seeks to do through its law— to wield the power granted to it by the Elections Clause to handicap those who seek federal office by affixing pejorative labels next to their names on the ballot if they do not pledge to support the State's preferred

position on a certain issue. Neither the design of the Constitution nor sound principles of representative government are consistent with the right or power of a State to interfere with the direct line of accountability between the National Legislature and the people who elect it. For these reasons Article VIII is void.

This said, it must be noted that when the Constitution was enacted, respectful petitions to legislators were an accepted mode of urging legislative action. See W. Miller, Arguing About Slavery 105–107 (1995). This right is preserved to individuals (the people) in the First Amendment. Even if a State, as an entity, is not itself protected by the Petition Clause, there is no principle prohibiting a state legislature from following a parallel course and by a memorial resolution requesting the Congress of the United States to pay heed to certain state concerns. From the earliest days of our Republic to the present time, States have done so in the context of federal legislation. See, *e.g.*, 22 Annals of Cong. 153–154 (1811) (reprinting a resolution by the General Assembly of the Commonwealth of Pennsylvania requesting that the charter of the Bank of the United States not be renewed); 2000 Ala. Acts 66 (requesting targeted relief for Medicare cuts); 2000 Kan. Sess. Laws ch. 186 (urging Congress to allow state-inspected meat to be shipped in interstate commerce). Indeed, the situation was even more complex in the early days of our Nation, when Senators were appointed by state legislatures rather than directly elected. At that time, it appears that some state legislatures followed a practice of instructing the Senators whom they had appointed to pass legislation, while only requesting that the Representatives, who had been elected by the people, do so. See 22 Annals of Cong. 153–154 (1811). I do not believe that the situation should be any different with respect to a proposed constitutional amendment, and indeed history bears this out. See, *e.g.*, 13 Annals of Cong. 95–96

(1803) (reprinting a resolution from the State of Vermont and the Commonwealth of Massachusetts requesting that Congress propose to the legislatures of the States a constitutional amendment akin to the Twelfth Amendment). The fact that the Members of the First Congress decided not to codify a right to instruct legislative representatives does not, in my view, prove that they intended to prohibit nonbinding petitions or memorials by the State as an entity.

If there are to be cases in which a close question exists regarding whether the State has exceeded its constitutional authority in attempting to influence congressional action, this case is not one of them. In today's case the question is not close. Here the State attempts to intrude upon the relationship between the people and their congressional delegates by seeking to control or confine the discretion of those delegates, and the interference is not permissible.

With these observations, I concur in the Court's opinion.

SUPREME COURT OF THE UNITED STATES

No. 99-929

REBECCA McDOWELL COOK, PETITIONER *v.*
DONALD J. GRALIKE AND MIKE HARMAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[February 28, 2001]

JUSTICE THOMAS, concurring in Parts I and IV and concurring in the judgment.

I continue to believe that, because they possess "reserved" powers, 'the people of the States need not point to any affirmative grant of power in the Constitution in order to prescribe qualifications for their representatives in Congress, or to authorize their elected state legislators to do so." *U. S. Term Limits, Inc.* v. *Thornton*, 514 U. S. 779, 846 (1995) (THOMAS, J., dissenting). For this reason, I disagree with the Court's premise, derived from *U. S. Term Limits*, that the States have no authority to regulate congressional elections except for the authority that the Constitution expressly delegates to them. See *ante*, at 11. Nonetheless, the parties conceded the validity of this premise, see Brief for Petitioner 25–26; Brief for Respondents 12–13, and I therefore concur.

SUPREME COURT OF THE UNITED STATES

No. 99-929

REBECCA McDOWELL COOK, PETITIONER *v.*
DONALD J. GRALIKE AND MIKE HARMAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[February 28, 2001]

CHIEF JUSTICE REHNQUIST, with whom JUSTICE O'CONNOR joins, concurring in the judgment.

I would affirm the judgment of the Court of Appeals, but on the ground that Missouri's Article VIII violates the First Amendment to the United States Constitution. Specifically, I believe that Article VIII violates the First Amendment right of a political candidate, once lawfully on the ballot, to have his name appear unaccompanied by pejorative language required by the State. Our ballot access cases based on First Amendment grounds have rarely distinguished between the rights of candidates and the rights of voters. In *Bullock* v. *Carter*, 405 U. S. 134, 143 (1972), we said: "[T]he rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters." And in *Anderson* v. *Celebrezze*, 460 U. S. 780, 787 (1983), we said that "voters can assert their preferences only through candidates or parties or both." Actions such as the present one challenging ballot provisions have in most instances been brought by the candidates themselves, and no one questions the standing of respondents Gralike and Harmon to

raise a First Amendment challenge to such laws.*

Article I, §4, provides that '[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof . . . .' Missouri justifies Article VIII as a 'time, place, and manner' regulation of election. Restrictions of this kind are valid 'provided that they are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.' *Clark* v. *Community for Creative Non-Violence*, 468 U. S. 288, 293 (1984). Missouri's Article VIII flunks two of these three requirements. Article VIII is not only not content neutral, but it actually discriminates on the basis of viewpoint because only those candidates who fail to conform to the State's position receive derogatory labels. The result is that the State injects itself into the election process at an absolutely critical point— the composition of the ballot, which is the last thing the voter sees before he makes his choice— and does so in a way that is not neutral as to issues or candidates. The candidates who are thus singled out have no means of replying to their designation which would be equally effective with the voter.

In *Anderson* v. *Martin*, 375 U. S. 399 (1964), we held a Louisiana statute requiring the designation of a candidate's race on the ballot violated the Equal Protection

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*The Court of Appeals upheld their First Amendment claim, but based its reasoning on the view that the ballot statements were 'compelled speech' by the candidate, and therefore ran afoul of cases such as *Wooley* v. *Maynard*, 430 U. S. 705 (1977). I do not agree with the reasoning of the Court of Appeals. I do not believe a reasonable voter, viewing the ballot labeled as Article VIII requires, would think that the candidate in question chose to characterize himself as having 'disregarded voters' instructions' or as 'having declined to pledge' to support term limits.

Clause. In describing the effect of such a designation, the Court said: '[B]y directing the citizen's attention to the single consideration of race or color, the State indicates that a candidate's race or color is an important— perhaps paramount— consideration in the citizen's choice, which may decisively influence the citizen to cast his ballot along racial lines." *Id.*, at 402. So, too, here the State has chosen one and only one issue to comment on the position of the candidates. During the campaign, they may debate tax reform, Social Security, national security, and a host of other issues; but when it comes to the ballot on which one or the other of them is chosen, the State is saying that the issue of term limits is paramount. Although uttered in a different context, what we said in *Police Department of Chicago* v. *Mosley*, 408 U. S. 92, 96 (1972) is equally applicable here: '[Government] may not select which issues are worth discussing or debating."

If other Missouri officials feel strongly about the need for term limits, they are free to urge rejection of candidates who do not share their view and refuse to 'take the pledge." Such candidates are able to respond to that sort of speech with speech of their own. But the State itself may not skew the ballot listings in this way without violating the First Amendment.

LAW OFFICES
JOHN E. HAVELOCK, P.C.
135 CHRISTENSEN DRIVE, SUITE 300
ANCHORAGE, ALASKA 99501

E-MAIL - jehavelock@aol.com

TELEPHONE
AREA CODE 907
276-1916
FACSIMILE
(907) 258-9053

April 5, 2001

House Committee on State Affairs
Alaska State Legislature
Juneau, Alaska 99801-1182

RE: **HB 189: Term Limits and Term Limit Pledges**

Dear Honorable Members,

It is my understanding that you are having a hearing on this bill on April 12. I would appreciate it if this letter could be made a part of the record of testimony on the subject bill.

I support this measure and urge its passage. I was reminded of the provisions of state law when confronted with this term limits language on the ballot in the last election. This kind of government sponsored electioneering is totally out of place on the ballot which should be kept clean so as not to impede a voters choice. How can we penalize ε voter for campaigning within a hundred feet of the polling booth when we have the state of Alaska campaigning on an issue right in the privacy of the polling booth? The State is saying that the term limits issue is important more than any other issue before the voters, which is nonsense. I happen to support Representative Young's position on term limits and as a voter I resent the State implying that there may be something wrong with his position on the ballot.

In addition to the policy reasons for supporting the repeals provided for in HB 189, as a lawyer and former Attorney General I am sensitive to the legal problems with these provisions of our statutes. The government has no business telling us why we should vote for a candidate. This is a First Amendment issue. While I understand Attorney General Botelho has toned down the effect of the statutes in an attempt to give the legislative intent some life, I fear he has not been stern enough. The government can abridge free speech by singling out an issue of policy discussion for government control. I fear it has done so here.

Under any analysis there is little gained here but the possibility of a lawsuit, a suit which I anticipate would be lost by the government. I have been asked whether I would bring a constitutional case against these sections, but why waste government and personal assets on defending such an action when the policy is so bad, however the Supreme Court may rule? Let the legislature act.

I urge you to enact this bill and repeal these provisions that constrain the right of the public to consider a clean ballot in exercising the right to vote.

Sincerely,

John Havelock

cc: Attorney General Botelho

HB 193

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM April 6, 2001

SUBJECT: Constitutionality of June 1 Deadline for Nominating Petitions (CSHB 193(JUD), Work Order No. 22-GH1089\O)

TO: Representative Norman Rokeberg
Attn: Heather Martel Nobrega

FROM: Kathryn L. Kurtz KK
Legislative Counsel

I have just received a copy of the Alaska Superior Court order granting a preliminary injunction in Sykes v. State, 3AN-90-7508-CI. In that order, Judge Fabe found:

> The August 1 deadline for filing nominating petitions is unconstitutional for the reasons stated on the record, 9/20/90, and that any deadline which precedes the date of the primary election would not pass constitutional scrutiny under either a balancing test or the compelling state interest test.

This decision was apparently not appealed by the state.

Although this decision is not published, the reasoning is consistent with what one might expect given the federal cases cited in my April 5 memo to you. Again, in order to avoid a potential first amendment challenge, it would be advisable to change the deadline for filing nominating petitions from June 1 to the date of the primary election.

KLK:jhb
01-010.jhb

Enclosure

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

JIM SYKES
JEANMARIE LARSON CRUMB
P.O. Box 141474
Anchorage, AK 99514
(907) 278-7436

Plaintiffs, in Pro Per

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

JIM SYKES,
JEANMARIE LARSON CRUMB

Plaintiffs

vs.

STATE OF ALASKA LIEUTENANT GOVERNOR STEVEN MC ALPINE, in his official capacity of Director of Elections,

Defendant.

Filed in the Trial Courts
STATE OF ALASKA THIRD DISTRICT
SEP 21 1990

Sept. 21, 1990

Case No. 3AN-90-7508-CI

PRELIMINARY INJUNCTION ORDER

Based on Plaintiffs' Motions For Preliminary Injunction and Temporary Restraining Order dated September 7, 1990, and for good cause having been shown, and this court having been fully advised by review of both plaintiffs' and defendant's arguments,

THE COURT HEREBY FINDS:

A. The August 1 deadline for filing nominating petitions is unconstitutional under ~~Vogler v. Miller, 651 P.2d 1, 5 (Alaska 1982)~~, and that any deadline which precedes the date of the primary election would not pass constitutional scrutiny ~~under Vogler~~, under either a balancing test or the compelling state interest test. for the reasons stated on the record, 9/20/90

B. Plaintiffs Jim Sykes and Jeanmarie Larson Crumb have submitted sufficient signatures demonstrating the modicum of support in AS15.25.160 by Aug 27, 1990, the day before the primary.

THEREFORE IT IS HEREBY ORDERED that the State of Alaska and the Division of Elections are enjoined from printing and distributing either the Official Election Pamphlets or the

1990 Official General Election Ballots until the following conditions are met:

1. All nominating petition signatures that have been submitted to the Division of Elections shall be ~~certified~~ counted and audited by Aug 27, 1990.

2. The names of Governor Candidate Jim Sykes and Lieutenant Governor Candidate Jeanmarie Larson Crumb be placed on the 1990 Official General Election Ballot.

3. The candidate materials of Jim Sykes and Jeanmarie Larson Crumb be placed in the 1990 Official Election Pamphlet in the section with other Governor and Lieutenant Governor candidates. If this it is not reasonably practical, then the materials may be presented on facing pages elsewhere within the pamphlet providing that prominent, bordered, notice be displayed on either the front page or index page stating the location of the additional Governor and Lieutenant Governor Candidates information within the pamphlet.

Date 9/21/90 Dana Fabe

Honorable Judge Dana Fabe

Superior Court

I certify that on 9/21/90, a copy of the above was mailed to each of the following at their address of record: Sykes/Allard Crumb

Secretary/Deputy Clerk

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM April 5, 2001

SUBJECT: Date of Filing Nominating Petitions
(Work Order No. 22-GH1089\O, CSHB 193(JUD))

TO: Representative Norman Rokeberg, Chair
House Judiciary Committee
Attn: Heather Martel Nobrega

FROM: Kathryn L. Kurtz KK
Legislative Counsel

Enclosed is the committee substitute you requested, incorporating the conceptual amendment.

In order to preclude the appearance of candidates nominated by petition on any party's primary ballot, this bill does the following:

- changes AS 15.25.190 to provide that the names of candidates nominated by petition will appear on the general election ballot rather than the primary ballot;
- changes AS 15.25.200 to reflect the change noted above;
- repeals AS 15.25.205, since most of it relates to the primary;
- adds a subsection to AS 15.25.180 requiring that candidates for governor nominated by petition provide the name of the candidate for lieutenant governor running jointly with them, to replace that aspect of AS 15.25.205 and maintain consistency with Article III, section 8 of the Constitution of the State of Alaska (which refers to candidates running jointly, and provides in part: "In the general election the votes cast for a candidate for governor shall be considered as cast also for the candidate for lieutenant governor running jointly with him. The candidate whose name appears on the ballot jointly with that of the successful candidate for governor shall be elected lieutenant governor.");
- changes AS 15.25.185 to reflect the repeal of AS 15.25.205; and
- changes the title to include a reference to nomination for the general election, to cover the changes in nomination by petition.

This draft does not change the deadline for filing nominating petitions, which is June 1 in the current statutes. This may raise a constitutional issue, since it puts the deadline well before the date of the election.

In Anderson v. Celebrezze, 460 U.S. 780 (1982), the United States Supreme Court invalidated a March deadline for independent candidates wishing to appear on the November general election ballot, holding that the early deadline burdened voters' freedom of choice and association without an adequate administrative justification. The court provided the following process for analyzing challenges to state election laws:

> [A court] must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interest put forward by the State as justification for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights.

Id. at 789. Still, the court also acknowledged that "the State's important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions." *Id.* at 1570.

Two recent federal court cases have applied Anderson case analysis to uphold statutory schemes placing the filing deadline for nominating petitions on the same day as the primary election. Coucil of Alternative Political Parties v. Hooks, 179 F.3d 64 (3d Cir. 1999); Wood v. Meadows, 207 F.3d 708 (4th Cir. 2000).

Prior to 1995, candidates nominated by petition in Alaska were listed on the general election ballot, and the deadline for filing nominating petitions was August 1. The attorney general's office informs me that this deadline was challenged in superior court, and changed to the date of the primary election. The state did not appeal, so there is no published decision, and I have not yet had the opportunity to review a copy of the superior court's order in the case.

If you have any questions, please call.

KLK:med
01-060.med

Enclosure

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM April 5, 2001

SUBJECT: Conceptual Amendment to
Work Order No. 22-GH1089\L (CSHB 193(JUD))

TO: Representative Norman Rokeberg
Attn: Heather Martel Nobrega

For previous CS

FROM: Kathryn L. Kurtz KLK
Legislative Counsel

Enclosed is the committee substitute you requested, incorporating the conceptual amendment. In order to preclude the appearance of candidates nominated by petition on any party's primary ballot, this bill does the following:

- changes AS 15.25.190 to provide that the names of candidates nominated by petition will appear on the general election ballot rather than the primary ballot;
- changes AS 15.25.200 to reflect the change noted above;
- repeals AS 15.25.205, since most of it relates to the primary;
- adds a subsection to AS 15.25.180 requiring that candidates for governor nominated by petition provide the name of the candidate for lieutenant governor running jointly with them, to replace that aspect of AS 15.25.205 and maintain consistency with Article III, section 8 of the Constitution of the State of Alaska (which refers to candidates running jointly, and provides in part: "In the general election the votes cast for a candidate for governor shall be considered as cast also for the candidate for lieutenant governor running jointly with him. The candidate whose name appears on the ballot jointly with that of the successful candidate for governor shall be elected lieutenant governor.");
- changes AS 15.25.185 to reflect the repeal of AS 15.25.205;
- changes the title to include a reference to nomination for the general election, to cover the changes in nomination by petition; and
- changes the deadline for filing nominating petitions, in order to avoid a potential constitutional issue. *See* Anderson v. Celebrezze, 460 U.S. 780 (1982) (holding that a March deadline for independent candidates wishing to appear on the November general election ballot was too early, burdening the voters' freedom of choice and association without an adequate administrative justification).

If you have any questions, please call.

KLK:med
01-057.med

Enclosure

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 4, 2001 **FURTHER REFERRALS: Finance**

Date of Committee Action: 4.4.01

The JUDICIARY Committee considered: **HB 193**

HOUSE BILL NO. 193 **MODIFIED BLANKET PRIMARY ELECTION**

"An Act relating to the primary election; and providing for an effective date."

Recommends it be replaced with _____ CS HB193 (JUD) **[ ] Same Title [ ] New Title**

For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____

[ ] attach amendments

[ ] add new referral to _____ Committee

[ ] Letter of Intent _____ Committee

List of Abbrev. For Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LAA
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**

*For Chief Clerk's Office Use Only

FN# *	List by Dept(s):	Fiscal	Indet.	Zero

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN #	Fiscal	Indet.	Zero
DOT	1	Y		

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
Jennifer James	JAMES	✓			
Elliott Kookogey	Kookogey		✓		
John Coghill	Coghill				✓
Kim Meyer	JMeyer	✓			
Chair: Norman Rokeberg		✓			
Chair:					

FAILS

AMENDMENT #1

OFFERED IN THE HOUSE by Representative Kookesh

TO: CS HB 193 (STA) JUD

Page ~~2~~ 3, line ~~28~~ 3:

Add a new subsection (d) "**(c) If a political party's bylaws do not permit voters not registered with a political party or registered with another political party to participate in that political party's primary ballot, all costs incurred by the state to administer that political party's primary election shall be reimbursed by that political party**"

FAILS

AMENDMENT #2

OFFERED IN THE HOUSE JUD by Representative Kookesh

TO: CS HB 193 (~~STA~~)

Page ~~3~~, line ~~6~~ 12

Delete "not" 12

Page 3, line ~~6~~, following "writing"

Delete "or pasting in"

Adopted

Conceptual Amendment #3

exclude from any party's ballot
the names of any non-party candidates

→ exclude from primary ballot

22-GH1089\J
Kurtz
4/4/01

Adopted

CS FOR HOUSE BILL NO. 193( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

"An Act relating to the primary election; and providing for an effective date."

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

*** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

PURPOSE. The purpose of this Act is to

(1) comply with the decision of the United States Supreme Court in California Democratic Party v. Jones, 530 U.S. 567 (2000); and

(2) have a new system in place in time to conduct the next primary election in an orderly and efficient manner consistent with this court decision.

*** Sec. 2.** AS 15.25.010 is amended to read:

Sec. 15.25.010. Provision for primary election. Candidates for the elective state executive and state and national legislative offices shall be nominated in a primary election by direct vote of the people in the manner prescribed by this chapter. **The director shall prepare and provide a primary election ballot for each political party. A voter registered as affiliated with a political party may vote**

that party's ballot. A voter registered as nonpartisan or undeclared rather than as affiliated with a particular political party may vote the political party ballot of the voter's choice unless prohibited from doing so under AS 15.25.014. A voter registered as affiliated with a political party may not vote the ballot of a different political party unless permitted to do so under AS 15.25.014.

* **Sec. 3.** AS 15.25 is amended by adding a new section to read:

Sec. 15.25.014. Participation in primary election selection of a political party's candidates. (a) Not later than 5:00 p.m., Alaska time, on September 1 of the calendar year before the calendar year in which a primary election is to be held, a political party shall submit a notice in writing to the director stating whether the party bylaws expand or limit who may participate in the primary election for selection of the party's candidates for elective state executive and state and national legislative offices. A copy of the party's bylaws expanding or limiting who may participate in the primary election for selection of the party's candidates, documentation required under (b) of this section, and other information required by the director, must be submitted along with the notice. The notice, bylaws, documentation, and other information required by the director shall be provided by the party's chairperson or another party official designated by the party's bylaws.

(b) Once a political party timely submits a notice and bylaws under (a) of this section and the director finds that the party has met the requirements of this chapter and other applicable laws, the director shall permit a voter registered as affiliated with another party to vote the party's ballot if the voter is permitted by the party's bylaws to participate in the selection of the party's candidates and may not permit a voter registered as nonpartisan or undeclared to vote a party's ballot if the party's bylaws restrict participation by nonpartisan or undeclared voters in the party's primary. However, for a subsequent primary election, the party shall timely submit another notice, bylaws, documentation, and other information under (a) of this section if the party's bylaws regarding who may participate in the primary election for selection of the party's candidates change.

(c) Party bylaws required to be submitted under (a) of this section must be precleared by the United States Department of Justice under 42 U.S.C. 1973c (sec. 5,

Voting Rights Act of 1965) before submission. Documentation of the preclearance must accompany the bylaws submitted under (a) of this section.

* **Sec. 4.** AS 15.25.060 is repealed and reenacted to read:

Sec. 15.25.060. Preparation and distribution of ballots. (a) The primary election ballots shall be prepared and distributed by the director in the manner prescribed in this section. The director shall prepare and provide a primary election ballot for each political party that contains all of the candidates of that party for elective state executive and state and national legislative offices. The director shall print the ballots on white paper and place the names of all candidates who have properly filed in groups according to offices. The order of the placement of the names for each office shall be as provided for the general election ballot. Blank spaces may not be provided on the ballot for the writing or pasting in of names.

(b) A voter may vote only one primary election ballot. A voter may vote a political party ballot only if the voter is registered as affiliated with that party, is allowed to participate in the party primary under the party's bylaws, or is registered as nonpartisan or undeclared rather than as affiliated with a particular political party and the party's bylaws do not restrict participation by nonpartisan or undeclared voters in the party's primary. For the purpose of determining which primary election ballot a voter may use, a voter's party affiliation is considered to be the affiliation registered with the director as of the 30th day before the primary election. If a voter changes party affiliation within the 30 days before the primary election, the voter's previous party affiliation shall be used for the determination under this subsection.

* **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).

ALASKA STATE HOUSE OF REPRESENTATIVES

Interim Address:
119 N. Cushman, Suite 211
Fairbanks, AK 99701
(907)-456-5081
Fax# (907)-456-8245

Session Contact:
(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 102

REPRESENTATIVE JOHN COGHILL

CSHB 193(STA) PRIMARY ELECTION
Sponsor Statement

The United States Supreme Court ruled in California Democratic Party et al. v. Jones, Secretary of State, et al., (530 U.S. 567, 2000) that the petitioners of California Proposition 198 which implemented California's blanket primary violated a political party's right to association. Governor Knowles has completely disregarding this decision by introducing HB 193 and SB 146. His approach is to enact the blanket primary and leave it up to the party to exclude voters from participation.

The intent of *California Democratic Party v. Jones* was to implement a primary system that allows a party to nominate its candidates for the general election and provide a mechanism by which they could include voters other than registered party members. In the Courts decision was very explicit in this regard by citing Eu v. San Francisco County Democratic Central Committee, (489 U.S. 214):

> "In no area is the political association's right to exclude more important than in its candidate-selection process. That process often determines the party's positions on significant public policy issues, and it is the nominee who is the party's ambassador charged with winning the general electorate over to its views. The First Amendment reserves a special place, and accords a special protection, for that process."

California goes even further in protecting the right of inclusion:

> "California blanket primary violates these principles [right to association]. Proposition 198 forces petitioners to adulterate their candidate-selection process—a political party's basic function—by opening it up to person wholly unaffiliated with the party, who may have different views from the party. "

It is not the power of the State to include; it is the Party's right to exclude. The legislation implementing a primary election should start at that point. My suggestion is that the director of elections prepares a primary election ballot for each political party. Any political party wanting to include participation of voters other than registered party members may provide

written notice to the director of elections by 5:00 p.m. November 1st of the calendar year prior to the primary election requesting that members of other parties or unaffiliated member be permitted access to the party's ballot.

Representative_John_Coghill@LEG.state.ak.us

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Fairbanks, AK 99701
(907)-456-5081
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State Capitol
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REPRESENTATIVE JOHN COGHILL

CSHB 193 SECTIONAL

Section 1. Intent language to comply with Democratic Party v. Jones, 530 U.S. 567(2000) and have a system in place in time for the 2002 Primary Election.

Section 2. Provides that the director shall prepare a primary ballot for each political party. It also provides that a person not registered with a political party many not vote that party's ballot unless that political party has precleared by-laws and given written notice to the Division of Elections that allows persons other than persons registered with the party to vote the ballot.

Section 3. Provides that a party must submit written notice to the director of elections by 5:00 p.m., Alaska Time on November 1 of the calendar year prior to the primary election that the party by-laws provide for provisions to vote in the primary different than those reflected on the primary ballot. The party's by-laws must accompany the application. It provides that once this process is used, all subsequent primaries will use the expanded ballot until such time the party submits written notice of a new process. The U.S. Department of Justice must preclear the by-laws of the party before submission.

Section 5. The language all primary ballots will be printed on white paper and that each voter may vote only one primary ballot. The order of names on the ballot will be the same as the order would be in the general election and there will be no spaces for write-in candidates. It also provides that the voter's party eligibility will be based on the voter's registered party 30 days prior to the primary.

Section 6. Effective date is immediate.

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According to Black's a primary election is a preliminary election. The primary election selects candidates for the general election. Historically, primary elections were a means of members of a political party to nominate or select their preference for their party candidate for the General Election.

It is noteworthy to cite Justice Rabinowitz in his April, 1996 dissent of O'Callaghan v. Alaska. He stated:

> ***In my view, Alaska's blanket primary statute impermissibly burdens the Republican Party of Alaska's political rights of association in violation of the First and Fourteenth Amendments to the United State Constitution."***

Rabinowitz argued that while the blanket primary did not specifically interfere with the Republican Party of Alaska's right to have candidates on the primary ballot, the state prohibited the RPA from selecting candidates according to its chosen method.

California Democratic Party *et al* v. Jones, Secretary of State of California, *et al.* (530 U.S. 567, 2000), resulted in a U.S. Supreme Court decision mirroring Justice Rabinowitz dissent. This case came about when Proposition 198 implemented a blanket primary in the State of California in 1996. The California Democratic Party, the California Republican Party, Libertarian Party of California, and the Peace and Freedom Party all had party rules prohibiting a person not registered members of their party from voting in their primary and challenged the blanket primary.

The U.S. Supreme Court in California Democratic Party *et al* v. Jones, Secretary of State of California, *et al.* No. 99-401, June 26, 2000, Justice Scalis drew the same conclusion and held:

"California's blanket primary violates a political party's First Amendment right of association."

This ruling simply says that political parties can, by the right to association, limits access to candidates of their party affiliation on the primary ballot.

Regardless of whether you approve of a closed primary or not, a closed primary is constitutional and the decision of voter access to a party's primary ballot is one of each political party.

PRIMARY ELECTION – A preliminary election for the nomination of candidates for office or of delegates to a party convention, designed as a substitute for party conventions. Such elections are classified as closed or open depending on whether or not tests of party affiliation are required.

-Black's Law Dictionary, Sixth Edition, Page 1190; West Publishing Co., St. Paul, Minn. 1990

CLOSED PRIMARY – Exists where members of each political party participate in nominating candidates of that party, and the voters of one party are not allowed to nominate a candidate for another party.

-Black's Law Dictionary, Sixth Edition, Page 255; West Publishing Co., St. Paul, Minn. 1990

GENERAL ELECTION - One for a definite purpose, regularly occurring at fixed intervals without any requirement other than the lapse of time. One at which the officers to be elected are such as belong to the general government; that is, the general and central political organization of the whole state, as distinguished from an election of officers for a particular locality only.

-Black's Law Dictionary, Sixth Edition, Page 518; West Publishing Co., St. Paul, Minn. 1990

POPULAR ELECTION – Election by people as a whole, rather than by a select group of people.

-Black's Law Dictionary, Sixth Edition, Page 518; West Publishing Co., St. Paul, Minn. 1990

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REPRESENTATIVE JOHN COGHILL

Date: March 24, 2001
To: Representative John Coghill
From: Rynnieva Moss, Legislative Aide
Re: Primary Election Legislation

As requested, I reviewed O'Callaghan v. Alaska, 914 P. 2d 1250 (Alaska, 1996). Had Section 3 of your bill been in statute when the Alaska State Supreme Court heard this case, I believe the partially-closed primary would still be law.

In the Court's finding, they base their decision on the argument of the State and the Alaskan Voters for an Open Primary that "a voter may change party registration immediately before voting in the partially-closed primary, which also facilitates raiding." This rationale overshadowed the Republican Party of Alaska's argument that the partially-closed primary was a means for the Party to protect itself against raiding.

The State argued that the blanket primary encouraged voter turnout, maximized voters' freedom of choice, and ensures that officers elected are representative of the people to be governed. The Alaska Supreme Court in a primary saw these rights as inherent, when, in fact, this standard should apply to the general election.

> *GENERAL ELECTION - One for a definite purpose, regularly occurring at fixed intervals without any requirement other than the lapse of time. One at which the officers to be elected are such as belong to the general government; that is, the general and central political organization of the whole state, as distinguished from an election of officers for a particular locality only.*
>
> *-Black's Law Dictionary, Sixth Edition, Page 518; West Publishing Co., St. Paul, Minn. 1990*

In O'Callaghan, the Court's final ruling was that both sides in this case had arguments with strengths and weaknesses and the Court's function was not to resolve them. The Court only ruled the State's interest in a voter participation outweighed the RPA's associational interests, therefore, the blanket primary statute is constitutional. The Court completely disregarded the rights of political parties, because raiding was potential anyway with the provision allowing voters to change their party affiliation at the polls.

In closing, I would just say that the Alaska Supreme Court has a history of making bad decisions. *O'Callaghan* is one of those bad decisions.