

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 86/2

10312 HOUSE JUDICIARY

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courts from upholding citizens' constitutional rights. Indeed, constitutional legal rulings commonly affect state programs and funding. Many of the most heralded constitutional decisions of the past century have, as a practical matter, effectively required state expenditures. In *Green v. County School Board*, the United States Supreme Court ordered effective desegregation of public schools;⁷⁴ in *Gideon v. Wainwright*, it required funding of counsel for indigent criminal defendants;⁷⁵ and in *Shapiro v. Thompson*, it required states to give newcomers to the jurisdiction equal welfare benefits.⁷⁶ In each of these cases, a judicial decision upholding constitutional rights required state expenditures to support those rights. As appellee doctors and Planned Parenthood point out, the funding implications and separation of powers issue in this case would be identical if the State relied on other suspect criteria, such as race, to deny Medicaid benefits. Following the State's argument, the exclusion of one ethnic group -- or inclusion only of other specified groups -- within legislative Medicaid appropriations would be immunized from constitutional review, merely because the legislature had exercised its spending power. We emphatically reject such a claim. Like the Supreme Court decisions listed above, today's holding is squarely within the authority of the court, not in spite of, but because of, the judiciary's role within our divided system of government.

Our conclusion that the separation of powers doctrine supports today's decision is firmly supported by twenty-one other courts that have considered a state's exclusion of medically necessary abortions from state-funded health care programs.⁷⁷ The State has not identified a single state or federal case holding that the separation of powers precludes a court from ordering the state to provide equal funding for women whose health is endangered by pregnancy.⁷⁸ Courts that have explicitly considered separation of powers challenges to holdings like the one we reach today have dismissed the challenges in no uncertain terms. The Massachusetts Supreme Judicial Court, for example, wrote:

We have never embraced the proposition that merely because a legislative action involves an exercise of the appropriations power, it is on that account immunized against judicial review. [We reject] the argument that either the doctrine of separation of powers or the political question doctrine requires that result. Without in any way attempting to invade the rightful province of the Legislature to conduct its own business, we have a duty, certainly since *Marbury v. Madison*, to adjudicate a claim that a law and the actions undertaken pursuant to that law conflict with the requirements of the Constitution. "This," in the words of Mr. Chief Justice Marshall, "is of the very essence of judicial duty." [79]

We agree with this articulation of the court's fundamental powers and duties.

A federal case, *State of Georgia v. Heckler*, also directly supports our conclusion.⁸⁰ In that case, the state of Georgia sought reimbursement from the federal Department of Health and Human Services (HHS) for money spent by the state to fund medically necessary abortions. Although the Court of Appeals for the Eleventh Circuit ultimately denied Georgia's claim, it emphatically rejected HHS's argument that because Congress

had not appropriated money for medically necessary abortions, a district court could not compel HSS to pay the claims.⁸¹ As the Eleventh Circuit court noted, the statute could preclude payment only if an interpreting court so determined.⁸² "There is no doubt," the Heckler court concluded, "that if this Court decided that these payments were legally required, HHS would be authorized to make them."⁸³

We agree with the Eleventh Circuit: It is legally indisputable that a trial court order requiring state compliance with constitutional standards does not violate the separation of powers doctrine.

V. CONCLUSION

The manner in which the State allocates public benefits is subject to constitutional limitation under Alaska's equal protection provision. The State, having undertaken to provide health care for poor Alaskans, must adhere to neutral criteria in distributing that care. It may not deny medically necessary services to eligible individuals based on criteria unrelated to the purposes of the public health care program. Moreover, the DHSS regulation in this case discriminatorily burdens the exercise of a constitutional right. Because we conclude that denial of Medicaid assistance to poor women who medically require abortions violates equal protection, we AFFIRM the decision of the superior court.

DISPOSITION

The manner in which the State allocates public benefits is subject to constitutional limitation under Alaska's equal protection provision. The State, having undertaken to provide health care for poor Alaskans, must adhere to neutral criteria in distributing that care. It may not deny medically necessary services to eligible individuals based on criteria unrelated to the purposes of the public health care program. Moreover, the DHSS regulation in this case discriminatorily burdens the exercise of a constitutional right. Because we conclude that denial of Medicaid assistance to poor women who medically require abortions violates equal protection, we AFFIRM the decision of the superior court.

OPINION FOOTNOTES

1 AS 47.07.010.

2 See *Committee to Defend Reprod. Rights v. Myers*, 29 Cal. 3d 252, 625 P.2d 779, 172 Cal. Rptr. 866 (Cal. 1981); *Moe v. Secretary of Admin. & Fin.*, 382 Mass. 629, 417 N.E.2d 387 (Mass. 1981); *Women of Minnesota v. Gomez*, 542 N.W.2d 17 (Minn. 1995); *Right to Choose v. Byrne*, 91 N.J. 287, 450 A.2d 925 (N.J. 1982); *New Mexico Right to Choose/NARAL v. Johnson*, 1999 NMSC 5, 975 P.2d 841, 126 N.M. 788 (N.M. 1998), cert. denied, 526 U.S. 1020, 143 L. Ed. 2d 352 (1999); *Women's Health Ctr. of W. Va., Inc. v. Panepinto*, 191 W. Va. 436, 446 S.E.2d 658 (W. Va. 1993); but see *Renee B. v. State, Agency for Health Care Admin.*, 2001 Fla. LEXIS 1396, No. S.C. 00-989, 2001 WL 776533, So. 2d (Fl. July 12, 2001); *Doe v. Department of Soc. Servs.*, 439 Mich. 650, 487 N.W.2d 166 (Mich. 1992); *Rosie J. v. North Carolina Dep't of Human Resources*, 347 N.C. 247, 491 S.E.2d 535 (N.C. 1997); *Hope v. Perales*, 83 N.Y.2d 563, 634 N.E.2d 183, 611 N.Y.S.2d 811 (N.Y. 1994); *Fischer v. Department of Pub. Welfare*, 509 Pa. 293, 502 A.2d 114 (Pa. 1985).

A number of lower state courts have also found that funding restrictions similar to those challenged today violated their state constitutions. See *Simat Corp. v. Arizona Cost Containment System Admin.*, [slip op.], No. CV1999014614 (Ariz. Super. May 23, 2000); *Doe v. Maher*, 40 Conn. Supp. 394, 515 A.2d 134 (Conn. Super. 1986); *Roe v. Harris*, [slip op.], NO. 96977 (Idaho Dist. Feb. 1, 1994); *Doe v. Wright*, [slip op.], No. 91-CH-1958 (Ill. Cir. Dec. 2, 1994); *Clinic for Women v. Humphreys*, [slip op.], No. 49D12-9908-MI-1137 (Ind. Super. Oct. 18, 2000); *Jeannette R. v. Ellery*, [slip op.], No. BDV-94-811 (Mont. Dist. May 19, 1995); *Planned Parenthood Ass'n v. Department of Human Resources of Oregon* 63 Ore. App. 41, 663 P.2d 1247 (Or. App. 1983), *aff'd on other grounds*, 687 P.2d 785 (Or. 1984) (declining to reach constitutional issue); *Low-Income Women of Texas v. Bost*, 38 S.W.3d 389 (Tex. App. 2000); *Doe v. Celani*, [slip op.], No. S81-84CnC (Vt. Super. May 23, 1986); but see *Doe v. Childers*, [slip op.], No. 94CI02183 (Ky. Cir. Aug. 7, 1995).

3 *Myers*, 625 P.2d at 780.

4 *Id.*

5 *Id.*

6 *Id.*

7 See AS 47.07; see also 42 U.S.C. § 1396-1396v (1997).

A second program, Chronic and Acute Medical Assistance (CAMA) complements Medicaid by providing some medical care for Alaskans who are poor but ineligible for Medicaid. See AS 47.08.150. CAMA's predecessor, the General Relief Medical program (GRM), funded abortions for eligible women when the procedure was necessary to protect their health or when pregnancy resulted from sexual assault, sexual abuse of a minor, or incest. See 7 AAC 47.200(a)(4)(F) (2000); 7 AAC 47.290(8) (2000). In 1998, after nearly 30 years of government support for medically necessary abortions through GRM, the legislature stopped funding the program and enacted CAMA as a replacement. CAMA covers essentially the same services as GRM, except that it does not fund any abortions. Compare AS 47.08.150 with 7 AAC 47.200.

8 See AS 47.07.010. Medicaid relies on joint state-federal funding, with the federal government paying a portion of the state's costs. See 42 U.S.C. §§ 1396b(a), 1396d(b). The "Hyde Amendment" limits federal Medicaid contributions for abortions: Federal funding is available for abortions in cases of rape or incest or where the woman's life is in danger, but not for abortions necessary to protect a woman's health. See Pub. L. No. 106-554, §§ 508-509, 114 Stat. 2763 (2000); *Right to Choose v. Byrne*, 91 N.J. 287, 450 A.2d 925, 928-29 (N.J. 1982) (discussing history of Hyde Amendment).

9 7 AAC 43.140 (2000) provides in part:

(a) Payment for an abortion will, in the department's discretion, be covered under Medicaid if the physician services invoice is accompanied by certification that the

- (1) life of the mother would be endangered if the pregnancy were carried to term; or
- (2) pregnancy is the result of an act of rape or incest.

10 *Valley Hosp. Ass'n v. Mat-Su Coalition for Choice*, 946 P.2d 963, 969 (Alaska 1997).

11 For part of the time that this appeal was pending, DHSS continued to withhold funding for medically necessary abortions, despite the superior court's injunction. On Planned Parenthood's motion, the superior court held a show cause hearing to determine whether the Department was in contempt of court. The court heard DHSS's claim that funding was unavailable, and determined, after a "struggle", not to hold

the agency in contempt. However, the court issued a new injunction to reiterate the terms of the first injunction and explicitly direct that, while DHSS retained discretion over its use of resources, it should consider state Medicaid funds available to pay for medically necessary abortions. The parties on appeal presented records from these proceedings and additional related briefing.

12 *M.C. v. Northern Ins. Co. of N.Y.*, 1 P.3d 673, 674-75 (Alaska 2000).

13 See *Follins v. State, Dep't of Revenue, Alcoholic Beverage Control Bd.*, 991 P.2d 202, 206 (Alaska 1999).

14 See *James v. McCombs*, 936 P.2d 520, 523 n.2 (Alaska 1997); see also *Dixon v. Dixon*, 747 P.2d 1169, 1175 n.5 (Alaska 1987).

15 Alaska Const. art. I, § 1.

16 See *supra* note 2.

17 See, e.g., *Doe v. Maher*, 40 Conn. Supp. 394, 515 A.2d 134, 157-59 (Conn. Super. 1986); *Right to Choose v. Byrne*, 91 N.J. 287, 450 A.2d 925, 934-37 (N.J. 1982); *Planned Parenthood Ass'n v. Department of Human Resources of Oregon*, 63 Ore. App. 41, 663 P.2d 1247, 1257-61 (Or. App. 1983), *aff'd on other grounds*, 297 Ore. 562, 687 P.2d 785 (Or. 1984); see also *Committee to Defend Reprod. Rights v. Myers*, 29 Cal. 3d 252, 625 P.2d 779, 172 Cal. Rptr. 866 (Cal. 1981).

18 See, e.g., *New Mexico Right to Choose/NARAL v. Johnson*, 1999 NMSC 5, 975 P.2d 841, 850-57, 126 N.M. 788 (N.M. 1998); *Doe v. Maher*, 515 A.2d at 159-62.

19 See, e.g., *Moe v. Secretary of Admin. & Fin.*, 382 Mass. 629, 417 N.E.2d 387, 398-99 (Mass. 1981); *Doe v. Maher*, 515 A.2d at 146-57.

20 See, e.g., *Women of Minnesota v. Gomez*, 542 N.W.2d 17, 26-32 (Minn. 1995); *Women's Health Ctr. of W. Va., Inc. v. Panepinto*, 191 W. Va. 436, 446 S.E.2d 658, 664-66 (W. Va. 1993).

21 *Panepinto*, 446 S.E.2d at 667; see also *Myers*, 625 P.2d at 781 (addressing the narrow question "whether the state, having enacted a general program to provide medical services to the poor, may selectively withhold such benefits from otherwise qualified persons because such persons seek to exercise their constitutional right of procreative choice in a manner which the state does not favor and does not wish to support" and holding that it may not); *Gomez*, 542 N.W.2d at 28 (defining the "relevant inquiry" as "whether, having elected to participate in a medical assistance program, the state may selectively exclude from such benefits otherwise eligible persons solely because they make constitutionally protected health care decisions with which the state disagrees," and concluding that the state may not); *Byrne*, 450 A.2d at 937 ("We hold that the State may not jeopardize the health and privacy of poor women by excluding medically necessary abortions from a system providing all other medically necessary care for the indigent."); *Johnson*, 975 P.2d at 856 ("Courts very rarely require the government to fund its citizens' exercise of their constitutional rights. . . . But that is not to say that when the Department elects to provide medically necessary services to indigent persons, it can do so in a way that discriminates against some recipients on account of their gender.").

22 *Moe*, 417 N.E.2d at 401 (quoting *Maher v. Roe*, 432 U.S. 464, 469-70, 53 L. Ed. 2d 484, 97 S. Ct. 2376 (1977)).

23 *Id.*

24 *Alaska Pacific Assurance Co. v. Brown*, 687 P.2d 264, 271 (Alaska 1984).

25 See *State v. Anthony*, 810 P.2d 155, 157 (Alaska 1991).

26 See *Matanuska-Susitna Borough Sch. Dist. v. State*, 931 P.2d 391, 396 (Alaska 1997).

27 *Id.* (quoting *Alaska Pacific Assurance Co.*, 687 P.2d at 269).

28 See *id.*; *State v. Ostrosky*, 667 P.2d 1184, 1192 (Alaska 1983).

29 See *id.*

30 *Alaska Pacific Assurance Co.*, 687 P.2d at 271.

31 See *Matanuska-Susitna Borough Sch. Dist.*, 931 P.2d at 396 (quoting *Alaska Pacific Assurance Co.*, 687 P.2d at 269-70).

32 See 931 P.2d at 396-97.

33 See *Valley Hosp. Ass'n v. Mat-Su Coalition for Choice*, 948 P.2d 963, 968-69 (Alaska 1997).

34 See *State v. Ostrosky*, 667 P.2d 1184, 1192 (Alaska 1983).

35 *Id.*

36 *Valley Hosp.*, 948 P.2d at 969.

37 687 P.2d at 273-74.

38 See *id.* We have since applied more relaxed scrutiny where "the infringement on [the] right to travel is relatively small and would not be likely to deter a person from traveling." *Church v. State, Dep't of Revenue*, 973 P.2d 1125, 1131 (Alaska 1999). In this case the likelihood of deterring exercise of the right is very high: The State's own statistics and the findings of the superior court indicate that, under the challenged regulation, some women "will have no choice but to go forward with the pregnancy." We therefore follow *Alaska Pacific Assurance Co.* in applying strict scrutiny.

39 See 687 P.2d at 266-67.

40 *Id.* at 271.

41 578 P.2d 951, 960 (Alaska 1978).

42 *Id.*

43 *Id.*

44 *Id.*

45 7 AAC 43.385(2), (6), (9), (11) & (12).

46 7 AAC 43.385(4).

47 7 AAC 43.385(17).

48 394 U.S. 618, 633, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969).

49 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969), partly rev'd on other grounds, *Edelman v. Jordan*, 415 U.S. 651, 670-71, 39 L. Ed. 2d 662, 94 S. Ct. 1347 (1974).

50 See 394 U.S. at 621.

51 *Id.* at 627.

52 *Id.* at 631 (internal quotations omitted) (alteration in original) (quoting **United States v. Jackson**, 390 U.S. 570, 581, 20 L. Ed. 2d 138, 88 S. Ct. 1209 (1968)). This precedent was not discussed in the U.S. Supreme Court's later decision, in **Harris v. McRae**, that the Hyde Amendment was permissible under the federal constitution. 448 U.S. 297, 100 S. Ct. 2671, 65 L. Ed. 2d 784 (1980). But in **Valley Hospital**, we explained that Alaska's broader constitutional protection at times mandates parting ways with federal precedent. See 948 P.2d at 969. In that case, we rejected the plurality opinion of **Planned Parenthood v. Casey**, 505 U.S. 833, 877-78, 120 L. Ed. 2d 674, 112 S. Ct. 2791 (1992), in order to declare that a woman's right to an abortion is fundamental. See **Valley Hosp.**, 948 P.2d at 969. We now join the majority of state courts in concluding that the federal Supreme Court's decision in **McRae** provides inadequate protection under our state constitution.

53 In the "Purpose" section of the Medicaid statute, the legislature "declares as a matter of public concern that the needy persons of this state receive uniform and high quality medical care, regardless of race, age, national origin, or economic standing." AS 47.07.010.

54 See **Sonneman v. Knight**, 790 P.2d 702, 705 (Alaska 1990) (using term "rational basis" to describe lowest standard of review under Alaska's sliding scale).

55 **Isakson v. Rickey**, 550 P.2d 359, 362 (Alaska 1976) (quoting **State v. Wylie**, 516 P.2d 142, 145 (Alaska 1973)). **Isakson** establishes that Alaska's rational basis review is more rigorous than that of the United States Supreme Court. *Id.*

56 We note that the United States Supreme Court reached the opposite conclusion regarding the analogous federal regulation in **Harris v. McRae**, 448 U.S. 297, 65 L. Ed. 2d 784, 100 S. Ct. 2671 (1980). However, as noted above, federal rational basis review is a less rigorous standard than Alaska's rational basis review. See **Isakson**, 550 P.2d at 362. We have explained that Alaska's broader constitutional protection at times mandates parting ways with federal precedent. See **Valley Hospital**, 948 P.2d at 969. The United States Supreme Court in **Harris v. McRae** did not consider the discriminatory allocation of government benefits cases, **Shapiro v. Thompson**, 394 U.S. 618, 22 L. Ed. 2d 600, 89 S. Ct. 1322 (1969) and **United States Department of Agriculture v. Moreno**, 413 U.S. 528, 37 L. Ed. 2d 782, 93 S. Ct. 2821 (1973), discussed in this opinion.

57 **Shapiro**, 394 U.S. at 638.

58 413 U.S. at 538.

59 See *Id.* The Court noted legislative history indicating congressional intent to exclude "so-[-]called 'hippies' and 'hippie communes'" from the food stamp program. *Id.* at 534. But it concluded:

The challenged classification clearly cannot be sustained by reference to this congressional purpose. For if the constitutional conception of "equal protection of the laws" means anything, it must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot constitute a legitimate government interest. As a result, [a] purpose to discriminate against hippies cannot, in and of itself and without reference to [some independent] considerations in the public interest, justify the [challenged] amendment.

Id. at 534-35 (internal quotations omitted, third alteration added).

60 **Vincent v. State**, 22 Cal. App. 3d 566, 572, 99 Cal. Rptr. 410 (Cal. App. 1971).

61 See *Id.*

62 **Lee v. Smith**, 43 N.Y.2d 453, 373 N.E.2d 247, 248, 402 N.Y.S.2d 351 (N.Y. 1977); see also **White v. Beal**, 555 F.2d 1146, 1149-50 (3d Cir. 1977) (finding equal protection issue sufficient to support jurisdiction, but not deciding on equal protection grounds, where remedial eye-care was available only if a person's visual impairment resulted from eye disease or pathology); **County of Orange v. Ivansco**, 67 Cal. App. 4th 328, 337-38 (Cal. App. 1998) (finding equal protection violation where parents supporting noncustodial children received different benefits depending on the children's eligibility for AFDC); but see **Moreno v. Draper**, 70 Cal. App. 4th 886, 888-89 (Cal. App. 1999) (analyzing same regulation as in **County of Orange** and finding no equal protection violation).

63 **Right to Choose v. Byrne**, 91 N.J. 287, 450 A.2d 925, 937 (N.J. 1982).

64 See **Matanuska-Susitna Borough School Dist.**, 931 P.2d 391, 396-97 (Alaska 1997) (outlining State's burden for justifying regulations); **Valley Hosp. Ass'n v. Mat-Su Coalition for Choice**, 948 P.2d 963, 971 (Alaska 1997) ("Since the right is fundamental, it cannot be interfered with unless the interference is justified by a compelling state interest.").

65 See **Matanuska-Susitna Borough Sch. Dist.**, 931 P.2d at 396-97.

66 410 U.S. 113, 163-64, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973).

67 **Valley Hospital**, 948 P.2d at 969.

68 **Byrne**, 450 A.2d at 935 (holding, based on **Roe**, that "at no point in pregnancy may [the state's interest in protection of potential life] outweigh the superior interest in the life and health of the mother").

69 **Malone v. Meekins**, 650 P.2d 351, 356 (Alaska 1982); see also **Marbury v. Madison**, 5 U.S. (1 Cranch) 137, 177, 2 L. Ed. 60 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is.").

70 See **State v. Dupere**, 709 P.2d 493, 496 (Alaska 1985), modified, 721 P.2d 638 (Alaska 1986) ("The separation of powers doctrine must be considered along with the complementary doctrine of checks and balances."); **Alaska State-Operated Sch. Sys. v. Mueller**, 536 P.2d 99, 103 (Alaska 1976); **Public Defender Agency v. Superior Court**, 534 P.2d 947, 950 (Alaska 1975).

The United States Supreme Court recently discussed the division of powers within the federal system of government. See **United States v. Morrison**, 529 U.S. 598, 120 S. Ct. 1740, 146 L. Ed. 2d 658 (2000). It reiterated the duty of courts to limit acts of legislation when those acts conflict with rights guaranteed by the Constitution, explaining that the framers of the Constitution divided power among the three branches of government so that the Constitution's provisions would not be defined solely by the political branches nor the scope of legislative power limited only by public opinion and the legislature's self-restraint. It is thus a permanent and indispensable feature of our constitutional system that the . . . judiciary is supreme in the exposition of the law of the Constitution.

120 S. Ct. at 1753 n.7 (internal quotations and citations omitted).

71 See **Aboud v. League of Women Voters**, 743 P.2d 333, 338 (Alaska 1987); **Malone**, 650 P.2d at 356-57.

72 **Valley Hosp. Ass'n v. Mat-Su Coalition for Choice**, 948 P.2d 963, 972 (Alaska 1997).

73 **Committee to Defend Reprod. Rights v. Myers**, 29 Cal. 3d 252, 625 P.2d 779, 172 Cal. Rptr. 866 (Cal. 1981).

74 391 U.S. 430, 88 S. Ct. 1689, 20 L. Ed. 2d 716 (1968).

75 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963).

76 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969), partly rev'd on other grounds, *Edelman v. Jordan*, 415 U.S. 651, 670-71, 39 L. Ed. 2d 662, 94 S. Ct. 1347 (1974).

77 See *supra* note 2.

78 A single justice in a concurring opinion stated that the judiciary may not, under the equal protection clause of Michigan's constitution, require legislative funding for medically necessary abortion. *Doe v. Department of Soc. Servs.*, 439 Mich. 650, 487 N.W.2d 166, 182-83 (Mich. 1992) (Levin, J., concurring). To our knowledge, his is the sole dissenting voice on this issue.

79 *Moe v. Secretary of Admin. & Fin.*, 382 Mass. 629, 417 N.E.2d 387, 395 (Mass. 1981) (internal citations omitted); see also *Committee to Defend Reprod. Rights v. Cory*, 132 Cal. App. 3d 852, 183 Cal. Rptr. 475, 478 (Cal. App. 1982) ("When there is an unconstitutional restriction in an existing appropriation, it offends no constitutional principle to direct that the disputed payments be made from funds already appropriated for the same general purpose."); *Clinic for Women, Inc. v. Humphreys*, No. 49D12-9908-MI-1137, Slip Op. at 12 (Ind. Super., Oct. 18, 2000) ("If the challenged enactments violate the state Constitution, the Court can grant relief even if doing so means that state funds will be spent in a manner not explicitly approved by the Legislature. The Court has the power to shape appropriate remedies and the Legislature has a duty to appropriate funds to meet its constitutional obligations."); *Low-Income Women v. Bost*, 38 S.W.3d 689, 702 (Tex. App. 2000) ("The relief sought by Low-Income Women -- funding medically necessary abortions -- cannot be characterized as a new appropriation. They do not ask for a new appropriation of funds to the Medical Assistance Program. Rather, they seek declaratory and injunctive relief against unconstitutional restrictions placed on the use of funds already appropriated pursuant to a pre-existing law authorizing funds to be used for health care under the program.").

80 768 F.2d 1293 (11th Cir. 1985).

81 See *id.* at 1295-96.

82 See *id.* at 1296.

83 *Id.*

VALLEY CHIROPRACTIC
CLINIC
400 N. Main Street
Wasilla, AK 99654
FAX # 373-2029
FAX # 373-2029

facsimile transmittal

To: Heather Nobrega Fax: 1-907-465-2040

From: Date: 05/10/02

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PASS SENATE BILL 364

RE: Senate Bill No. 364

TO: Representative Rokeberg,
Chairman of Judiciary Committee

By signing this memo I am stating my desire for Senate Bill No. 364 to be passed. This is more than a matter of choice. It sets forth a necessary guideline that protects the mother and child. In a moment of emotional turmoil a hasty decision could be made and acted upon not only ending a child's life but also possibly causing untold mental anguish when living with the end result. Guidelines are demanded here to avoid the proverbial "smoking gun".

I am requesting that you vote to pass this bill and protect the lives of mother and child.

DeeDee Jonrowe

~~DeeDee~~ DeeDee Jonrowe

P.O. Box 272

Willow, Alaska

99688

CC: Representative Ogan
Representative James
Representative Coghill
Representative Meyer
Representative Berkowitz
Representative Kookesh

PASS SENATE BILL 364

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I am requesting that you vote to pass this bill and protect the lives of mother and child.

Laurel Beaulieu

LAUREL BEAULIEU
465 Ravenswood Cp

Wasilla, AK 99654

CC: Representative Ogan
Representative James
Representative Coghill
Representative Meyer
Representative Berkowitz
Representative Kookesh

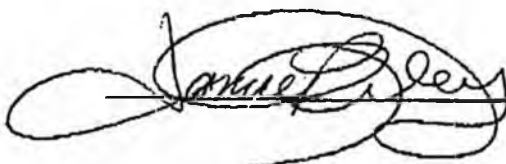
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I am requesting that you vote to pass this bill and protect the lives of mother and child.



JANICE RILEY
HC 5 BOX 6748
PALMER, AK 99645

CC: Representative Ogan
Representative James
Representative Coghill
Representative Meyer
Representative Berkowitz
Representative Kookesh

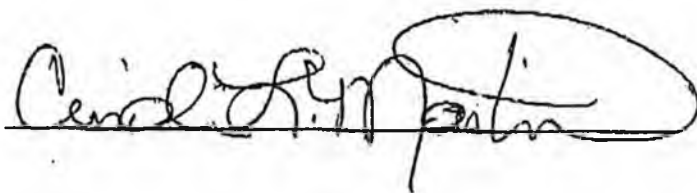
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I am requesting that you vote to pass this bill and protect the lives of mother and child.

A handwritten signature in cursive script, appearing to read "Carol A. Martin", written over a horizontal line.

CC: Representative Ogan
Representative James
Representative Coghill
Representative Meyer
Representative Berkowitz
Representative Kookesh

PASS SENATE BILL 364

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TO: Representative Rokeberg,
Chairman of Judiciary Committee

By signing this memo I am stating my desire for Senate Bill No. 364 to be passed. This is more than a matter of choice. It sets forth a necessary guideline that protects the mother and child. In a moment of emotional turmoil a hasty decision could be made and acted upon not only ending a child's life but also possibly causing untold mental anguish when living with the end result. Guidelines are demanded here to avoid the proverbial "smoking gun".

I am requesting that you vote to pass this bill and protect the lives of mother and child.



Dawn M. MacIver

CC: Representative Ogan
Representative James
Representative Coghill
Representative Meyer
Representative Berkowitz
Representative Kookesh

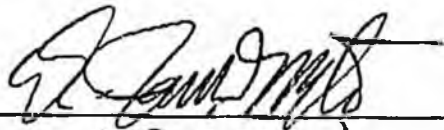
PASS SENATE BILL 364

RE: Senate Bill No. 364

TO: Representative Rokeberg,
Chairman of Judiciary Committee

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DR. JAMES D. MARTIN
400 N. MAIN ST.
WASILLA, AK

- CC: Representative Ogan
- Representative James
- Representative Coghill
- Representative Meyer
- Representative Berkowitz
- Representative Kookesh

99654
907 373-2022

PASS SENATE BILL 364

RE: Senate Bill No. 364

TO: Representative Rokeberg,
Chairman of Judiciary Committee

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Representative Meyer
Representative Berkowitz
Representative Kookesh

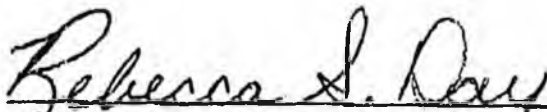
PASS SENATE BILL 364

RE: Senate Bill No. 364

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Chairman of Judiciary Committee

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I am requesting that you vote to pass this bill and protect the lives of mother and child.



Rebecca S. Day
1801 Bayview Dr Wasilla AK

CC: Representative Ogan
Representative James
Representative Coghill
Representative Meyer
Representative Berkowitz
Representative Kookesh

Subject: SB 364

Date: Fri, 10 May 2002 10:34:56 -0800

From: "Chris & Susan Kepler" <kepler@mtaonline.net>

To: <Heather_Nobrega@legis.state.ak.us>

I am in favor of SB 364.

K.Chris Kepler
HC5 Box 9763
Palmer, AK 99645

WILLIAM W. RESINGER, M.D.

P.O. BOX 839
PALMER, ALASKA 99645-0839
FAX: (907) 746-1763

FACSIMILE COVER SHEET

RE: SB 364

Date: 5/10/02 Time: 10:45AM No. of Pages (including cover sheet): _____

To:

Name: HEATHER NOBREGA, STAFF

JUDICIARY COMMITTEE - House of Rep.

Company: Chair: Rokeberg
members: Ogan, James, Coghill, Meyer, Berkowitz, Korteck

City: Juneau

Telephone No.: _____

Telefax No. (907) 465-2040

Comments:

As a pro-life physician,
I strongly support this bill
which specifies the definition
of "medically necessary."

Physicians who adhere to the Oath
of Hippocrates would, of course,
not perform abortions at all.

→ WWR

[Fwd: HB 522]

Subject: [Fwd: HB 522]

Date: Wed, 08 May 2002 11:04:48 -0800

From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>

Organization: Alaska State Legislature

To: Heather_Nobrega@legis.state.ak.us

Subject: HB 522

Date: Wed, 8 May 2002 14:52:04 EDT

From: Upick2@aol.com

To: Representative_Norman_Rokeberg@legis.state.ak.us

I very much appreciate that you not move this bill out of your committee today or any other day.

Best regards,
Anna Davidson
2200 Gambell St.
Anchorage, AK 99503
HMO: 907-653-7675
Cell: 907-227-7034

Subject: [Fwd: PREVENT HB522 FROM BECOMING LAW--Defining "Medically Necessary"]
Date: Wed, 08 May 2002 11:04:31 -0800
From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>
Organization: Alaska State Legislature
To: Heather_Nobrega@legis.state.ak.us

Subject: PREVENT HB522 FROM BECOMING LAW--Defining "Medically Necessary"
Date: Wed, 08 May 2002 09:32:29 -0800
From: Eric McCallum <ericrobin@customcpu.com>
To: Representative_Norman_Rokeberg@legis.state.ak.us

I am a moderate Republican and I am pro-choice. I urge you to stop HB522 in your committee. The legislature has no business defining what is a "medically necessary" abortion. This is a physician's job, based on his/her best judgement.

HB522 is MEAN SPIRITED. There is no consideration for severe fetal anomalies. No consideration if a fetus is dead. Why should the legislature force women to carry such pregnancies to term?

This bill cuts deep into the doctor/patient relationship. It sets a precedent. Do you really want the legislature making healthcare decisions for you because you are person with a low income. Would Rep.Ogan want the legislature determining what care he really needs?

I believe it is unethical to force a woman to carry an unwanted child to term.

Eric McCallum
14100 Jarvi Drive
Anchorage, AK 99515

Subject: [Fwd: HB 522 (SB 364)]
Date: Wed, 08 May 2002 11:04:12 -0800
From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>
Organization: Alaska State Legislature
To: Heather_Nobrega@legis.state.ak.us

Subject: HB 522 (SB 364)
Date: Wed, 8 May 2002 08:13:02 -0800
From: Jean Kollantai/CLIMB <climb@pobox.alaska.net>
To: Representative_Norman_Rokeberg@legis.state.ak.us

Our family urges you not to move this bill out of the Judiciary Committee. The Legislature has much more important things to do than micromanage what goes on in women's wombs and in the doctor's office, and needs to put its energy towards the real problems and issues in a forward-looking way, not something like this that reflects the philosophical agenda of some.

Jean Kollantai
Anchorage

Subject: SB 364

Date: Fri, 10 May 2002 08:37:27 -0800

From: "Mark Ortega" <ortegaml@worldnet.att.net>

To: <Heather_Nobrega@legis.state.ak.us>

Please help pass the SB 364 referring to "medically necessary" abortions. Very few (if any, except ectopic pregnancies which are a different thing altogether) abortions are medically necessary. We need to get people to see that human life is important from beginning to end and can't just be arbitrarily done away with because someone decides it is "medically necessary" often referring to emotional, mental, or financial distress involved. Being a medical necessity is a life and death issue only not one based on feelings. People with these other kinds of problems can get help. There are many individuals and groups that want to help. Thank you.

Mark and Lori Ortega, Eagle River

Subject: [Fwd: Opposed to SB 364]
Date: Thu, 09 May 2002 09:42:22 -0800
From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>
Organization: Alaska State Legislature
To: Heather_Nobrega@legis.state.ak.us

Subject: Opposed to SB 364
Date: Thu, 09 May 2002 12:56:20 -0400
From: ftblg@netscape.net (Brandee Gerke)
To: Representative_Norman_Rokeberg@legis.state.ak.us,
Representative_Scott_Ogan@legis.state.ak.us, Representative_John_Coghill@legis.state.ak.us,
Representative_Jeannette_James@legis.state.ak.us,
Representative_Kevin_Meyer@legis.state.ak.us,
Representative_Ethan_Berkowitz@legis.state.ak.us,
Representative_Albert_Kookesh@legis.state.ak.us

I am writing to express opposition to SB 364 which would narrowly define the medical necessity of abortions for poor women. I urge you to leave the determination of "medical necessity" to qualified physicians rather than to bureaucrats. Choices concerning the potential harm or even death of a woman or her fetus are EXTREMELY sensitive, emotional, and very personal decisions that must be made on an individual basis as circumstances are sure to be unique in each and every case! Such decisions should not be based on cut and dry, widely applied legislative language that leaves no room for consideration of individual circumstances. In time critical situations, it would be possible for medical procedures that are urgent and necessary to be held up in the bureaucratic process. I urge you to vote in opposition to SB 364.

Brandee Gerke
17415 Christine Ave.
Juneau, AK 99801
(907)789-5766

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Get your own FREE, personal Netscape Mail account today at <http://webmail.netscape.com/>

Subject: comment re Bill SB 364

Date: Fri, 10 May 2002 03:28:25 EDT

From: COALWELLT@aol.com

To: Heather_Nobrega@legis.state.ak.us

5/9/02

Alaska Senate Judiciary Committee,

This letter is in SUPPORT of SB 364 on limitations of Abortion funding to cases of severe need and not for Abortion on Demand.

Although I do not do OB at this time in my practice in Anchorage, I did do OB while I lived and practiced in Barrow. I have seen too many families fighting to maintain a pregnancy. I prefer that public funds are not used to terminate pregnancies that could have been prevented by the common methods of birth control (condoms, birth-control pills, IUD's) or with very cheap, easily obtainable "morning after pills". I would rather see the funds used for more positive purposes.

I'll keep it short and sweet,

Tim Coalwell, MD
2421 Scarborough Dr.
Anchorage, AK 99504
coalwellt@AOL.com

Subject: Bill SB364

Date: Fri, 10 May 2002 06:12:02 -0700

From: dihawkins@seward.net

To: <Heather_Nobrega@legis.state.ak.us>

I am writing in support of the above bill. I strongly object to the use of public funds for ANY abortion, and while I realize that this view is neither politically correct or supportive of constitutionally mandated, "abortion rights" it is I believe the only morally mandated stance. I am a nurse and remember early in my nursing career participating in the care of an individual who had had a "medically mandated abortion." The emotional devastation that that situation held for all involved, primarily the mother will not be forgotten, though it occurred over twenty years ago. Doctors will be the first to object to any limitation of their practice, though it has been clearly shown that their profession is not immune to abuses and poor decision making, let alone self-serving interests. Public funds should be used with utmost care and caution and a sense, particularly in the medical field, of deep social concern. The more regulation of this disturbing practice the better. There are VERY few cases of legitimate medically mandated abortions. Please hold the medical profession to a high standard. Sincerely, Ina Hawkins.

Subject: SB 364

Date: Fri, 10 May 2002 07:45:15 -0800

From: "Chris & Susan Kepler" <cskepler@hotmail.com>

To: heather_nobrega@legis.state.ak.us

I am in favor of SB 364, which tightens the definition of "medically necessary" abortions.

Susan D. Kepler
HC5 Box 9763
Palmer, Alaska 99645

Chat with friends online, try MSN Messenger: <http://messenger.msn.com>



April 26, 2002

The Honorable Norman Rokeberg
Chairman of the Judiciary Committee
of the House of Representatives
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Re: HB 552

Dear Representative Rokeberg:

On behalf of the Alaska Catholic Conference, I urge favorable report on HB 552, which limits public abortion funding to those cases of medical necessity as required by the Alaska Supreme Court.

The consistent Catholic position on human life is that each individual deserves protection, especially, where the issue is as fundamental as life or death. We are prohibited by our judiciary from extending full protection, but we are not required by the Court to fund elective abortions. Where these significant and deep moral objections among Alaska's citizens, as there is regarding abortion, public funds that belong to all should not be used.

Passage of HB 552 is good public policy and the right moral choice.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Roger L. Schwietz".

†Roger L. Schwietz, OMI
Archbishop of Anchorage

Subject: [Fwd: Stop HB 522 & SB364]

Date: Wed, 01 May 2002 08:28:33 -0800

From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>

Organization: Alaska State Legislature

To: Heather_Nobrega@legis.state.ak.us

Subject: Stop HB 522 & SB364

Date: Tue, 30 Apr 2002 19:26:46 -0800

From: Anne Millbrooke <anne@nome.net>

To: <Representative_Norman_Rokeberg@legis.state.ak.us>

Email

Content-type: text/plain; charset="US-ASCII"

Content-transfer-encoding: 7bit

House Bill 522 and Senate Bill 364 stink! Alaska does not need hostile legislation, anti this group of people or anti that group, and taking money from the poorest only guarantees that the bottom will keep sinking. All of Alaska would benefit if we raised the lowest level a tier or two or three!
Anne Millbrooke

Jan Whitefield, M.D.

4115 Lake Ous Parkway, Anchorage, AK 99508
007-682-7228

April 28, 2002

The Honorable Representative N. Rokeberg, State of Alaska

Dear Sir:

House bill 522 and Senate bill 364, the new bills introduced into the House and Senate are dangerous to the women of Alaska.

Consider a woman with Class D diabetes who becomes pregnant. She may develop blindness during pregnancy secondary to retinal detachment, or may develop renal failure. She has an increased incidence of Pregnancy induced hypertension in pregnancy that may cause her to have a seizure and subsequent stroke. While I can tell a woman of these risks, I am not able to predict the future and tell her whether she will or will not get any or all of these problems. I am simply aware of the increased risk compared to other women and can counsel her to these risks. As a physician I cannot state with 100% assuredness that a woman will or will not develop a particular problem. The same is true of many other problems in pregnancy such as hypertension, seizure disorders, Lupus, and many other disorders too numerous to list.

Similarly, if I put a patient on a particular medicine in pregnancy to treat a disorder such as Lupus, hypertension, or depression, I cannot tell the patient with 100% surety that a particular drug will or will not affect her baby. Just read any package insert of most drugs, and the manufacturers will discuss the risks of a drug in pregnancy. It becomes very clear that there are no guarantees in medicine. Prednisone is commonly used to treat Lupus and asthma in pregnancy. The Physician's Desk references says:

"Since adequate human reproduction studies have not been done with corticosteroids (prednisone), the use of these drugs in pregnancy, nursing mothers, or women of childbearing potential requires that the possible benefits of the drug be weighed against the potential hazards to the mother and embryo or fetus. Infants born of mothers who have received substantial doses corticosteroids during pregnancy should be carefully observed for signs of hypoadrenalism"

I may see an unmarried woman who works to support herself and her three children, and she may relate that she is severely distressed over a current pregnancy. She may request an abortion, or wonder about being placed on an antidepressant. All antidepressants have possible risks to the fetus. Consider Prozac, a commonly used antidepressant. In the book "Drugs in Pregnancy and Lactation", a standard reference text in this field by Gerald Briggs, PhD in Pharmacy, the following quote can be read:

"Because at least one animal study has shown that fluoxetine (Prozac) can produce changes, perhaps permanent, in the fetal brain, the maternal benefits must be carefully weighed against the potential embryo and fetal risks before exposing a pregnancy to this drug."

• Page 2

April 28, 2002


Should I or should I not give this drug to this patient? Will it affect her fetus? Is this drug dangerous to the fetus? Will her life be negatively affected or endangered if I do not give her the drug? You may be able to answer those questions, but I can't. I am a physician, not a soothsayer.

These are only two of an infinite number of examples that can be presented with equally ambivalent answers. As physicians we can anticipate possible outcomes, but cannot predict with 100% certainty any specific outcome.

This law, if enacted, will surely eliminate the payment of many abortions by the State of Alaska. However, the pregnant women, with their difficult problems and uncertain outcomes will remain and they suffer the consequences. They are the ones who will lose their sight, or have the stroke, or have their kidneys fail. If the word "would" were replaced with "could" throughout the bill, it may be a workable bill. As it is, it is only a transparent effort to eliminate payment of abortion by the State at the expense of the patient and fetus. While it may gain a politician some points with certain constituents, the women of Alaska will suffer.

Please consider the health of the women and do not allow this bill to pass through the general body of the Senate and House.

Sincerely,


Jan Whitefield
OB/GYN

Subject: [Fwd: HB522]

Date: Mon, 29 Apr 2002 08:05:45 -0800

From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>

Organization: Alaska State Legislature

To: Heather_Nobrega@legis.state.ak.us

Subject: HB522

Date: Mon, 29 Apr 2002 08:55:48 -0700 (PDT)

From: David Comins <alaskamd@yahoo.com>

To: Representative_Norman_Rokeberg@legis.state.ak.us

I am writing to strongly urge you to oppose HB522 and its attempt to narrowly define what a medical necessity is for poor women who feel they need an abortion. It interferes with the doctor-patient relationship and is virtually impossible to reliably diagnose. It will lead to many more unwanted and disabled babies being born. This will, in turn, lead to many years of unhappiness for the individuals involved and incredible expense for the rest of us who must support their needs after birth. I know what I am talking about--I have adopted two babies at birth and have worked with special needs children and troubled adolescents for years.

Yours very truly,
Mikell Murphy, EdD.

Do You Yahoo!?

Yahoo! Health - your guide to health and wellness

<http://health.yahoo.com>

Subject: [Fwd: Oppose HB522]

Date: Mon, 29 Apr 2002 07:59:57 -0800

From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>

Organization: Alaska State Legislature

To: Heather_Nobrega@legis.state.ak.us

Subject: Oppose HB522

Date: Fri, 26 Apr 2002 17:09:31 -0800

From: Robin Smith <ericrobin@customcpu.com>

To: Representative_Norman_Rokeberg@legis.state.ak.us

Please stop HB522 in your committee. I appreciate your effort in creating the Patient's Bill of Rights. I hope you will continue to defend the doctor/patient relationship by opposing this bill. The legislature has no business defining what is "medically necessary".

Some people say they do not want their tax dollars paying for abortions. I object to the "death penalty", and yet my government participates in this act.

I am writing to you because I do not believe Senator Ward or Rep. Green (my current representatives) will seriously consider my opinion. Thank you for persistent work for good government.

Robin Smith
14100 Jarvi Drive
Anchorage, AK 99515

Subject: [Fwd: HB522/SB364]
Date: Wed, 01 May 2002 08:28:49 -0800
From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>
Organization: Alaska State Legislature
To: Heather_Nobrega@legis.state.ak.us

Subject: HB522/SB364
Date: Tue, 30 Apr 2002 19:41:08 -0800
From: "Marcia Hongsermeier" <marciasnow@msn.com>
To: <Representative_Norman_Rokeberg@legis.state.ak.us>

Sir

I highly encourage you to not hold a hearing of HB522 and/or SB364

Marcia Miller
Anchorage AK

Subject: [Fwd: HB522]

Date: Wed, 01 May 2002 16:59:17 -0800

From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>

Organization: Alaska State Legislature

To: Heather_Nobrega@legis.state.ak.us

Subject: HB522

Date: Wed, 1 May 2002 10:46:23 -0800

From: "Igloo Mom" <Igloomom@gci.net>

Organization: Domestic Engineer

To: <Representative_Norman_Rokeberg@legis.state.ak.us>

Dear Representative Rokeberg,

Please hear and pass HB 522!

Thank you,
Colana K. Hutchinson
Anchorage, AK
VP AK Right to Life

Subject: [Fwd: Stop HB522]

Date: Fri, 03 May 2002 08:45:18 -0800

From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>

Organization: Alaska State Legislature

To: Heather_Nobrega@legis.state.ak.us

Subject: Stop HB522

Date: Thu, 2 May 2002 20:47:31 -0800

From: "Henderson" <hndrsn@gci.net>

To: <Representative_Norman_Rokeberg@legis.state.ak.us>

Dear Representative Rokeberg,
stop HB522. He is the
as Chair of the Judiciary committee, this is a request to please stop HB 522.

HB522 wants to narrowly define a "medically necessary" abortion and will restrict low-income women's access to medicaid coverage for this procedure and is not the answer to a very serious problem.

This bill interferes with the doctor/patient relationship. It is written so broadly the women would have to be on death's door for the physician to act. It also does not take into consideration fetal anomalies.

Respectfully submitted,
Denise C Henderson

Subject: SB364

Date: Fri, 10 May 2002 07:39:56 -0800

From: "Sharon Mach" <machfam@cyberlynx.ak.net>

To: <Heather_Nobrega@legis.state.ak.us>

Hello Heather,

Would you please pass this msg on to Rep. Rokeberg.

I am a supporter of SB364. I am very saddened by the testimony of pro-abortion doctors

who think "medically necessary" means you can kill your baby if it is an "inconvenience" in your life.

Especially after the first trimester. I hope they are showing these woman what they take out of them before they throw it away.

Maybe this would make them realize, "I don't ever want to do this again".

I am currently pregnant with my 6th child.

We struggled a little with this since my husband is 40 and I am 39 and

we realized our baby would graduate when we're almost 60.

We will seem more like his grandparents then his parents.

But we NEVER once thought of the option to abort this baby.

How in the world can anyone take the life away from a tiny little being who is growing inside them.

I just feel this is morally wrong.

I don't think there is ever any reason to have an abortion.

I would give up my life for my babies life if I had to.

I have lived long enough in this world and my babies life is just beginning. Just beginning to learn . . .

I had a miscarriage before this pregnancy and it was a very sad time for us as parents and for my children, the babies siblings. Even though we had never seen this baby, he had become a member of the family.

Please pass this bill so we can slow down the unnecessary abortions and save a few of these precious little beings.

Sincerely,

Sharon Mach

PO Box 876707

Wasilla, AK 99687

Subject: Please support bill SB 364

Date: Fri, 10 May 2002 00:03:16 -0700

From: "Everett & Troya Williamson" <etw@gci.net>

To: <Heather_Nobrega@legis.state.ak.us>

Dear Heather Nobrega,

Please communicate to Representative Rokeberg that it is important that bill SB 364 pass. The passing of this bill will save more babies' lives. It is abhorant to me that our state funds abortions for any reason at all. We need to tighten the definition of medically necessary so that more babies can live. These babies deserve this gift of life.

When I was 17 years old, in 1974, right after Roe vs Wade came into being, I became pregnant. And it was oh so easy to have that abortion. I remember wishing I could go to a home for unwed mothers but having an abortion was promoted as a quick and easy solution to my problem. And I went for it. And destroyed a life. If an abortion would have been more difficult to obtain and any other solutions would have been offered I would have allowed that child to live.

Please make it more difficult to take a baby's life. For the sake of that child and for the sake of the mother and father.

Thank you for considering this.

Respectfully,

Troya Williamson

etw@gci.net

Subject: SB 364

Date: Thu, 9 May 2002 22:02:34 -0800

From: "Frank & Rosalie" <tadda@gci.net>

To: <Heather_Nobrega@legis.state.ak.us>

Dear Rep. Rokeberg

Please vote to pass SB 364 to tighten the definition of medically necessary so that innocent babies are not aborted.

Thank you

Frank & Rosalie Tadda
Anchorage Ak 99507

Subject: [Fwd: Please Oppose SB 364 & HB 522]
Date: Thu, 09 May 2002 14:18:39 -0800
From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>
Organization: Alaska State Legislature
To: Heather_Nobrega@legis.state.ak.us

Subject: Please Oppose SB 364 & HB 522
Date: Thu, 9 May 2002 13:29:29 -0800
From: "Jeff & Susan Sloss" <jssloss@gci.net>
To: <Representative_Norman_Rokeberg@legis.state.ak.us>,
<Representative_Scott_Ogan@legis.state.ak.us>,
<Representative_John_Coghill@legis.state.ak.us>,
<Representative_Jeannette_James@legis.state.ak.us>,
<Representative_Kevin_Meyer@legis.state.ak.us>,
<Representative_Ethan_Berkowitz@legis.state.ak.us>,
<Representative_Albert_Kookesh@legis.state.ak.us>

Dear Chairman Rokeberg and members of the House Judiciary Committee:

These two new bills now attempt to narrow the definition of medical necessity to such an extreme that many poor women who need abortions will in fact be excluded from coverage under Medicaid. Because the definitions of medical necessity in the bill are vague and unworkable, the bills use vague adjectives in phrases such as "**serious adverse physical condition**," "[condition would be] **significantly aggravated** by continuation of the pregnancy," "**seriously endanger** [the woman's health]," and "**highly dangerous** to the fetus..." Who decides what is a serious danger? What is a significant health consequence? Significant to whom -- shouldn't the patient make that determination, since *she* will be the one suffering the "significantly aggravated" health problem? This bill would have a bureaucrat at DHSS making these determinations, thereby potentially undermining physician autonomy and the doctor-patient relationship.

This legislation has serious problems and should be shelved. No doubt there are many more pressing issues facing us today.

Sincerely, Jeff & Susan Sloss, 740 5th St., Juneau, AK 99801

Jeff and Susan Sloss <jssloss@gci.net> Jeff & Susan Sloss
--

Subject: [Fwd: SB 364 and SB 183]

Date: Thu, 09 May 2002 09:33:32 -0800

From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>

Organization: Alaska State Legislature

To: Heather_Nobrega@legis.state.ak.us

Subject: SB 364 and SB 183

Date: Wed, 08 May 2002 15:24:58 -0800

From: sherrie <apca@aptalaska.net>

To: <Representative_Norman_Rokeberg@legis.state.ak.us>

Dear Representative Rokeberg,

The women of Alaska are counting on you to protect their constitutional rights!

Please do not take up SB 364 when it is referred to House Judiciary. It interferes with the doctor-patient relationship and is an illegal attempt to restrict the rights of a Medicaid-eligible women to terminate a pregnancy.

I have been grateful for your support of women's rights in the past and hope I can continue to count on you. I have become concerned since you moved SB 183, a bill all but eliminating public interest lawsuits, from your committee last week without an opportunity for the public to be heard. This measure will make it even more difficult for us to fight for our rights in court when anti-choice legislators have their way.

I hope we can count you as a NO vote when SB 183 is brought to the floor for a vote.

Please do not be pressured to trade women's rights away in an end-of-session deal.

Please vote pro-woman. Thank you for your consideration.

Sincerely,

Sherrie Goll
PO Box 261
Haines, AK 99827

Subject: [Fwd: SB364 hearing]

Date: Thu, 09 May 2002 12:19:15 -0800

From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>

Organization: Alaska State Legislature

To: Heather_Nobrega@legis.state.ak.us

Subject: SB364 hearing

Date: Thu, 9 May 2002 11:14:19 -0800

From: "Litia Garrison" <litia.garrison@ppfa.org>

To: <Representative_Norman_Rokeberg@legis.state.ak.us>

CC: <Representative_Scott_Ogan@legis.state.ak.us>,
<Representative_John_Coghill@legis.state.ak.us>,
<Representative_Jeannette_James@legis.state.ak.us>,
<Representative_Kevin_Meyer@legis.state.ak.us>,
<Representative_Ethan_Berkowitz@legis.state.ak.us>,
<Representative_Albert_Kookesh@legis.state.ak.us>

Dear Representatives,

I write to urge you ***to not let this bill move out of your committee***, and to inform you of my strong opposition to this bill, which I feel represents patent unequal treatment of the state's Medicaid funds. I feel it also represents a particular group's intent on claiming the ability to downplay the concept of medical necessity, by taking the decision making out of the hands of the patient and her healthcare provider, and allowing a bureaucrat to determine what is or is not medically necessary. While the group that is sponsoring the passage of SB 364 objects morally to the concept of abortion, I object to their concept that they can be the moral determinants of the life circumstances of those financially unable to seek options in their healthcare needs. Again, I urge you to not let this bill move out of your committee.

Thank you for your consideration,

Litia Garrison
Planned Parenthood of Alaska
Sitka Center Clinic Manager

Subject: [Fwd: STOP THIS BILL-POSTED ON NET]

Date: Thu, 09 May 2002 09:42:37 -0800

From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>

Organization: Alaska State Legislature

To: Heather_Nobrega@legis.state.ak.us

Subject: STOP THIS BILL-POSTED ON NET

Date: Thu, 9 May 2002 10:10:51 -0700 (PDT)

From: AFJS@webtv.net (ss)

To: Representative_Norman_Rokeberg@legis.state.ak.us

A GREAT TIME FOR AN ELECTION:

Subject: The Fascist- Sen. Pete Kelly is at it Again-Re Abortion
Date: Thu, May 9, 2002, 8:40am

Pete Kelly Just can't seem to keep his nose out of a woman's vagina. Maybe it's because he wants one so much. He is one of those hardcore, way over the top, right-wing religious freak conservatives, who not only thinks he has the God-given Right to tell a woman what to do with her body, but also the Legal Right to make Laws that will affect a woman her entire life.

This Same Pete Kelly who is stating that a woman who wants an abortion is "Fraudulently" Using public Medicaid funds and "Abusing the System" is the SAME Pete Kelly who ILLEGALLY and fraudulently used \$14 MILLION dollars of these Same Medicaid funds to raise the Salaries of State Employees in 2000, which was all done behind "Closed Doors" in a "Special Session" called, Just to take up the State Employee contracts.

That "Special Session" was televised by Juneau's KTOO, Gavel-to-Gavel, of which I taped. Even Sen. Robin Taylor (R), was NOT invited to that "Closed Door Session" stating that some kind of "deal" was up and the legislature is going to be asked to vote on "some amendment" which no one has seen, nor discussed.

Sure enough out pranced Kelly, Theirault and the other Right-wingers who stated that they JUST miraculously FOUND \$14 Million dollars so they could give the State Employees a salary raise. It was Federal Medicaid money that by LAW, is mandated to go into a trust fund and Only used for Federally mandated medical programs, knowing that over 119,000 Alaskans HAVE NO MEDICAL INSURANCE. Instead, these corrupt politicians have been putting these Federal Funds into the General (all-purpose) Fund.

I wrote to the entire legislature about this blatantly illegal act and to the Feds. At the very first Senate Finance Committee meeting in January of 2001, Pete Kelly, Chairman of this Committee and Sen. (let the public pay for my breast surgery and I'll deny the poor) Lyda Green (R) stated that she Wanted to change the practice of putting Federal Medicaid Funds into the Gen. Fund, like it was Just a nice thing to do, rather than, TOTALLY ILLEGAL. I have this on tape also.

CAN THERE BE ANY WORSE CORRUPT SLIME THEN THIS IN THE ALASKA LEGISLATURE? THIS IS WHY THOSE OF YOU WHO LIVE IN OR KNOW PEOPLE IN FAIRBANKS, MUST GET RID OF PETE KELLY. (Note the below in Kelly's B.S. stating that MOST of Alaskans are AGAINST abortions and then he refers to the State of Michigan.

Kelly's blatant ARROGANCE of Power and Rages are constantly demonstrated AGAINST WOMEN AND ALASKA NATIVES...HE IS A certifiable lunatic and FASCIST, hungry for Power.

This Bill is going to be heard TODAY, May 9th at 4:00 p.m. by the House Judiciary.

To email the H-Judiciary here are their addresses:

Representative_Pete_Kott@legis.state.ak.us
Representative_Joe_Green@legis.state.ak.us
Representative_Jeannette_James@legis.state.k.us
Representative_Lisa_Murkowski@legis.state.ak.us
Representative_Norman_Rokeberg@legis.state.ak.us
Representative_Eric_Croft@legis.state.ak.us
Representative_Beth_Kertula@legis.state.ak.us

The legislature has a NEW Web Teleconference capability, If you want to Hear this or any other committee meeting. Go to:
http://www.legis.state.ak.us/tc_audio/tc_audio.htm MAY 14th IS THE LAST DAY OF THIS SESSION. (ONLY TWO WORK DAYS) YOU CAN EXPECT THE WORST OF ALL LEGISLATION TO GET PUSHED THROUGH QUICKLY SO THE PUBLIC ISN'T AWARE.

Go to

<http://www.legis.state.ak.us/textonly/textonly.htm> AND FIND OUT WHAT BILLS YOU ARE ABSOLUTELY AGAINST AND SAY SO BEFORE IT'S TOO LATE. SS:-O

Pete Kelly

Session:

State Capitol, Room 518

Juneau, AK 99801-1182

Phone: (907) 465-2327

Fax: (907) 465-5241

Send Public Opinion Message

Interim:

119 N. Cushman St., Suite 201

Fairbanks, AK 99701-2879

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Kelly Bill Defines 'Medically Necessary' Abortion For Immediate

Release: May 8, 2002

(JUNEAU) - A bill defining the term "medically necessary" as it relates to state funding of abortions has passed the Senate floor. Sponsored by Sen. Pete Kelly (R-Fairbanks), Senate Bill 364 will help curb the potential for fraud and abuse of state funds for on-demand abortions, by more clearly defining the term "medically necessary." "Most Alaskans agree it is inappropriate to use state funds to provide on-demand abortions," said Kelly.

"Unfortunately under our current system an abortion doctor can deem nearly anything as medically necessary and have the state pay for it, including just being "stressed out" over being pregnant." Kelly's office has received reports about an inordinately large number of young women receiving multiple "medically necessary abortions," and having the cost picked up by the state, costs which often include airline passage for two, hotel stays and ground transportation. Citing figures from the state of Michigan, which

keeps close track of abortions performed in their state of more than 9 million people, only 33 out of the 26,000-plus abortions performed in that state last year were deemed "medically necessary." Kelly compares this figure to Alaska, which has a population of 600,000, but performed roughly 600 state funded abortions deemed "medically necessary."

"I am not sure why the Centers for Disease Control is not up here with gas masks and rubber suits trying to figure out why women in this state can't be pregnant here without having some horrible medical problems," Kelly mused.

"The fact is women aren't having medical problems, we just have a regulation that is too broad, which allows women to get state-funded abortions that are elective under the guise of medical problems." With passage of SB 364 the Department of Health and Social Services will

finally have clear guidelines on what constitutes a medically necessary abortion.

The current federal standard on this issue is the "Hyde Amendment," which only allows the use of Medicare funds for abortion when the pregnancy puts the mother's life at risk or if the pregnancy was caused by rape or incest.

SB 364 would expand on the federal standard to provide guidelines on medical conditions in which state funds may be used to terminate a pregnancy.

#

Attachments:

Print Friendly Version

Requires Adobe Acrobat Reader - 1 page(s) - 15k Broadcasters Note: Audio comments are available on the Majority Actuality line: 1-800-478-6540 or below.

Related Links

· Kelly Bill Defines Medically Necessary" Abortion · HB 160
: Reporting of Abortions

· SB 91 : Abortion: Informed Consent; Information · SB 210 :

Limits on Right to Privacy

· SB 364 : Medicaid Payments for Abortion Email A Friend Should someone else know about the information on this page? Tell them about it now!

Jan Whitefield, M.D.

4115 Lake Otis Parkway, Anchorage, AK 99508
907-563-7228

May 1, 2002

Senators and Representatives, State of Alaska

Dear Sir or Madam:

House bill 522 and Senate bill 364, the new bills introduced into the House and Senate are dangerous to the women of Alaska.

Consider a woman with Class D diabetes who becomes pregnant. She may develop blindness during pregnancy secondary to retinal detachment, or may develop renal failure. She has an increased incidence of Pregnancy induced hypertension in pregnancy that may cause her to have a seizure and subsequent stroke. While I can tell a woman of these risks, I am not able to predict the future and tell her whether she will or will not get any or all of these problems. I am simply aware of the increased risk compared to other women and can counsel her to these risks. As a physician I cannot state with 100% assuredness that a woman will or will not develop a particular problem. The same is true of many other problems in pregnancy such as hypertension, seizure disorders, Lupus, and many other disorders too numerous to list.

Similarly, if I put a patient on a particular medicine in pregnancy to treat a disorder such as Lupus, hypertension, or depression, I cannot tell the patient with 100% surety that a particular drug will or will not affect her baby. Just read any package insert of most drugs, and the manufacturers will discuss the risks of a drug in pregnancy. It becomes very clear that there are no guarantees in medicine. Prednisone is commonly used to treat Lupus and asthma in pregnancy. The Physician's Desk references says:

"Since adequate human reproduction studies have not been done with corticosteroids (prednisone), the use of these drugs in pregnancy, nursing mothers, or women of childbearing potential requires that the possible benefits of the drug be weighed against the potential hazards to the mother and embryo or fetus. Infants born of mothers who have received substantial doses corticosteroids during pregnancy should be carefully observed for signs of hypoadrenalism"

I may see an unmarried woman who works to support herself and her three children, and she may relate that she is severely distressed over a current pregnancy. She may request an abortion, or wonder about being placed on an antidepressant. All antidepressants have possible risks to the fetus. Consider Prozac, a commonly used antidepressant. In the book "Drugs in Pregnancy and Lactation", a standard reference text in this field by Gerald Briggs, PhD in Pharmacy, the following quote can be read:

“Because at least one animal study has shown that fluoxetine (Prozac) can produce changes, perhaps permanent, in the fetal brain, the maternal benefits must be carefully weighed against the potential embryo and fetal risks before exposing a pregnancy to this drug.”

Should I or should I not give this drug to this patient? Will it affect her fetus? Is this drug **dangerous** to the fetus? Will her life be negatively affected or **endangered** if I do not give her the drug? You may be able to answer those questions, but I can't. I am a physician, not a soothsayer.

These are only two of an infinite number of examples that can be presented with equally ambivalent answers. As physicians we can anticipate possible outcomes, but cannot predict with 100% certainty any specific outcome.

This law, if enacted, will surely eliminate the payment of many abortions by the State of Alaska. However, the pregnant women, with their difficult problems and uncertain outcomes will remain and will suffer the consequences. They are the ones who will lose their sight, or have the stroke, or have their kidneys fail. While it may gain a politician some points with certain constituents, the women of Alaska will suffer.

Please consider the health of the women and do not allow this bill to pass through the general body of the Senate and House.

Sincerely,

Jan Whitefield, M.D.
OB/GYN

Valdez Medical Clinic

Andrew R. Embick, M.D.
Kathleen G. Todd, M.D.
John S. Cullen, M.D.
Joseph H. O. Roth, M.D.

P.O. Box 1829
Valdez, Alaska 99686

Telephone
(907) 835-4811
Telefax
(907) 835-5162

Jennifer Rudinger, ACLU Fax 907 258-0288

I will try to be at the Valdez LHO at 9AM, but I have patients starting at 9 so will be unable to stay very long. I cannot come at 3PM unless someone cancels.

Here's a statement to read for me:

I urge you not to pass Senate Bill 364 (House Bill 522) limiting abortion funding. This bill excludes any consideration of fetal anomalies as a legitimate reason for abortion, which I assure you, are high on many women's list of legitimate reasons for abortion. Should my patient whose fetus had multiple congenital anomalies incompatible with life caused by a known exposure to a teratogenic agent be required to carry to term? This bill also requires an impossibly high burden of proof to protect the mother's health. We in medical care are often faced with chances, not certainties. This bill would require certainty before action was taken, thus precluding most action. Abortion/pregnancy must remain a decision made by individuals who can assess risk and weigh those risks based on their own value systems.

In thinking about abortion funding, we need to keep in mind where fairness lies. Those who argue against spending government money on abortion as something they don't agree on believe in. Forget that other people also have deeply held beliefs. It's against my convictions to knowingly carry to term a grossly deformed baby or to try to carry septuplets or to endanger my life for the sake of a fetus. I wouldn't do it and I wish that state

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money wasn't spent on these kinds of pregnancies. However, I don't think that the state should cut off all funding to a woman who doesn't have an abortion in these circumstances. She might believe differently than I do. The government needs to stay neutral, not allowing anyone to impose abortion on women, including the poor, but likewise not allowing anyone to impose pregnancy on them.

Kathleen G. Todd MD

SB

369

Adopted
As Amended

Conceptual
AMENDMENT #1

OFFERED IN THE HOUSE
ID: CSSB 369 (RLS)

OFFERED BY

Page 4, Line 4:

Delete: "or"

Insert: [or]

Page 4, Line 6:

Delete: [.]

Insert; ;

Page 4, Line 7:

Insert: (5) the creditor is seeking to satisfy a claim for child support.

Page 5, Line 25, after "except," through line 30:

Delete all material.

Insert:

- (a) to the extent that a donee of an inter vivos or testamentary power of appointment
- (1) is permitted by the donor of the power to appoint the property to the donee's estate or to the creditors of the donee's estate; and
 - (2) effectively exercises the power of appointment in favor of the donee's estate or the creditors of the donee's estate; or
- (b) ~~when~~ the creditor is seeking to satisfy a claim of child support.

to the extent that

ALASKA STATE LEGISLATURE

HOUSE JUDICIARY COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Scott Ogan, Vice-Chairman
Representative John Coghill
Representative Jeannette James
Representative Kevin Meyer
Representative Ethan Berkowitz
Representative Albert Kookesh



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

Heather M. Nobrega
Counsel to Committee

MEMORANDUM

To: House Judiciary Members

From: Heather M. Nobrega, Counsel *HMN*
House Judiciary Committee

Date: May 11, 2002

Re: Changes in SB 369 from HB 316

The following are the differences between SB 369 and HB 316:

Page 1, Lines 6-8:

HB 316

Sec. 13.36.370. Trust protector. (a) A trust instrument may provide for the appointment of a disinterested third party to act as a trust protector.

SB 369

Sec. 13.36.370. Trust protector. (a) Except for a trust created under AS 47.07.020(f), a trust instrument may provide for the appointment of a disinterested third party to act as a trust protector.

Page 1, Lines 9 and 10:

HB 316

...trust instrument, including the power to

SB 369

...trust instrument, which may include the power to

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 369
 (S) Publish Date: 5/2/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title: "An Act relating to trusts, including trust BRU: Civil Division
protectors, trustee advisors, and transfers of trust interests, . . ." Component: Commercial
 Sponsor: Senate Judiciary Committee
 Requester: Senate Judiciary Committee Component No.: 2211

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
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 ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SB 369 provides for the appointment of a trust protector and a trust advisor. The bill also prevents creditors of beneficiaries from attaching assets transferred into a trust unless certain conditions are met by all parties, and establishes a statute of limitations regarding when creditors must bring an action for a fraudulent transfer claim.

Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Phone: (907) 465-5370
 Division: Attorney General's Office Date/Time: 4/30/02 4:20 PM
 Approved by: Kathryn Daughhete for Bruce M. Botelho, Attorney General Date: 4/30/2002
 Agency: Department of Law

House JUDICIARY Minute



Apr 08, 2002

HB 316 - POWERS OF APPOINTMENTS/TRUSTS/CREDITORS

Number 2129

CHAIR ROKEBERG announced that the last order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 316, "An Act relating to trusts, including trust protectors, trustee advisors, and transfers of trust interests, and to creditors' claims against property subject to a power of appointment; and providing for an effective date."

Number 2092

REPRESENTATIVE LESIL McGUIRE, Alaska State Legislature, sponsor, said that SSHB 316. Representative McGuire informed the committee that in 1997 the legislature passed the Alaska Trust Act which has been a tremendous success by all accounts. Representative McGuire noted that last year she brought a bill before the committee that did more fine tuning to the 1997 legislation. This area of law is continual changing and thus [SSHB 316] is before the committee today. Representative McGuire highlighted that SSHB 316 makes changes to the "spend thrift" area of the law, and adds the ability to have a trust protector and a trust advisor. She pointed out that the ability to have a trust protector and trust advisor has been codified in Delaware, which is what is being attempted [with SSHB 316] in order to allow the settlor to have as much control as possible when the decision to give money is made.

Number 1977

STEPHEN E. GREER, Attorney at Law, specified that he was present today solely because he is an attorney interested in ensuring that Alaska has the best trust laws. He noted that although his constituent base is the average Alaskan who wants to protect his/her family, he acknowledged that passage of SSHB 316 will indirectly benefit the trust industry. Mr. Greer explained that in 1977 Alaska was the first to pass trust laws and thus the other states have been able to draft legislation that clarified the intent better than Alaska. Therefore, SSHB 316, while adding a few new provisions, mainly clarifies what those in the estate planning community view the law to be. Mr. Greer pointed out that Sections 1 and 2 provide statutory authority for trust provisions that are commonly found in trusts. The legislation also provides clarity to the existing spend thrift provisions, which are presently found under AS 34.40.110. Furthermore, Section 3 adds two new provisions in Section 3 that pertain to charitable remainder trusts and grantor repaying unit trusts and grant retained for annuity trust. He noted that these provisions are found in Delaware's law. Moreover, this legislation restates the second restatement of law position regarding the power of appointments in the extent to which property subject to a power of appointment should be protected from creditor claims.

CHAIR ROKEBERG asked if [that restatement] is a restatement of property.

MR. GREER replied yes.

Number 1830

REPRESENTATIVE BERKOWITZ turned to Section 1 and asked if that section basically requires the hiring of professional trust protectors because it has to be a disinterested party.

MR. GREER posed a situation in which he established a trust and the Alaska Trust Company is named as the trustee of the trust. However, he wants to ensure that the Alaska Trust Company isn't going to view [the trust] as permanent position of employment for themselves. Therefore, the settlor could name a disinterested party, a trust protector, could be given the authority to remove or replace that [trustee] with the trustee of the [trust protector's] choice. Therefore, the provision is actually meant to protect the settlor's intent in creating the trust.

Number 0761

REPRESENTATIVE BERKOWITZ turned to Section 5, which clarified that fraudulent conveyance actions may only be brought against a settlor of a trust and only [regard to] a specific transfer of assets. This would be a change to current law. Therefore, he inquired as to who else would be subject to fraudulent conveyance actions. Furthermore, he asked what other assets might be consumed.

MR. GREER clarified that this is not a change of existing law. Mr. Greer explained that the novelty of this trust legislation [AS 34.40.110] is that it has really always been the law. For instance, a settlor may decide to give someone money, although the settlor may be uncertain as to how the money will be used. Therefore, the settlor names a trustee. Assuming there is a spend thrift provision attached to the trust, then the beneficiary would have no ability to assign their interest in the trust. Moreover, none of the creditors of the beneficiary would be able to attach the interest. The novelty of the 1997 law is that it allows an individual to create a trust and name a trustee, while the [settlor] can retain discretionary interest in the trust and thus no creditor of the [settlor] can attach these assets. Mr. Greer noted that there other states have passed laws that copy Alaska's trust laws.

MR. GREER explained that Sections 5 and 6 have to be read together. He pointed out that Section 6(g) only deals with the self-settled trust, which is what was just described that allowed for the [settlor] to retain discretionary interest in the trust. Under current law, a preexisting creditor is allowed one year after the trust could have reasonably been discovered by that creditor to bring a fraudulent conveyant action against [the settlor]. If that action was successful, the spend thrift provision would be held null and void. However, the problem is that the statute doesn't contain a definition of a preexisting creditor. Therefore, Section 6(g)(1) and (2) provide the definition of a preexisting creditor. Mr. Greer offered an example of a contractor who builds a building that he believes was built to the specifications. The contractor then decides to do some estate planning and he subsequently transfers some property in trust. Mr. Greer explained that the problem with making a transfer in trust is that without a discretionary interest, the money is gone. Mr. Greer commented that people are hesitant to make such gifts unless they are extremely

wealthy. In this situation the [settlor] maintains a discretionary interest and upon death the property will pass on to the children. However, subsequent to the [settlor's] death there is a lawsuit for the building the settlor built. Assuming "he" is successful in this underlying cause of action, the question is in regard to the point in time the plaintiff has the ability to bring a fraudulent conveyance action against that contractor to attack the transfer in the trust. Mr. Greer related his belief that without the provision in [Section 6(g)(1) and (2)] then there would be an unlimited statute of limitations for bringing a fraudulent conveyance action that the plaintiff must demonstrate that the claim was asserted against the contractor prior to the creation of the trust, in which case the contractor should have had the benefit of unlimited statute of limitations. Alternatively, Mr. Greer posed a situation in which the [settlor] didn't believe anything was wrong with the building and the transfer to the trust is made, and the fraudulent conveyance action is filed within four years of transfer to the trust. Mr. Greer reiterated that the legislation attempts to define a preexisting creditor.

REPRESENTATIVE BERKOWITZ inquired as to the source of the language for this legislation.

MR. GREER informed the committee that there was no uniform law back in 1997. Furthermore, Alaska was the first in the country to put such law in effect. As a result, those in the estate planning community who have realized that there are some open-ended questions with regard to the trust law.

Number 1430

DOUG BLATTMACHR, President & CEO, Alaska Trust Company, testified via teleconference in support of SSHB 316 because it makes Alaska competitive with Delaware while clarifying some issues.

CHAIR ROKEBERG asked if Mr. Blattmachr felt that without the changes in SSHB 316, [Alaska trusts] would be in an uncompetitive petition with Delaware trusts.

MR. BLATTMACHR replied yes.

CHAIR ROKEBERG inquired as to what would happen if an income tax was enacted on trust clients.

MR. BLATTMACHR answered that Alaska's trust clients from outside Alaska would leave within one year and go to Delaware, South Dakota, or Nevada because of the lack of an income tax on foreign trusts.

REPRESENTATIVE BERKOWITZ noted that he has cautioned against putting trusts in with an income tax.

Number 1307

REPRESENTATIVE COGHILL asked if there would be any interface problems since SSHB 316 will apply to those already existing trusts.

MR. BLATTMACHR responded that he didn't foresee any problems because [the legislation] merely recognizes things that are already included in the trusts.

MR. GREER clarified that only two provisions would be

prospective, which is the ability for a settlor to create a charitable remainder trust. Everything else is retroactive because these are things commonly done in trust instruments; the desire is to merely have the statutory authority to do so.

CHAIR ROKEBERG noted that it would take an act of the owners of the trust to implement these instruments.

MR. GREER agreed and said that is a very important point. Mr. Greer further agreed with Chair Rokeberg in regard to the settlor's ability to modify an existing trust, assuming that the trust can be amended or modified. Mr. Greer pointed out that there is another provision in Alaska that allows for modifications or amendments if one returns to court, for instance.

REPRESENTATIVE BERKOWITZ asked if there is anything in statute that would preclude the appointment of a trust protector.

MR. GREER replied no.

REPRESENTATIVE BERKOWITZ inquired, then, to what Section 1 does other than codify existing practice.

MR. GREER answered that it merely codifies existing practice.

Number 1189

DAVE SHAFTEL, Estate Planning Attorney, testified via teleconference. He informed the committee that he is a member of the informal group of attorneys that have worked on trusts and related state legislation. Mr. Shaftel said that as a member of the informal group and someone who [deals] with these trusts he wanted to reinforce the already presented testimony. Mr. Shaftel echoed earlier testimony that these are clarifications of various provisions that are already placed in trusts now. "This bill clarifies that if a court ever needs to review these trusts and evaluate these provisions that we have the support of the legislature that they have been statutorily authorized," he explained.

MR. SHAFTEL informed the committee that about a half dozen or so estate planning attorneys [in Alaska] have reviewed SSHB 316 and are in support of it. Therefore, he urged this committee's support.

REPRESENTATIVE BERKOWITZ directed attention to the change on page 3, line 7. He interpreted that to change the burden of proof of creditors. He inquired as to Mr. Shaftel's opinion of that language change.

Number 1053

MR. SHAFTEL answered that discussion of the language change on page 3, line 7, resulted in the determination that if one is going to set aside a transfer, then the motive needs to be significant and substantial. Therefore, the word "primarily" was inserted.

REPRESENTATIVE BERKOWITZ remarked that in his mind there is a difference between significant and substantial as opposed to "primarily". Significant and substantial could amount to 20-25 percent of the reason, while "primarily" would [necessitate] 51 percent of the reason.

MR. SHAFTEL answered, "Your point is accurate; I can't argue with it."

MR. GREER interjected that he would argue that this [change] doesn't change the law because it will always be a question of fact that is decided by a jury. He pointed out that one can always set aside a transfer restriction if one can prove that when the settlor created the trust there was a fraudulent intent behind it. To prove the fraudulent intent, the plaintiff has to show that the primary purpose of the trust was to defraud the creditor. Therefore, Mr. Greer didn't believe this [language change] adds anything. He noted that the main reason people create trusts for estate planning purposes. In order to set aside the trust, the intent to defraud the creditor can't be merely 1 percent of [the trust] but rather has to be to "primarily" defraud the creditor. He said he believes that is what the court would've had to find in the past.

Number 0896

REPRESENTATIVE BERKOWITZ related his view that [the language change to "primarily"] has added a second element to be proven. The existing statute requires proof of fraud; however, now the requirement is that [the fraud] is the primary intent. Representative Berkowitz said that it seems that the balance has been changed. Therefore, he disagreed with Mr. Greer's assertion that [the language is] the same because [that would mean that] "primarily" is equated with the language "in whole or in part".

CHAIR ROKEBERG asked if "primarily" is language that [the trust attorneys] inserted or the drafter.

MR. GREER replied that it was language put in by the group.

REPRESENTATIVE JAMES returned to the earlier example of a contractor who builds a building and is out of business now, and the time period in regard to the contractor's liability hasn't expired. Before the expiration of the [liability time period], the contractor establishes [a trust] not knowing whether there would be a claim, but suddenly there is a claim. Representative James asked whether a fraudulent conveyance action could be made against [the settlor] simply because the trust existed.

MR. GREER replied yes. Mr. Greer posed a situation in which a builder builds a building, which he thinks is fine. Then the builder decides to transfer money to his children. However, a lawsuit is subsequently filed against this individual. Therefore, the question is in regard to whether one can set aside a transfer to one's child for any reason at all. Mr. Greer specified that [the legislation] is saying that a transfer can only be set aside if the individual can show that the primary intent in transferring these assets to the children was to defraud the creditor [or any other creditor that might have brought the case].

Number 0725

MR. SHAFTEL highlighted that all estate planning involves some intent to protect assets, which is an area of concern. Mr. ShafTEL related his belief that it would be a flimsy provision if all of these transfers could be set aside with the mere proof of the discussion of asset protection with the attorney. He noted that most all of his clients discuss asset protection to some degree and is part of the normal. Therefore, this

provisions says that if the primary purpose of a transfer was to defraud creditors, then [the transfer] should be set aside. This particular [provision] needed clarification because the language was vague.

REPRESENTATIVE BERKOWITZ agreed that the "in part" language was difficult due to the least scintilla of evidence, which is not appropriate either. Representative Berkowitz remarked that if a "significant and substantial" played into the transfer, then the individual shouldn't be able to benefit. He expressed concern with the requirement for proof of primary intent, which will be difficult.

Number 0505

REPRESENTATIVE JAMES commented that "significant and substantial" versus "primary" relates to intent. Although [protection of the trust] could be a substantial reason [for a transfer], it may not be the primary reason. She said she didn't [believe that "significant and substantial" are [equal] with "primary". "And I think what they're trying to say is this has got to be most of the reason why they did, not necessarily most of the money issue," she said.

REPRESENTATIVE BERKOWITZ agreed, but foresaw "in part" being interpreted as next to nothing, while "primarily" amounts to just over 50 percent of the reason, and "significant and substantial" could be somewhere in between those two.

MR. GREER remarked that the notion is to anticipate future problems. Mr. Greer said that he was unaware of any lawsuit, since 1997, filed under this section. If there is any possibility that a transfer might be set aside, the attorney won't do it. Mr. Greer said, "This has been a statute that certainly has not been abused."

Number 0421

REPRESENTATIVE COGHILL directed attention to Section 5, and remarked that (b)(1) of [AS 34.40.110] is very critical because the cause of action hinges on (b)(1). Therefore, "primary" becomes important to Section 5 in regard to extinguishment of the claim or transfer of assets. He asked if that was correct.

MR. GREER answered that Representative Coghill was correct. He pointed out that a transfer restriction, a spend thrift provision, will only be set aside under the four circumstances listed under [Section 5] (b), (b)(1) specifies that the transfer is primarily shown to be a fraudulent transfer with respect to that creditor. The other circumstances (b)(2)-(4) aren't being changed, although (b)(3) is being added to allow for charitable remainder trusts, grantor retained annuity trusts, and unit trusts. Mr. Greer agreed that in order for the creditor to set aside this transfer restriction, has to establish that the transfer was primarily to defraud the creditor.

MR. SHAFTEL pointed out that Section 6 requires that an action or claim can only be brought when a "preponderance of evidence" has been demonstrated. Generally, when proving fraud, the burden of proof is higher with clear and convincing evidence. By allowing 51 percent [with the use of "primarily"], this statute is protective of a plaintiff who is attempting to set aside a transfer to a trust. Use of the term "primarily" is consistent with the liberal burden of proof. The [trust attorney] group viewed [the use of "primarily"] as a compromise,

and the group agreed upon the preponderance of evidence as the appropriate approach. Mr. Shaftel felt it is a balanced and fair approach.

Number 0111

REPRESENTATIVE JAMES moved to report SSHB 316 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, SSHB 316 was reported from the House Judiciary Standing Committee.

DRAFT

Bill Root: Display Bill Root



TO REPORT PROBLEMS WITH BASIS INQUIRY

LIVE K'TOO STREAMS



Return to Basis Main Menu (22 Legislature)

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SJR

23

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSSJR 23(FIN) AM
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: OOG
 Title Constitutional amendment relating BRU Elections
to an appropriation and spending limit Component Elections
 Sponsor Senator Donley
 Requester House Judiciary Component No. 21

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual	1.5					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	1.5	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	1.5					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	1.5	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. If this measure requires the printing of an 8-1/2 by 18 inch ballot, the cost will increase by \$22.0.

Prepared by: Gail Fenumiai, Election Administrative Supervisor Phone 465-3935
 Division Division of Elections Date/Time 1/31/02 3:30 PM
 Approved by: Lieutenant Governor Fran Ulmer Date 01/31/2002
 Agency Office of the Lieutenant Governor

ADOPTED

HOUSE CS FOR CS FOR SENATE JOINT RESOLUTION NO. 23()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): SENATORS DONLEY, Halford, Ward, Taylor, Cowdery, Phillips, Austerman, Leman, Kelly

A RESOLUTION

1 **Proposing amendments to the Constitution of the State of Alaska relating to an**
2 **appropriation limit and a spending limit.**

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

4 * **Section 1.** Article IX, sec. 16, Constitution of the State of Alaska, is repealed and
5 readopted to read:

6 **Section 16. Appropriation and Spending Limit.** (a) Appropriations made
7 for a fiscal year shall not exceed by more than four percent the amount appropriated
8 for the fiscal year two years preceding the fiscal year for which the appropriations are
9 made. This subsection does not apply to

10 (1) an appropriation to the Alaska permanent fund;

11 (2) an appropriation of Alaska permanent fund income for payments of
12 permanent fund dividends to State residents;

13 (3) an appropriation to meet a state of disaster declared by the
14 governor as prescribed by law;

15 (4) an appropriation for the Alaska Railroad;

16 (5) an appropriation of State general obligation and revenue bond

1 proceeds;

2 (6) an appropriation required to pay obligations under general
3 obligation bonds, revenue bonds, and certificates of participation issued by the State;

4 (7) an appropriation of money received from the federal government;

5 (8) a reappropriation of money already appropriated under an
6 unobligated appropriation that is not void under Section 13 of this article;

7 (9) an appropriation of money for expenditure by a State agency to
8 provide services to another State agency that has also received an appropriation of the
9 same money; and

10 (10) an appropriation made under (b) or (c) of this section.

11 (b) An appropriation that exceeds the limit under (a) of this section may be
12 made for any public purpose upon affirmative vote of at least two-thirds of the
13 members of each house of the legislature. The total amount of appropriations under
14 this subsection made for a fiscal year may not exceed two percent of the amount
15 appropriated for the fiscal year two years preceding the fiscal year for which the
16 appropriations are made.

17 (c) An appropriation that exceeds the limit under (a) and (b) of this section
18 may be made for any public purpose upon affirmative vote of at least three-fourths of
19 the members of each house of the legislature. The total amount of appropriations
20 under this subsection made for a fiscal year may not exceed two percent of the amount
21 appropriated for the fiscal year two years preceding the fiscal year for which the
22 appropriations are made.

23 (d) If appropriations for a fiscal year exceed the amount that may be
24 appropriated under (a) - (c) of this section, the governor shall reduce expenditures by
25 the executive branch for its operation and administration to the extent necessary to
26 avoid spending more than the amount that may be appropriated under (a) - (c) of this
27 section.

28 * Sec. 2. Article XV, Constitution of the State of Alaska, is amended by adding a new
29 section to read:

30 **Section 30. Transition; Reconsideration of Appropriation and Spending**
31 **Limit.** (a) Notwithstanding the provision in Section 16(a) of the Article IX that

1 appropriations for a fiscal year shall not exceed by more than four percent the amount
2 appropriated for the fiscal year two years preceding the fiscal year for which
3 appropriations are made, appropriations made for

4 (1) fiscal year 2004 under Section 16(a) of Article IX shall not exceed
5 \$3,328,000,000 excluding appropriations under Section 16(a)(1) - (10) of Article IX;
6 and

7 (2) fiscal year 2005 under Section 16(a) of Article IX shall not exceed
8 \$3,394,000,000 excluding appropriations under Section 16(a)(1) - (10) of Article IX.

9 (b) If the 2002 amendment relating to an appropriation and spending limit (art.
10 IX, sec. 16) is adopted, the lieutenant governor shall place the ballot title and
11 proposition for the amendment on the ballot again at the general election in 2006 and
12 every six years thereafter unless it is rejected. If the majority of those voting on the
13 proposition rejects the proposition, Section 16 of Article IX is repealed on the date the
14 election is certified.

15 * Sec. 3. The amendments proposed by this resolution shall be placed before the voters of
16 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
17 State of Alaska, and the election laws of the state.

2.602

Conceptual Amendment
moved by Rokeberg — FAILED

Pg. 2, Line 10
move #10 to #11

insert as #10


exclude fully funded, self supported
program receipts

friendly amendment
only those designated in statute



SENATOR DAVE DONLEY
ALASKA STATE LEGISLATURE

DATE: February 5, 2002

TO: Representative Norm Rokeberg, Chair 
House Judiciary Committee

FROM: Senator Dave Donley

RE: Work Draft HCS CS SJR 23 (JUD) "R" Version, "Proposing amendments to the Constitution of the State of Alaska relating to an appropriation limit and a spending limit"

Thank you for allowing me to appear before the House Judiciary Committee on October 19, 2001. I appreciated the committee's comments and suggestions. Attached for your consideration is a work draft of HCS CS SJR 23, version "R." Version R contains three changes from the "P" version adopted for discussion by the committee in October:

1. The first change incorporates your committee's suggestion that a third tier of appropriation limit exceptions be allowed with a 75% vote of each house of the Legislature. Section 16(c) was added which allows a third increase not to exceed 2% (page 2, lines 17 - 22).
2. The second change occurs on page 1, lines 11 and 12. Subsection (2) was rewritten to clarify that only the amounts paid out in Permanent Fund Dividends is excluded from the spending limit. The phrasing in the prior version could have been interpreted as excluding administrative costs of the PFD division from the spending limit, which was not my intent.
3. The third change is the inclusion of set dollar amounts on which the FY 04 and FY 05 spending limits are based. This allows the legislature to consider FY 02 supplementals and the FY 03 budget without debating how they may affect the spending limit and will allow a predictable growth in future years.

Attached with the proposed work draft are a sponsor statement reflecting the changes in this new work draft, a sectional analysis of the work draft, a chart showing the effect of the proposed spending limit and potential increases and a copy of the information from the 1982 election pamphlet regarding the original spending limit.

Thank you for considering this legislation. If you have any questions, please do not hesitate to call my office.

DD:dld

cc: House Judiciary Members

Co-Chair: Senate Finance Committee

Vice-Chair: Senate Judiciary Committee

Member: Legislative Budget and Audit Committee • Legislative Council

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SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

**Sponsor Statement
for
Proposed Work Draft "R" Version of
House Committee Substitute for Senate Joint Resolution 23 ()
"Proposing amendments to the Constitution of the State
of Alaska relating to an appropriation limit and a spending limit"**

The Senate Finance Committee believes adoption of an effective, reasonable constitutional spending limit to be an essential first step to developing any new long-range fiscal plan for the state.

Senate Joint Resolution 23 would amend Article IX, sec 16 of Alaska's Constitution by lowering the existing appropriation limit to better reflect Alaska's current revenue picture. Passage of SJR 23 would ensure a limit on the growth of state government and force the state to further reasonably reduce non-essential state spending.

The existing constitutional appropriation limit, adopted by voters in 1981 has not worked as anticipated and has never been effective in restraining state spending. A main reason for its failure is that the starting amount of \$2.5 billion was too high and its escalator factor based on population and inflation was too liberal. In fact, given the increases in inflation and population over the last 19 years, the general fund spending limit imposed by Article IX, Section 16 is over \$6 billion. That is about \$3 billion more than general fund spending in Fiscal Year 2002. SJR 23 would more accurately reflect today's spending by amending the existing appropriation limit.

The appropriation limit proposed by the "R" version of SJR 23 is based on a non-cumulative amount appropriated from 2 years prior and would allow for up to a 2% increase per year (4% total) requiring a simple majority vote. An additional 2% may be appropriated bringing the total to 6%. This additional 2% would require a two-thirds vote of both houses. Yet another 2% may be appropriated bringing the total allowable increase to 8%. This last 2% increase would require a three-fourths vote of both houses.

If, for example 6% more was appropriated for FY08 than FY 06, the FY08 limit would be based on the original 4% increase that passed with a simple majority, not the full 6%.

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Sponsor Statement
Work Draft Version R for
HCS CS SJR 23 ()
February 5, 2002

If the amount appropriated exceeds the limit, the governor shall reduce expenditures by the executive branch for its operation and administration in order to bring expenditures back in line with the constitutional limit.

A transitional section in the resolution sets the FY 04 spending limit at \$3,328,000,000 (derived by increasing the rounded FY 02 amount of \$3.2 billion by 4 percent). This amount may be increased by 2% with a 2/3 vote and an additional 2% with a 3/4 vote. The FY 05 spending limit is set at \$3,394,000,000 (derived by increasing the FY 04 limit by 2% and rounding down). Setting specific amounts for the first two years the new spending limit is in effect allows this legislature to consider FY 02 supplementals and the FY 03 upcoming budget requests without debating how they might possibly effect FY 04 and FY 05 budgets.

SJR 23 also removes the requirement that one-third of the budget be appropriated for capital expenditures. Over the years, several attorney general opinions have been written on the meaning of the constitutional limit; those opinions counter the plain English meaning of the language and have allowed the legislature and the administration to avoid this requirement. SJR 23 removes this arbitrary and superfluous requirement.

SJR 23 simplifies and clarifies exactly what spending counts towards the appropriation limit, something that is not clear in the existing constitutional language.

Without a meaningful constitutional amendment in place that limits the amount of state general fund expenditures, there is absolutely no guarantee that the state will restrain, let alone reduce, spending. SJR 23 would limit state spending and is a key component of any new long-range plan to ensure Alaska's long-term fiscal health.

DD/dld



SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

Sectional Analysis
For
Proposed Work Draft "R" Version of
House Committee Substitute for Senate Joint Resolution 23 ()
"Proposing amendments to the Constitution of the State of Alaska
relating to an appropriation limit and a spending limit"

- Section 1** (a) Rewrites the existing constitutional spending limit formula. With the exception of certain types of appropriations and reappropriations, provides that appropriations made for a fiscal year shall not exceed by more than four percent the amount appropriated for the fiscal year two years preceding the fiscal year for which the appropriations are made.
- (b) Permits an appropriation that exceeds the limit under (a) to be made by affirmative vote of two-thirds of the members of each house, and establishes a limit on the amount of these types of appropriations.
- (c) Permits an appropriation that exceeds the limit under (a) and (b) to be made by affirmative vote of two-thirds of the members of each house, and establishes a limit on the amount of these types of appropriations.
- Section 2** (a) Inserts a transitional section under Article XV of the Alaska Constitution setting the base spending limit for Fiscal Year 04 at \$3,328,000,000 and the base spending limit for Fiscal Year 05 at \$3,394,000,000.
- (b) The lieutenant governor is directed to place this proposition on the ballot again at the general election in 2006 and every six years thereafter unless it is rejected.

Section 3 The proposed amendments will be voted on during the 2002 general election.

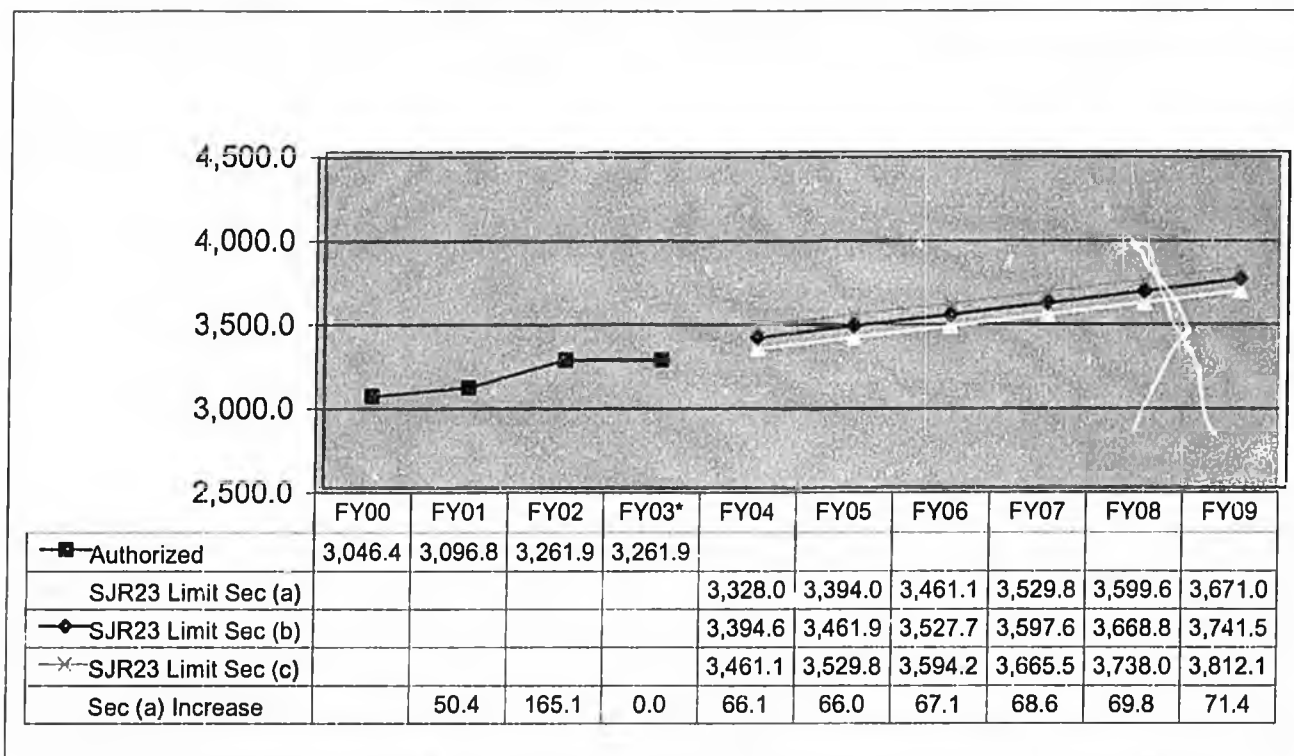
HCS CS SJR 23, Version R
Senator Donley:dld 2/5/02

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SJR 23 Appropriation Limits



Sec (a) allows for up to a 4% increase over the amt appropriated 2 years prior.

Sec (b) states an additional 2% (6% total) may be appropriated with a two-thirds vote of both houses.

Sec (c) states an additional 2% (8% total) may be appropriated with a three-quarters vote of both houses.

(All numbers taken from LFD Fiscal Summaries)

Not included in SJP23 Limit:

Permanent Fund dividends, G.O. & revenue bond proceeds, reappropriations, duplicated funds, funds from non-state sources.

	FY 04	FY 05	FY 06	FY 07	FY 08	FY 09
Potential cumulative increases over prior year						
Section (a) + (b) increase	132.7	133.9	133.7	136.5	139.0	142.0
Section (a)+(b) + (c) increase	199.2	201.8	200.2	204.4	208.2	212.6

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BALLOT MEASURE NO. 4**Constitutional Amendment
AMENDMENT LIMITING INCREASES IN APPROPRIATIONS**

(Free Conference Committee Substitute for Senate Joint Resolution No. 4)

SUMMARY*(As it will appear on the November 2, 1982 General Election Ballot)*

This amendment adds a new section to article IX of the Alaska Constitution. The section limits appropriations for a fiscal year to \$2.5 billion, adjusted annually for changes in population and inflation since 1981. At least one-third of the limitation amount is reserved for appropriations for capital projects and state loan programs. The remainder (up to two-thirds) may be spent for governmental operations. Appropriations to the Alaska Permanent Fund and appropriations or bond authorizations for capital projects may exceed this limit if they are not vetoed by the governor and are approved by the voters. The limit could also be exceeded to meet a state of disaster declared by the governor. The limit would not apply to appropriations for permanent fund dividends, general obligation bond payments, appropriations from revenue bond proceeds, or for costs associated with relocation of the capital (if Ballot Measure No. 8 is passed). The amendment provides for reconsideration of the limit by the voters at the 1986 General Election.

BALLOT FORM:

A vote "FOR" adopts the amendment.

A vote "AGAINST" rejects the amendment.

FOR
AGAINST

VOTE CAST BY MEMBERS OF 12TH STATE LEGISLATURE ON FINAL PASSAGE

Senate	(20 members):	Yeas <u>15</u>	Nays <u>4</u>	Absent or Not Voting <u>1</u>
House	(40 members):	Yeas <u>27</u>	Nays <u>13</u>	Absent or Not Voting <u>0</u>

LEGISLATIVE AFFAIRS AGENCY SUMMARY*(As required by law)*

The proposed amendments to the Constitution of the State of Alaska would impose a limit on the amount of money that could be appropriated from the state treasury for a state fiscal year. The limit for a fiscal year would be \$2,500,000,000 plus an amount representing cumulative changes in population and inflation from July 1, 1981, to the fiscal year in question. Within the limit on appropriations, one-third of the amount available to be appropriated would be reserved for capital projects and loan appropriations.

The following appropriations would be exempt from the limit on appropriations:

1. an appropriation for Alaska permanent fund dividends;
2. an appropriation of revenue bond proceeds;
3. an appropriation to pay principal and interest on state general obligation bonds;
4. an appropriation of money received from non-state sources in trust for specific purposes;
5. an appropriation to the Alaska Permanent Fund if the appropriation bill is approved by the governor, becomes law without the signature of the governor, or is passed by a three-fourths vote of the membership of the legislature over the veto of the governor; and is approved by the voters as prescribed by law;
6. an appropriation for capital projects if the appropriations bill is confined to projects of the same type; approved by the governor, becomes law without the signature of the governor, or is passed by a three-fourths vote of the membership of the legislature over the veto of the governor; and is approved by the voters as prescribed by law after the voters are informed of the cost of operations and maintenance of the proposed projects; and
7. an appropriation to meet a state of disaster declared by the governor, as prescribed by law.

BALLOT MEASURE NO. 4 (Cont.)

LEGISLATIVE AFFAIRS AGENCY SUMMARY (cont.)

The ballot measure also includes three transitional measures associated with the appropriations limit. If the voters approve both the appropriations limit and the cost of providing for relocation of the capital, additional voter approval of appropriations for relocation of the capital would not be required under the appropriations limit. If the appropriation limit is adopted the same proposition must be placed on the 1986 ballot for a second vote and if it is rejected in 1986 the appropriation limit would be repealed. The appropriation limit would apply to appropriations made for the state fiscal years beginning July 1, 1981, and thereafter.

FULL TEXT OF PROPOSED CONSTITUTIONAL AMENDMENT

SECTION 16. APPROPRIATION LIMIT. Except for appropriations for Alaska permanent fund dividends, appropriations of revenue bond proceeds, appropriations required to pay the principal and interest on general obligation bonds, and appropriations of money received from a non-State source in trust for a specific purpose, including revenues of a public enterprise or public corporation of the State that issues revenue bonds, appropriations from the treasury made for a fiscal year shall not exceed \$2,500,000,000 by more than the cumulative change, derived from federal indices as prescribed by law, in population and inflation since July 1, 1981. Within this limit, at least one-third shall be reserved for capital projects and loan appropriations. The legislature may exceed this limit in bills for appropriations to the Alaska permanent fund and in bills for appropriations for capital projects, whether of bond proceeds or otherwise, if each bill is approved by the governor, or passed by affirmative vote of three-fourths of the membership of the legislature over a veto or item veto, or becomes law without a signature, and is also approved by the voters as prescribed by law. Each bill for appropriations for capital projects in excess of the limit shall be confined to capital projects of the same type, and the voters shall, as provided by law, be informed of the cost of operations and maintenance of the capital projects. No other appropriation in excess of this limit may be made except to meet a state of disaster declared by the governor as prescribed by law. The governor shall cause any unexpended and unappropriated balance to be invested so as to yield competitive market rates to the treasury.

SECTION 26. APPROPRIATIONS FOR RELOCATION OF THE CAPITAL. If a majority of those voting on the question at the general election in 1982 approve the ballot proposition for the total cost to the State of providing for relocation of the capital, no additional voter approval of appropriations for that purpose within the cost approved by the voters is required under the 1982 amendment limiting increases in appropriations (art. IX, sec. 16).

SECTION 27. RECONSIDERATION OF AMENDMENT LIMITING INCREASES IN APPROPRIATIONS. If the 1982 amendment limiting appropriation increases (art. IX, sec. 16) is adopted, the lieutenant governor shall cause the ballot title and proposition for the amendment to be placed on the ballot again at the general election in 1986. If the majority of those voting on the proposition in 1986 rejects the amendment, it shall be repealed.

SECTION 28. APPLICATION OF AMENDMENT. The 1982 amendment limiting appropriation increases (art. IX, sec. 16) applies to appropriations made for fiscal year 1984 and thereafter.

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STATEMENT IN FAVOR OF BALLOT MEASURE NO. 4

Ballot Measure No. 4 deserves the support of all Alaskans. It will prevent the continuation of excessive state spending which has been the pattern in recent years. This spending spree is the result of more projects and more programs. Inflation and population growth have not played a major role.

For example, in 1960, the state budget was \$41 million, the population was 226,000, and the Consumer Price Index 103. In 1980, state spending was \$1.14 billion, the population 400,000, and the Consumer Price Index stood at 290. In Fiscal Year 1982, state spending (not including appropriations to the Permanent Fund), was \$3.84 billion. Population and Consumer Price Index figures have not been published for 1982, but if it is assumed that during the 1980-82 period state population increased to 440,000 and the Consumer Price Index rose to about 350, then between 1960 and 1982, state population increased 94% while the Consumer Price Index increased by 239%. But state spending increased by an astounding 9,265% during this same period.

The passage of Ballot Measure No. 4 will halt that sort of runaway government growth by providing a constitutional limit on most items of state spending. The limit is set at \$2.5 billion each year, adjusted for the

changes in population and inflation. At least one-third of the expenditures must be for capital projects and loans, thus, the day-to-day operating budget of the State is held to two-thirds of the limit, or a maximum of \$1.66 billion, plus adjustments. Provisions are made for additional capital expenditures which are approved by the people and for other expenditures in the event of a disaster declared by the governor.

Although it is true that the Fiscal Year 1983 budget is less than Ballot Measure No. 4 would permit, this relatively austere budget was passed during a time of rapidly falling revenue projections. Had this restraint not been present, there is little reason to believe that the Legislature would have deviated from its past practices of excessive spending.

While Ballot Measure No. 4 is not perfect and does not provide for all the limitations one might want, nevertheless, it is the only constitutional spending limit available. Only by voting to accept this ballot measure can the people of Alaska show their determination to restrain spending by the Legislature and begin the road back to state fiscal responsibility.

—Kent Edwards, President
Common Sense for Alaska, Inc.

STATEMENT AGAINST BALLOT MEASURE NO. 4

Only the first two sentences of this measure apply to a spending limitation; the remainder list seven exceptions for spending above the limit, only two of which make much sense: 1) putting money in the Permanent Fund; and 2) spending to clean up a disaster. The remaining five exceptions are loopholes that give legislators and the governor the ability to continue excessive spending on: A) bond authorizations for capital projects; B) issuance of Permanent Fund dividends; C) general obligation bond payments; D) appropriations from revenue bond proceeds; and E) costs of the Capital Move, if passed. All five of these expenditures can be over the spending limit.

But let's back up to those first two sentences. The biggest abuses in government spending are in the area of "capital expenditures," otherwise called "pork". After each capital project is built, it carries operating and maintenance costs. Whatever of the one-third in the limit we spend for capital projects, we are automatically adding to the cost of doing the state's business (the other two-thirds). We cannot continually add to the state's responsibilities and expect the operating two-thirds of the budget to be covered by an increase in population and inflation. We will quickly reach the point where each project built will necessitate cuts in social or educational programs, or will cause a cut in maintenance, leaving our capital projects to decay.

As if this weren't bad enough, let's add in loophole "A", bond authorizations for capital projects. If one-third of the usable revenues aren't enough for desired

and needed capital projects, the Legislature can issue an authorization for the State to sell bonds to build the project. If the governor does not veto the authorization, you will be asked to approve the sale of bonds at a general election. When we sell bonds to get money for projects, we later pay back the buyers—with interest. In loophole "C" we don't even have to count that payback against the spending limit!

Nothing in this measure lays out which projects will be included in the one-third capital limit and which will be put before the voters. As a legislator, I would guess that pet projects of key legislators will be in the budget so they won't be as easily seen by the public. Projects of statewide importance—jails and schools—will be put on the ballot. Each approved project will further impact the operating budget causing a deeper cut in programs and operations.

In addition, there is no provision for declining revenues. This "spending limit" is before you under the assumption we will have increasing revenues each year. That is not likely. As revenues decline, we would be foolish to continue to allocate one-third of our available revenues for building and loans when we will have continually less revenue for operations. In such a case, the only way to maintain government operations would be to increase personal taxes and return to a personal income tax.

We need a spending limitation, but this isn't it.

—Sally Smith, Representative
Alaska State Legislature

*Adopted
10.19.01*

22-LS0734VP
Cook
9/4/01

HOUSE CS FOR CS FOR SENATE JOINT RESOLUTION NO. 23()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS DONLEY, Halford, Ward, Taylor, Cowdery, Phillips, Austerman, Leman, Kelly

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to an
2 appropriation limit and a spending limit.

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

4 * Section 1. Article IX, sec. 16, Constitution of the State of Alaska, is repealed and
5 readopted to read:

6 Section 16. **Appropriation and Spending Limit.** (a) Appropriations made
7 for a fiscal year shall not exceed by more than four percent the amount appropriated
8 for the fiscal year two years preceding the fiscal year for which the appropriations are
9 made. This subsection does not apply to

- 10 (1) an appropriation to the Alaska permanent fund;
- 11 (2) an appropriation of Alaska permanent fund income for a program
12 that provides permanent fund dividends to State residents;
- 13 (3) an appropriation to meet a state of disaster declared by the
14 governor as prescribed by law;
- 15 (4) an appropriation for the Alaska Railroad;
- 16 (5) an appropriation of State general obligation and revenue bond

1 proceeds;

2 (6) an appropriation required to pay obligations under general
3 obligation bonds, revenue bonds, and certificates of participation issued by the State;

4 (7) an appropriation of money received from the federal government;

5 (8) a reappropriation of money already appropriated under an
6 unobligated appropriation that is not void under Section 13 of this article;

7 (9) an appropriation of money for expenditure by a State agency to
8 provide services to another State agency that has also received an appropriation of the
9 same money; and

10 (10) an appropriation made under (b) of this section.

11 (b) An appropriation that exceeds the limit under (a) of this section may be
12 made for any public purpose upon affirmative vote of two-thirds of the members of
13 each house of the legislature. The total amount of appropriations under this subsection
14 made for a fiscal year may not exceed two percent of the amount appropriated for the
15 fiscal year two years preceding the fiscal year for which the appropriations are made.

16 (c) If appropriations for a fiscal year exceed the amount that may be
17 appropriated under (a) or (b) of this section, the governor shall reduce expenditures by
18 the executive branch for its operation and administration to the extent necessary to
19 avoid spending more than the amount that may be appropriated under (a) or (b) of this
20 section.

21 * **Sec. 2.** Article XV, Constitution of the State of Alaska, is amended by adding a new
22 section to read:

23 **Section 30. Reconsideration of Appropriation and Spending Limit.** If the
24 2002 amendment relating to an appropriation and spending limit (art. IX, sec. 16) is
25 adopted, the lieutenant governor shall place the ballot title and proposition for the
26 amendment on the ballot again at the general election in 2006 and every six years
27 thereafter unless it is rejected. If the majority of those voting on the proposition
28 rejects the amendment, Section 16 of Article IX is repealed on the date the election is
29 certified.

30 * **Sec. 3.** The amendments proposed by this resolution shall be placed before the voters of
31 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the

1 State of Alaska, and the election laws of the state.



Alaska State Senate

Senate Finance Committee


Official Business

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

MEMORANDUM

October 8, 2001

TO: House Judiciary Committee Members

FROM: Senator Dave Donley, Co-Chair 
Senate Finance Committee

RE: Committee Substitute to Senate Joint Resolution 23 (FIN)am "P" Version, "Proposing amendments to the Constitution of the State of Alaska relating to an appropriation limit and a spending limit"

I ask that you support the adoption of CS SJR 23 (FIN)am, the "P" version, as a House Committee Substitute and pass it from committee at your earliest convenience.

Briefly, this proposed constitutional amendment revises the existing appropriation limit (Article IX, Section 16) adopted in 1981.

The existing appropriation limit is too high, is unclear, and is not functioning as intended. The "P" version of SJR 23 would lower the appropriation limit to create an enforceable reasonable restraint, clarify how the limit is calculated, remove the non effectual one-third capital spending requirement and link future increases to the two previous year's spending levels rather than a single starting point amount.

The Senate Finance Committee believes adoption of an effective, reasonable constitutional spending limit to be an essential first step to developing any new long-range fiscal plan for the state.

Attached for your further information are the following documents:

- Committee Substitute to Senate Joint Resolution 23 (FIN)am "P" Version
- Existing Article IX, Section 16 of the Alaska Constitution
- Sectional Summary
- Sponsor Statement to CS SJR 23 (FIN)am
- Talking Points for CS SJR 23 (FIN)am
- Charts

DD:jjj

**Existing Provision
Alaska Constitution
Article IX, Section 16**

Section 9.16 - Appropriation Limit.

Except for appropriations for Alaska permanent fund dividends, appropriations of revenue bond proceeds, appropriations required to pay the principal and interest on general obligation bonds, and appropriations of money received from a non-State source in trust for a specific purpose, including revenues of a public enterprise or public corporation of the State that issues revenue bonds, appropriations from the treasury made for a fiscal year shall not exceed \$2,500,000,000 by more than the cumulative change, derived from federal indices as prescribed by law, in population and inflation since July 1, 1981. Within this limit, at least one-third shall be reserved for capital projects and loan appropriations. The legislature may exceed this limit in bills for appropriations to the Alaska permanent fund and in bills for appropriations for capital projects, whether of bond proceeds or otherwise, if each bill is approved by the governor, or passed by affirmative vote of three-fourths of the membership of the legislature over a veto or item veto, or becomes law without signature, and is also approved by the voters as prescribed by law. Each bill for appropriations for capital projects in excess of the limit shall be confined to capital projects of the same type, and the voters shall, as provided by law, be informed of the cost of operations and maintenance of the capital projects. No other appropriation in excess of this limit may be made except to meet a state of disaster declared by the governor as prescribed by law. The governor shall cause any unexpended and unappropriated balance to be invested so as to yield competitive market rates to the treasury.