

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10463 HOUSE STATE AFFAIRS

Ex 7
 POLICIES AND PROCEDURES APPLICABLE
 TO THE TREASURY DIVISION,
 DEPARTMENT OF REVENUE,
 STATE OF ALASKA

APPENDIX Y

MEMORANDUM

STATE OF ALASKA Department of Revenue

To: File

Date: December 29, 2000

Telephone: 465-2301

From: Wilson L. Condon
 Commissioner

Subject: Decision and Justification for Asset
 Allocation for the Constitutional
 Budget Reserve Fund

The Constitutional Budget Reserve Fund (CBRF or Fund) is a very important financial asset of the state. By adopting a constitutional amendment (Article IX, Section 17 of the Alaska State Constitution) the voters of Alaska established the Fund in 1990. The state must deposit all money received as a result of administrative proceedings or litigation on (1) mineral lease payments or (2) taxes on mineral income into the Fund. The legislature can appropriate money from the Fund with a three-quarters vote of both houses or, under some restricted circumstances, with a simple majority.

This memorandum records two changes in investment policy. The first is a result of a legislative directive to invest some of the CBRF money more aggressively, in the hope of reaping some higher return from the riskier capital markets. The second is a change resulting from a modification in internal investment methodology in an attempt to dampen some of the volatility caused by the ever-changing nature of the CBRF.

A significant change that affects the CBRF investment policy occurred in 2000 when the 21st Legislature created a special "subaccount" in the CBRF in order to "yield higher returns than might be feasible to obtain with other money in the budget reserve fund." The legislature directed that "In establishing or modifying the investment policy for the subaccount in the constitutional budget reserve fund, the commissioner of revenue shall assume that those funds will not be needed for at least five years." The legislature funded this subaccount with \$400 million. Creation of this subaccount required creation of a new investment policy for the \$400 million.

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At the same time, the Department will effect a subtle change in its investment policy for the main account. In the ten years that the Fund has been in existence, the Department has not been able to maintain a consistent investment policy in part because the balance, purpose, and intended use of the fund, and consequent investment time frame, have changed over time. In the recent past, the Department would consider the asset allocation of that portion of the CBRF needed to fill the State reserve policy separately from the remainder, if any. The Department would develop two separate investment policies, which it would then blend to create one policy for the Fund. This process lead to frequent changes in the CBRF investment policy based on changes in assumptions or circumstances that had a material effect on the amounts of the CBRF not needed to meet the State's reserve policy. As explained below, although the Department will still calculate the amount needed for the two-year reserve, it will no longer develop, and then blend, a separate investment policy for the reserve and the remainder. This should allow for a more consistent match of investment objectives.

This is the fifth major change in the investment policy for the CBRF over the past 24 months. The Department expects that as a result of the change it is making in how the policy is derived, changes in the future will be more evolutionary in nature and more likely than not caused by changes in the capital markets assumption the Department receives each year. The table below shows the investment policies that have been in place for the entire CBRF over the past several years.

Table 1

	7/97 - 7/98	Change No. 1 7/98 - 12/98	Change No. 2 12/98 - 8/99	Change No. 3 8/99	Change No. 4 4/00
Equity Pool	19%	9%	0%	0%	0%
Broad Market Fixed Income Investment Pool	49%	33%	44%	0%	10%
Intermediate-term Fixed Income Investment Pool	31%	47%	30%	85%	75%
Short-term Fixed Income Investment Pool	1%	11%	26%	15%	15%

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Many of these changes were caused by the unexpected decline in oil prices from late 1997 through early 1999. This price decline and the consequent revenue shortfall required substantially larger than expected draws from the CBRF. This in turn reduced the CBRF balance substantially and shortened the CBRF's average investment time horizon from almost five years to less than two years. The average time horizon of the fund increased slightly in the spring of 2000.

Three developments gave rise to the need to change investment policy for the CBRF on July 1, 2000. First was the creation of the "subaccount" by the Legislature. Second was a decision by the Department to create only one investment policy for the main account of the CBRF rather than continue with its past practice of developing several individual policies for various segments of the CBRF and the combining them. Finally, continued high oil prices extended the expected life of the fund. Based on these developments the Department created the following separate investment policies for the main account and the subaccount of the CBRF.

Main Account of the CBRF

Updated through late November Treasury estimates that the balance of the main account of the CBRF balance will be \$2,678,000,000 on June 30, 2001. The same account balance was \$2,334,200,000 on July 1, 2000.

For the main account of the CBRF, Treasury considers the State's current two-year reserve requirement, General Fund cash flow borrowing needs, money in excess of that which might be needed within two years and the investment policy of the GeFONSI. At this time, although it appears the state will need most of the money from the CBRF to implement its Reserves Policy (Appendix X)¹ and to meet its cash flow needs, the current high oil prices and the balance in the CBRF support a somewhat more aggressive policy for the money in the main account of the CBRF than has been the case in recent years.

¹ This memorandum is the latest in a series of similar memoranda dated September 26, 1997, July 15, 1998, December 28, 1998 and August 10, 1999.

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Based on current spending and revenue projections, Treasury estimates that \$2,100,000,000 in the CBRF should be allocated to the reserve to cover the next two years' anticipated and unanticipated budget shortfalls, and that \$300,000,000 should be allocated to meet cash flow needs. As explained in Appendix X, to calculate the amount of reserve necessary, Treasury used an average estimated or implied standard deviation of oil prices, \$3.83/barrel, over the relevant period to estimate the amount of money needed to cover a 90th percentile oil price decline. This results in a reserve large enough to meet anticipated expenditures even if oil prices fell, except for a 10% probability that the reserve would not be sufficient. Treasury's estimate of money required for reserve reflects both the state's current fiscal position and the possibility of a material decline in oil prices estimated using market measures of price volatility for oil. The estimated CBRF balance on June 30, 2001 exceeded the state's short-term reserve needs and cash flow requirements by \$278 million.

The investment policy for the main account, however, remains conservative. Treasury has a moderate to moderately high risk tolerance. Treasury has a limited liquidity requirement for the Fund. The primary factor limiting the risk tolerance for the main account of the CBRF is the relatively short time horizon. The state may need a significant amount of this money within one year. The Department of Revenue estimates that the balance of the main account of the Fund will be exhausted by July of 2005. Treasury has concluded that the best way to meet the objectives for the main account of the CBRF while maximizing returns is to invest 10% in the Short-term Fixed Income Investment Pool, 65% in the Intermediate-term Fixed Income Investment Pool and 25% in the Broad-Market Fixed Income Investment Pool.

The recommended policy has the following characteristics:

Expected Return	5.82%
Risk	3.95%
Probability of Negative Return	7.05%

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The Subaccount of the CBRF

The subaccount of the CBRF was created by the legislature with the express intent of investing the subaccount more aggressively in an attempt to "yield higher returns than might be feasible to obtain with other money in the budget reserve fund " AS37.10.430(c). In giving this instruction the legislature provide statutory authority for the commissioner to have a clearly different risk tolerance when investing this money. Specifically the legislature provided that "In establishing or modifying the investment policy for the subaccount in the constitutional budget reserve fund, the commissioner of revenue shall assume that those funds will not be needed for at least five years." AS 37.10.430(c). The Department has publicly maintained and believes that time horizon is a major determinant of risk tolerance. In developing the investment policy for the CBRF over the years the possibility that the State could exhaust the Fund in just a few years has led to a more conservative investment policy than would otherwise have been the case. The legislature explicitly removed this constraint from the Commissioner when developing investment policy for the subaccount.

The legislature did not establish how much higher the expected rate of return might be or exactly how much risk could or should be accepted in the investment policy for the subaccount. The Department was left to consider these questions in light of how it and other fiduciaries would address the questions for a long-term endowment like fund. The most common approach to development of investment policies for endowments and other long-term funds is to look at historically achievable real or inflation adjusted returns for various asset classes and overall portfolios. Using this information, adjusted for current conditions and future expectation, fiduciaries can judge the likelihood of achieving various levels of returns and what the risk of the investment policies might be.

Most fiduciaries are comfortable with investment policies that target 5 percent real returns over time. As an example the State Retirement Systems have a current target of 5.15 percent. The Permanent fund has traditionally targeted something close to 5 percent. Both of these funds are clearly long-term funds. The majority of endowment or other long-term investment funds have

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investment policies that are likely to produce real or inflation-adjusted returns in the 4 to 6 percent range.

In evaluating the investment policy for the subaccount, the critical question becomes, is the fund significantly different from a typical endowment? Based on the legislative instruction the Department has concluded that it is not at this time different enough in any relevant way from a typical fund to justify either a more aggressive or more conservative investment policy than a typical fund. Treasury has concluded and I concur that a 5 percent real expected rate of return should be the target of the investment policy of the subaccount. Treasury has further concluded that the best way to meet the objectives for the subaccount of the CBRF while controlling risk is to invest 41% in the Domestic Equity Investment Pool, 17% in the International Equity Investment Pool and 42% in the Broad-Market Fixed Income Investment Pool.

The recommended policy has the following characteristics:

Expected Return	8.25%
Risk	10.56%
Probability of Negative Return	21.74%
Real rate of Return	5.00%

Ex 8

Post-it* Fax Note	7671	Date	1/29/01	# of pages	12
To	Dave D'Amato		From	T. Davenport	
Dept	Rep. Crawford		Co.	Treasury	
Phone #	0		Phone #	465-3751	
Fax #	465-4565		Fax #		

Constitutional Budget Reserve Fund - Investment Policy Statement

1. Overview

The state must deposit in a Constitutional Budget Reserve Fund (CBRF) all money received by the state after July 1, 1990 as a consequence of the resolution of disputes about the amount of mineral lease bonuses, royalties or taxes.

The Legislature may appropriate funds from the CBRF to fund the operations of state government only under certain conditions. If, at any time, the amount of funds from other sources available to the Alaska Legislature for appropriation is less than the amount appropriated to fund state government for the previous fiscal year, then the Legislature may appropriate from the CBRF on a simple majority vote. When the amount of funds from other sources exceeds the amount appropriated for the previous fiscal year, the Legislature may appropriate from the Fund for any public purpose with a three-fourths vote of the members of each house.

The Alaska state constitutional provision governing the operation of the CBRF requires the state's general fund to repay the money that has been appropriated from the CBRF if and when there is a surplus in the general fund at the end of any fiscal year. The general fund does not pay interest on the money it has "borrowed" from the CBRF.

Treasury's investment policies for the CBRF have changed over the years as balance and the expected uses of the CBRF have changed. A significant change occurred this year when the 21st Legislature created a special subaccount in the CBRF in order to "yield higher returns than might be feasible to obtain with other money in the budget reserve fund." The legislature directed that "In establishing or modifying the investment policy for the subaccount in the constitutional budget reserve fund, the commissioner of revenue shall assume that those funds will not be needed for at least five years. Income earned on money in the subaccount shall be retained in the subaccount by the department." AS 37.10.430(c).

Treasury, according to the constitution, credits to the CBRF the amount earned by the investment of the money in the CBRF. That is, the main account of the CBRF retains its investment earnings and the subaccount of the CBRF retains its investment earnings.

Appendix V contains the constitutional and statutory provisions applicable to the CBRF.

2. History

- November 1990. Voters of Alaska adopt an amendment to the Alaska State Constitution creating the CBRF. Article IX, 17 - See Appendix V.
- 1992-1994. Litigation over meaning of key terms in the constitutional provision.
- 1994. Legislature attempts to define "administrative proceedings involving taxes" and "money available for appropriation." 1 Ch. 5 SLA 1994. AS 37.10.410-420.
- April 1994. Alaska Supreme Court decision in *Hickel v. Halford* 872 P.2d 171 defining scope of "dispute" and "administrative proceedings."
- May 1994. Alaska Supreme Court decision in *Hickel v. Cowper* 874 P.2d 922 defining meaning of "amount available for appropriation."
- 1996. Legislature modifies definition of "administrative proceedings involving taxes." 5 Ch. 108 SLA 1996. See Appendix V.
- 1996. Legislature grants commissioner discretion to transfer management of all or a portion of CBRF to Alaska Permanent Fund Corporation. 1 Ch. 41 SLA 1996. AS 57.10.430. See Appendix V.
- 1997. Commissioner of Revenue decides to manage and invest all of CBRF through the Treasury Division, and Commissioner adopts Reserves Policy for the state.
- 1997. Commissioner adopts investment policy for CBRF based on three separate purposes of CBRF:
 - Fund to implement the state's Reserves Policy to cover anticipated and unanticipated shortfalls in the next two fiscal years' budgets;
 - Fund to provide a transition to a long-term fiscal plan; and
 - Fund to act as long-term reserve account to cover unanticipated budget shortfalls well into the future.
- June 1997. Legislature appropriates money from the CBRF for the first time from the CBRF to pay for CBRF equity investment management fees.
- July 1998. Because of anticipated heavy use of CBRF in short to medium term to balance state budgets, Commissioner modifies investment policy and eliminates consideration of using a portion of the CBRF to act as long-term reserve account.
- December 1998. Treasury reviews the Department of Revenue's Fall oil revenue forecast and the Office of Management and Budget's updated expenditure forecast. Treasury determines that the CBRF will be exhausted within five years to meet revenue shortfalls. Commissioner modifies investment policies and eliminates all equity investments.
- July 1999-September 1999. Treasury recommends and Commissioner accepts an investment policy recognizing a two-year investment horizon for the entire balance of the CBRF. Very large draws on CBRF to balance FY 98 and FY 99 budgets, together with a projected \$600 million to \$1.0 billion draw to balance FY 00 budget, reduces the anticipated time horizon for the balance of fund.

Commissioner concludes this change is appropriate no matter how the public votes in the September 14, 1999 special election relating to the state's long-range finances. Similarly, the Commissioner concludes that the higher oil prices experienced in the late spring and summer of 1999 should not alter this proposed policy.

- April 2000. Treasury recommends and Commissioner accepts an investment policy that recognizes a balance in the CBRF in excess of the state's two year reserve requirement and the state's cash flow needs. Higher than anticipated oil prices and a significant settlement increased the balance of the CBRF enough to cause the change in the investment policy
- July 2000. A significant change in the legislation relating to the fund caused Treasury to recommend significant changes to the investment policy of the fund. Treasury recommended and the commissioner accepted an investment policy that recognized a distinction for the newly created subaccount of the fund, the likely life of the fund, and the role of the balance of the fund in filling the reserve requirements of the State. (Related decision document in Appendix Y.) (Earlier versions of these decision documents are maintained in permanent files in Treasury's Asset Accounting Section. Revised documents relating to those policy decisions may be found in Appendices W and X.)

3. Facts and Figures

Fund Cash Flow History by Fiscal Year

Alaska's Public Finances
Constitutional Budget Reserve Fund, Main Account
 (\$millions)

	Settlement Contributions ^(a)	Investment Income ^(b)	Net Loans to General Fund	Balance Available to Loan GF at Year End ^(c)
FY 91	291	6	-	297
FY 92	247	19	-	563
FY 93	914	57	(849)	685
FY 94 ^(d)	437	61	(569)	614
FY 95	1,543	122	(285)	1,994
FY 96	586	111	(173)	2,518
FY 97	570	167	(83)	3,172
FY 98	343	369	(325)	3,559
FY 99	56	114	(1,101)	2,628
FY 00	448	115	^(c) (357)	^(b) 2,734
FY 01 (Proj.)	100	128	117	^(b) 2,679
FY 02 (Proj.)	45	133	(515)	2,342
FY 03 (Proj.)	45	107	(717)	1,777
Total	5,625	1509	(\$4,857)	

Data sources:

- (a) Department of Revenue, Income and Excise Audit Division, Mineral Payments Report (ties in total through FY99).
- (b) Derived (by formula).
- (c) State of Alaska Comprehensive Annual Financial Report (ending balance less the outstanding receivable from the state's general fund).
- (d) Although the table above is based on cash flows, it does not reflect the timing of the \$1,006,038,474 legislative appropriation (Ch 14, SLA 1994) resulting from an Alaska Supreme Court order to restore the CBRF for certain settlement payments deposited to the state's general fund from FY 1990-1994.
- (e) FY00 includes draw to finalize FY99 budget (42num).
- (f) Reflects \$100 million transfer to Power Cost Equalization Endowment Fund.
- (g) Reflects \$400 million transfer to CBRF subaccount on July 1, 2000.

Alaska's Public Finances
Constitutional Budget Reserve Fund, Subaccount
(\$millions)

	Settlement Contributions ^(a)	Investment Income ^(b)	Net Loans to General Fund	Balance Available to Loan GF at Year End ^(c)
FY 00	0	0	0	0
FY 01 (Proj.)	400	34	0	434
FY 02 (Proj.)	0	37	0	471
FY 03 (Proj.)	0	40	0	511
Total	400	111	0	

4. Investment Policy

For the main account of the CBRF (excluding the subaccount that has a five-year time horizon), Treasury recognizes the State's current two-year reserve requirement, General Fund cash flow borrowing needs, money in excess of that which might be needed within two years and the Investment policy of the GcFONSI. At this time, the current high oil prices and the balance in the CBRF support a somewhat more aggressive policy for the money in the main account of the CBRF than had been the case in recent years.

Treasury would invest the main account of the CBRF with the following in mind:

Risk Tolerance	Moderately high. Fund should not be needed for several years.
Investment Objectives	Moderately high exposure of principal to loss in return for higher expected longer-term returns. Limited current income requirement. Moderate inflation protection needed. Moderate liquidity requirement.
Time Horizon	Intermediate.

Effective July 1, 2000, Treasury's investment policy for the main account of the CBRF would be:

25%	Board Market Fixed Income Investment Pool
65%	Intermediate-term Fixed Income Investment Pool
10%	Short-term Fixed Income Investment Pool

Treasury's performance benchmark for the main account of the CBRF is:

25%	Lehman Brothers Aggregate Bond Index
65%	Merrill Lynch 1-5 year Government Index
10%	Three-month U.S. Treasury Bill

Treasury would invest the subaccount of the CBRF with the following in mind:

Risk Tolerance	High. The legislature has expressly provided guidance by instructing the Commissioner to use at least a five year time horizon in establishing an investment policy for the subaccount.
Investment Objectives	High exposure of principal to loss in return for higher expected longer-term returns. Limited current income requirement. Inflation protection needed. Moderate liquidity requirement.
Time Horizon	Long.

Effective July 1, 2000, Treasury's investment policy for the subaccount of the CBRF would be:

42%	Board Market Fixed Income Investment Pool
41%	Domestic Equity Investment Pool
17%	International Equity Investment Pool

Treasury's performance benchmark for the main account of the CBRF is:

42%	Lehman Brothers Aggregate Bond Index
41%	Russell 3000 Stock Index
17%	Morgan Stanley Capital International Europe, Australia, and Far East Stock Index

5. Control and Reporting Requirements

On or before March 15 each year, AS 37.10.430 requires Treasury to prepare a report to the Legislature comparing beginning and ending balances in the CBRF for the immediately preceding calendar year together with comparative nominal, real and realized returns for the CBRF, the Permanent Fund and the

general fund. The State Comptroller in the Treasury Division is responsible for compiling this information and preparing and distributing the required report.

The Alaska Legislature made AS 37.10.071 directly applicable to the CBRF. Accordingly, the Commissioner, through the State Comptroller, maintains accounting records for the Fund in accordance with generally accepted accounting principles (as would be required by AS 37.10.071(a)(8)) and engages an independent certified public accountant to perform an annual audit of the financial condition of the Fund and the pertinent investment transactions (as would be required by AS 37.10.071(a)(9)).

Version Control

Revision Date	Effective Date	Summary of Changes	Find it in Version
8/19/99	9/1/99	CBRF - elimination of Transition Fund and Long-term Reserve Fund, modification to investment policy of Two-year Shortfall Fund including asset allocation.	1.2
3/7/00	4/1/00	Treasury updates 2000 capital market assumptions and changes asset allocation policy accordingly. Target policy was 15% Short-term Fixed Income Investment Pool, 85% Intermediate-term Fixed Income Investment Pool.	1.3
4/7/00	4/10/00	Treasury revises asset allocation after receiving a \$416.3 million settlement from an oil tax dispute in early April 2000. Asset allocation was 25% Short-term Investment Pool, 75% Intermediate-term Investment Pool.	1.4
1/29/01	7/1/00	Treasury revises asset allocation when the 21st Legislature creates a special \$400 million "subaccount" in the CBRF effective July 1, 2000 and establishes a new \$100 million Power Cost Equalization Endowment Fund.	1.7

HJR

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FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHJR 16(STA)
 (H) Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title: Reconsider the imposition of a fee to transport BRU: Legislature
 firearms through Canada Component: _____
 Sponsor: Representative Crawford Component Number: _____
 Requester: H(STA) _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

CHANGE IN REVENUES ()						
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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)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This resolution has no fiscal impact on state spending.

Prepared by: Rynniva Moss

Phone 465-3719

Representative John Coghill
 Committee Chair

Date 2/27/01

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SHJR 16 (STA)
(H) Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title: Intervene to reconsider the imposition BRU: Legislature
of a fee transport firmwares through Canada Component: _____
Sponsor: Representative Crawford Component Number: _____
Requester: H (STA)

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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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)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Rynniruo W. Moss, House State Affairs Aide Phone 465 - 3719

Representative: John Coghill Date Feb. 27, 2001
Committee Chair

HJR

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ALASKA STATE HOUSE OF REPRESENTATIVES

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REPRESENTATIVE JOHN COGHILL

HJR 23 RETENTION OF THE ELECTORAL COLLEGE Sponsor Statement

The electoral college is based upon republican principles that discourage mob-rule. Under the electoral college system that our forefathers very carefully and skillfully designed each State is allocated an Elector for each of its two U.S. Senators, plus an elector for each of its U.S. Representatives. This allows States the same equal voice they have in the U.S. Senate for selection of the President, while weighing in on individuals of each state through the U.S. House formula. As population changes and migrates, the number of Electors will change with the Census every ten years as will the number of representatives from each state in the U.S. House.

If not for the electoral college, Alaska would have no voice in the selection of a President. Today we have three of the 538 electoral votes giving us a little more than 1/2 of 1% of the voice in the Presidential vote, represents one-fifth of the total land mass in the United States. That voice would diminish considerably in a popular vote and the massive vote of urban America would make our decisions for us.



President Elect

ARTICLES

Federalist #68

The mode of appointment of the Chief Magistrate of the United States is almost the only part of the system, of any consequence, which has escaped without severe censure, or which has received the slightest mark of approbation from its opponents. The most plausible of these, who has appeared in print, has even deigned to admit that the election of the President is pretty well guarded. I venture somewhat further, and hesitate not to affirm, that if the manner of it be not perfect, it is at least excellent. It unites in an eminent degree all the advantages, the union of which was to be wished for.

It was desirable that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided. This end will be answered by committing the right of making it, not to any preestablished body, but to men chosen by the people for the special purpose, and at the particular conjuncture.

It was equally desirable, that the immediate election should be made by men most capable of analyzing the qualities adapted to the station, and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper to govern their choice. A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to such complicated investigations.

It was also peculiarly desirable to afford as little opportunity as possible to tumult and disorder. This evil was not least to be dreaded in the election of a magistrate, who was to have so important an agency in the administration of the government as the President of the United States. But the precautions which have been so happily concerted in the system under consideration, promise an effectual security against this mischief. The choice of SEVERAL, to form an intermediate body of electors, will be much less apt to convulse the community with any extraordinary or violent movements, than the choice of ONE who was himself to be the final object of the public wishes. And as the electors, chosen in each State, are to assemble and vote in the State in which they are chosen, this detached and divided situation will expose them much less to heats and ferments, which might be communicated from them to the people, than if they were all to be convened at one time, in one place.

Nothing was more to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption. These most deadly adversaries of republican government might naturally have been expected to make their approaches from more than one quarter, but chiefly from the desire in foreign powers to gain an improper ascendant in our councils. How could they better gratify this, than by raising a creature of their own to the chief magistracy of the Union? But the convention have guarded against all danger of this sort, with the most provident and judicious attention. They have not made the appointment of the President to depend on any preexisting bodies of men, who might be tampered with beforehand to prostitute their votes; but they have referred it in the first instance to an immediate act of the people of America, to be exerted in the choice of persons for the temporary and sole purpose of making the appointment. And they have excluded from eligibility to this trust, all those who from situation might be suspected of too great devotion to the President in office. No senator,

representative, or other person holding a place of trust or profit under the United States, can be of the numbers of the electors. Thus without corrupting the body of the people, the immediate agents in the election will at least enter upon the task free from any sinister bias. Their transient existence, and their detached situation, already taken notice of, afford a satisfactory prospect of their continuing so, to the conclusion of it. The business of corruption, when it is to embrace so considerable a number of men, requires time as well as means. Nor would it be found easy suddenly to embark them, dispersed as they would be over thirteen States, in any combinations founded upon motives, which though they could not properly be denominated corrupt, might yet be of a nature to mislead them from their duty.

Another and no less important desideratum was, that the Executive should be independent for his continuance in office on all but the people themselves. He might otherwise be tempted to sacrifice his duty to his complaisance for those whose favor was necessary to the duration of his official consequence. This advantage will also be secured, by making his re-election to depend on a special body of representatives, deputed by the society for the single purpose of making the important choice.

All these advantages will happily combine in the plan devised by the convention; which is, that the people of each State shall choose a number of persons as electors, equal to the number of senators and representatives of such State in the national government, who shall assemble within the State, and vote for some fit person as President. Their votes, thus given, are to be transmitted to the seat of the national government, and the person who may happen to have a majority of the whole number of votes will be the President. But as a majority of the votes might not always happen to centre in one man, and as it might be unsafe to permit less than a majority to be conclusive, it is provided that, in such a contingency, the House of Representatives shall select out of the candidates who shall have the five highest number of votes, the man who in their opinion may be best qualified for the office.

The process of election affords a moral certainty, that the office of President will never fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications. Talents for low intrigue, and the little arts of popularity, may alone suffice to elevate a man to the first honors in a single State; but it will require other talents, and a different kind of merit, to establish him in the esteem and confidence of the whole Union, or of so considerable a portion of it as would be necessary to make him a successful candidate for the distinguished office of President of the United States. It will not be too strong to say, that there will be a constant probability of seeing the station filled by characters pre-eminent for ability and virtue. And this will be thought no inconsiderable recommendation of the Constitution, by those who are able to estimate the share which the executive in every government must necessarily have in its good or ill administration. Though we cannot acquiesce in the political heresy of the poet who says:

"For forms of government let fools contest—
That which is best administered is best,"—

yet we may safely pronounce, that the true test of a good government is its aptitude and tendency to produce a good administration.

The Vice-President is to be chosen in the same manner with the President; with this difference, that the Senate is to do, in respect to the former, what is to be done by the House of Representatives, in respect to the latter.

The appointment of an extraordinary person, as Vice-President, has been objected to as superfluous, if not mischievous. It has been alleged, that it would have been preferable to have authorized the Senate to elect out of their own body an officer answering that description. But two considerations seem to justify the ideas of the convention in this respect. One is, that to secure at all times the possibility of a definite resolution of the body, it is necessary that the President should have only a casting vote. And to take the senator of any State from his seat as senator, to place him in that of President of the Senate, would be to exchange, in regard to the State from which he came, a constant for a contingent vote. The other consideration is, that as the Vice-President may occasionally become a substitute for the President, in the supreme executive magistracy, all the reasons which recommend the mode of election prescribed for the one, apply with great if not with equal force to the manner of appointing the other. It is remarkable that in this, as in most other instances, the objection which is made would lie against the constitution of this State. We have a Lieutenant-Governor, chosen by the people at large, who presides in the Senate, and is the constitutional substitute for the Governor, in casualties similar to those which would authorize the Vice-President to exercise the authorities and discharge the duties of the President.

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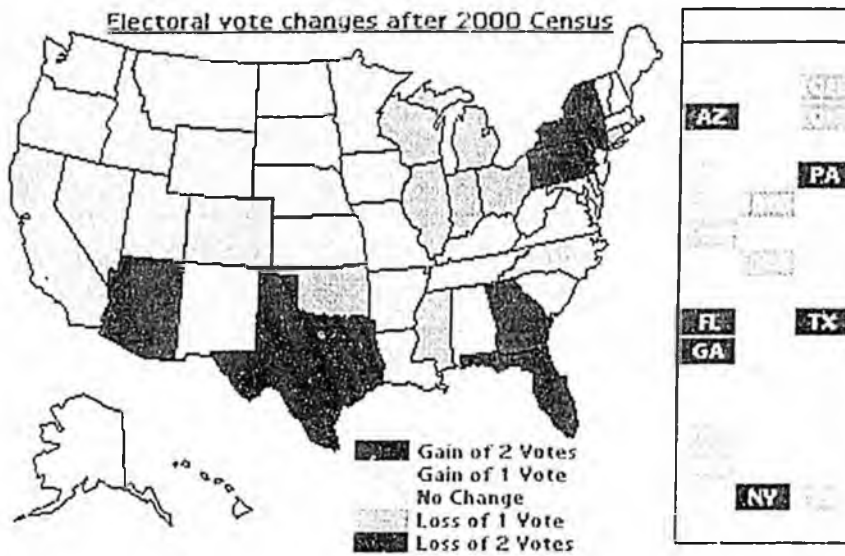


President Elect

ARTICLES

New electoral vote totals for 2004-2008

The **Census Bureau** has released its data from the 2000 Census. According to the Constitution, every ten years a count is made of the United States population to determine how many Representatives each state is allotted in Congress. The census is important in presidential politics since the number of votes each state is given in the Electoral College is figured by adding the number of Representatives and Senators it has. The new data shows 18 states will see a change in their electoral votes for the next two presidential elections. Had the 2000 election been held using the new numbers, Bush would have won 278-259-1.





President Elect

ARTICLES

Electoral College vs popular vote in 1824, 1876, and 1888

Electoral College critics point out the elections of 1824, 1876, and 1888 in their arguments to prove the system doesn't work. In those three elections the candidate who won the Electoral College vote, did not win the popular vote. Besides forgetting the 50 other elections where the Electoral College agrees with the popular vote, critics conveniently ignore the factors that caused these three situations.

1824 - Adams vs Jackson

THE CRITICS CHARGE: In this election, critics point out that Andrew Jackson won both the electoral vote and the popular vote, but the House of Representatives circumvented the will of the people and chose John Quincy Adams as President.

BACKGROUND: In this election four men, all from the same party, were running for President. Each was popular in a different section of the country: Adams in the Northeast, Jackson in the South/Southwest, Crawford in the South/Mid-Atlantic, and Clay in the West. When the votes were counted, Jackson had won the most electoral and popular votes, but had failed to carry a majority of electoral votes. It fell upon the House of Representatives to choose the president from among the top three electoral vote getters: Jackson, Adams, and Crawford. With Clay throwing his support to Adams (who is rumored to have done so for a cabinet post), Adams carried the vote on the first ballot and was named President.

WHY THE ELECTORAL COLLEGE SHOULDN'T BE BLAMED: The critics ignore the fact that the popular vote was not a true indicator of the will of the people in 1824. In fact, popular vote totals weren't even kept for elections before this one. Hardly any state had all four candidates on the ballot; most didn't have three. And six states didn't even have a public vote! Their legislatures chose the electors. This included New York, the largest state at the time, where Adams certainly would have been able to cut into or eliminate Jackson's popular vote lead.

CONCLUSION: To say the Electoral College failed in 1824 is incorrect, because this was not a campaign where the candidates went after the popular vote; this campaign was fought for electoral votes.

1876 - Hayes vs Tilden

THE CRITICS CHARGE: In this election, critics say the system failed because even though Samuel Tilden had a substantial lead over Rutherford B. Hayes in the popular vote, he still lost by one electoral vote.

BACKGROUND: On election night, it appeared that Tilden would win. He led the popular vote 51% to 48%, and led in the Electoral College vote 184-165 with 20 votes still undecided. Tilden only needed one vote to win; Hayes needed all 20. Both parties claimed the disputed votes (Florida's 4 votes, Louisiana's 8 votes, South Carolina's 7 votes, and 1 of Oregon's 3 votes). An Electoral Commission was set up by Congress, who awarded all 20 votes, and the presidency, to Hayes.

WHY THE ELECTORAL COLLEGE SHOULDN'T BE BLAMED: The 1876 election was filled with so many irregularities, that blaming the Electoral College seems ridiculous. First off, Colorado had just joined the union and decided they didn't have enough money to

hold an election so their legislature just sent three electoral votes for Hayes. Secondly, fraud abounded in the states of Florida, Louisiana, and South Carolina. Democrats intimidated blacks in order to keep them from voting, and Republicans, backed by armed troops, got as many blacks as possible to vote, as many times as they could. It's impossible to say who would have legitimately won these states, but most scholars agree Tilden would have won Louisiana and Florida, and Hayes would have won South Carolina. Lastly, the Electoral Commission set up by Congress is not part of the normal Electoral College system. It was composed of 8 Republicans and 7 Democrats who voted along political lines to give all the votes to Hayes. It turns out that the Republicans had secretly made a deal with the Democrats. If the Democrats would accept the results of the Electoral Commission, the Republicans would end Reconstruction in the South.

CONCLUSION: To say the Electoral College failed in 1876 is incorrect, because without the rampant fraud in the South *OR* without a biased Electoral Commission that voted on partisan lines the popular vote winner, Tilden, probably would have won the electoral vote as well.

1888 - Harrison vs Cleveland

THE CRITICS CHARGE: In this election, critics believe they have their best case against the Electoral College. Grover Cleveland won the popular vote while Benjamin Harrison won the electoral vote. Since no major issues of fraud, voter irregularities, or Congressional meddling is alleged, this is a straight up case of the system being wrong.

BACKGROUND: The main issue, if not the only issue, in the campaign was the tariff, brought to the forefront by the incumbent president Cleveland. He proposed lowering it, widely favored in the South; Harrison wanted to keep higher tariffs, widely favored in the North. One of the most civil and boring elections in history was also one of the closest. Cleveland had only a 0.8% lead over Harrison in the popular vote.

WHY THE ELECTORAL COLLEGE SHOULDN'T BE BLAMED: While this may be the critics best example to show the Electoral College is flawed, supporters would say this election shows why the system works. The Electoral College system encourages candidates to make their appeal as broad as possible in order to win. Cleveland basically ran a campaign based on one issue supported by a single region of the country and ran up the vote in that region, thereby padding his popular vote. In the six southern states of Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Texas, Cleveland received over 65% of the vote. In those six states Cleveland beat Harrison by 425,532 votes. In the other 32 states combined, Harrison beat Cleveland by 334,936 votes.

CONCLUSION: To say the Electoral College failed in 1888 is to not understand how the system works. The Electoral College prevents one region of the country voting as a block from unduly directing the outcome of the election to the rest of the country. The real reason Cleveland won the popular vote (by only 90,536 out of 11,379,131 votes cast) but lost the election was because of unusually high support in a single region of the country.

ELECTION 2000



FREQUENTLY ASKED QUESTIONS ABOUT THE ELECTORAL COLLEGE AND BACKGROUND INFORMATION

KEY DATES FOR THE ELECTORAL COLLEGE IN 2000

November 7, 2000 -- General Election: The voters in each state choose Electors to serve in the Electoral College. As soon as election results are final, the states prepare seven "Certificates of Ascertainment" of the Electors chosen, and send one original along with two certified copies to the Archivist of the United States.

December 18, 2000 -- Meeting of Electors: The Electors in each State meet to select the president and vice president of the United States. The Electors record their votes on six "Certificates of Vote," which are paired with the six remaining original "Certificates of Ascertainment." The Electors sign, seal and certify these packages of electoral votes and immediately send them to the president of the Senate, the Archivist of the United States and other designated federal and state officials.

December 27, 2000 -- Deadline for Receipt of Electoral Votes: the president of the Senate, the Archivist of the United States, and other designated federal and state officials must have the electoral votes in hand.

January 6, 2001 - Counting Electoral Votes in Congress: The Congress meets in joint session to count the electoral votes (unless Congress passes a law to change the date).

FREQUENTLY ASKED QUESTIONS ON THE ELECTORAL COLLEGE

Who selects the Electors?

The process for selecting Electors varies throughout the United States. Generally, the political parties nominate Electors at their state party conventions or by a vote of the party's central committee in each state. Electors are often selected to recognize their service and dedication to their political party. They may be state elected officials, party leaders, or persons who have a personal or political affiliation with the presidential candidate. Then the voters in each state choose the Electors on the day of the general election. The Electors' names may or may not appear on the ballot below the name of the candidates running for president, depending on the procedure in each State.

What are the qualifications to be an Elector?

The U.S. Constitution contains very few provisions relating to the qualifications of Electors. Article II, section 1, clause 2 provides that no senator or representative, or person holding an Office of Trust or Profit under the United States, shall be appointed an Elector. As a historical matter, the 14th Amendment provides that state officials who have engaged in insurrection or rebellion against the United States or given aid and comfort to its enemies are disqualified from serving as Electors. This prohibition relates to the post-Civil War era. A state's certification of Electors on its Certificates of Ascertainment is generally sufficient to establish the qualifications of Electors.

Is a vote for president and vice president meaningful in the Electoral College system?

Yes, within a state a vote has a great deal of significance. Under the Electoral College system, we do not elect the president and vice president through a direct nationwide vote. The presidential election is decided by the combined results of 51 state elections (in this context, the term "state" includes D.C.). A single vote helps decide which candidate receives the state's electoral votes. It is possible that an Elector could ignore the results of the popular vote, but that occurs very rarely.

The founders of the nation devised the Electoral College system as part of their plan to share power between

the states and the national government. Under the federal system adopted in the Constitution, the nationwide popular vote has no legal significance. As a result, it is possible that the electoral votes awarded on the basis of state elections could produce a different result than the nationwide popular vote. Nevertheless, the individual citizen's vote is important to the outcome of each state election.

Are Electors required to vote for the candidate who won his or her state's popular vote?

There is no Constitutional provision or federal law that requires Electors to vote according to the results of the popular vote in their states. Some states (24 plus D.C. at last count) require Electors to cast their votes according to the popular vote. These pledges fall into two categories -- Electors bound by state law and those bound by pledges to political parties.

The Supreme Court has held that the Constitution does not require that Electors be completely free to act as they choose and therefore, political parties may extract pledges from Electors to vote for the parties' nominees. Some state laws provide that so-called "faithless electors" may be subject to fines or may be disqualified for casting an invalid vote and be replaced by a substitute Elector. The Supreme Court has not specifically ruled on the question of whether pledges and penalties for failure to vote as pledged may be enforced under the Constitution. No Elector has ever been prosecuted for failing to vote as pledged.

Today, it is rare for Electors to disregard the popular vote by casting their electoral vote for someone other than their party's candidate. Electors generally hold a leadership position in their party or were chosen to recognize years of loyal service to the party. Throughout our history as a nation, more than 99 percent of Electors have voted as pledged.

How is it possible for the electoral vote to produce a different result than the nationwide popular vote?

It is important to remember that the president is not chosen by a nationwide popular vote. The electoral vote totals determine the winner, not the statistical plurality or majority a candidate may have in the nationwide vote totals. Electoral votes are awarded on the basis of the popular vote in each state.

Note that 48 out of the 50 states award electoral votes on a winner-takes-all basis (as does D.C.). For example, all 54 of California's electoral votes go to the winner of that state election, even if the margin of victory is only 50.1 percent to 49.9 percent.

In a multi-candidate race where candidates have strong regional appeal, as in 1824, it is quite possible that a candidate who collects the most votes on a nation-wide basis will not win the electoral vote. In a two-candidate race, that is less likely to occur. But it did occur in the Hayes-Tilden election of 1876 and the Harrison-Cleveland election of 1888 due to the statistical disparity between vote totals in individual state elections and the national vote totals.

Why do we still have the Electoral College?

The Electoral College process is part of the original design of the U.S. Constitution. It would be necessary to pass a constitutional amendment to change this system.

Note that the 12th Amendment, the expansion of voting rights, and the use of the popular vote in the states as the vehicle for selecting Electors has substantially changed the process.

Many different proposals to alter the presidential election process have been offered over the years, such as direct nationwide election by the people, but none have been passed by Congress and sent to the states for ratification. Under the most common method for amending the Constitution, an amendment must be proposed by a two-thirds majority in both houses of Congress and ratified by three-fourths of the states.

What proposals have been made to change the Electoral College system?

Reference sources indicate that over the past 200 years, over 700 proposals have been introduced in Congress to reform or eliminate the Electoral College. There have been more proposals for Constitutional amendments on changing the Electoral College than on any other subject. The American Bar Association has criticized the Electoral College as "archaic" and "ambiguous" and its polling showed 69 percent of lawyers favored abolishing it in 1987. But surveys of political scientists have supported continuation of the Electoral College. Public opinion polls have shown Americans favored abolishing it by majorities of 58 percent in 1967;

81 percent in 1968; and 75 percent in 1981.

Opinions on the viability of the Electoral College system may be affected by attitudes toward third parties. Third parties have not fared well in the Electoral College system. Candidates with regional appeal such as Governor Strom Thurmond of South Carolina in 1948 and Governor George Wallace of Alabama in 1968 won blocs of electoral votes in the South, which may have affected the outcome, but did not come close to seriously challenging the major party winner. The last third party or splinter party candidate to make a strong showing was Theodore Roosevelt in 1912 (Progressive, also known as the Bull Moose Party). He finished a distant second in electoral and popular votes (taking 88 of the 266 electoral votes needed to win). Although Ross Perot won 19 percent of the popular vote nationwide in 1992 (United We Stand Party, which was the forerunner of the Reform Party), he did not win any electoral votes since he was not particularly strong in any one or several states. Any candidate who wins a majority or plurality of the popular vote has a good chance of winning in the Electoral College, but there are no guarantees.

How do the 538 electoral votes get divided among the states?

The electoral votes allotted to each state correspond with the number of representatives and senators each state has in Congress. The distribution of electoral votes among the states can vary every 10 years depending on the results of the U.S. census.

One of the primary functions of the census is to reapportion the 435 members of the House of Representatives among the states, based on the current population. The reapportionment of the House determines the division of electoral votes among the states. In the Electoral College, each state gets one electoral vote for each one of its representatives in the House, plus two electoral votes for its two senators.

Every state has at least 3 electoral votes because the Constitution grants each state two senators and at least one representative. In addition to the 535 electoral votes divided among the states, the District of Columbia has three electoral votes because the 23rd Amendment granted it the same number of votes as the least populated state.

If a state gains or loses a congressional district, it will also gain or lose an electoral vote. As a result of the census conducted this year, the number of electoral votes allotted to your state may change for the 2004 election.

What is the difference between the winner-takes-all rule and proportional voting, and which states follow which rule?

There are 48 States that have a winner-takes-all rule for the Electoral College. In these states, whichever candidate receives a majority of the vote, or a plurality of the popular vote (less than 50 percent but more than any other candidate) takes all of the state's electoral votes.

Only two states, Nebraska and Maine, do not follow the winner-takes-all rule. In those states, there could be a split of electoral votes among candidates through the state's system for proportional allocation of votes. For example, Maine has four electoral votes and two congressional districts. It awards one electoral vote per congressional district and two by the state-wide, "at-large" vote. It is possible for Candidate A to win the first district and receive one electoral vote, Candidate B to win the second district and receive one electoral vote, and Candidate C, who finished a close second in both the first and second districts, to win the two at-large electoral votes. Although this is a possible scenario, it has not actually occurred in recent elections.

Can citizens in U.S. territories vote for president?

No, the Electoral College system does not provide for residents of U.S. territories, such as Puerto Rico, Guam, the U.S. Virgin Islands and American Samoa to vote for president. Unless citizens in U.S. territories have official residency (domicile) in a U.S. state or the District of Columbia (and vote by absentee ballot or travel to their state to vote), they cannot vote in the presidential election. Note that prior to the adoption of the 23rd Amendment, D.C. residents could not vote in the presidential election.

The political parties may authorize voters in primary elections in territories to select delegates to represent them at the political party conventions. But that process does not affect the Electoral College system.

What would happen if two candidates tied in a state's popular vote, or there was a dispute as to the winner?

A tie is a statistically remote possibility even in smaller states. But if a state's popular vote were to come out as a tie between candidates, state law would govern as to what procedure would be followed in breaking the tie. A tie would not be known of until late November or early December, after a recount and after the secretary of state had certified the election results. Federal law would allow a state to hold a run-off election.

A very close finish could also result in a run-off election or legal action to decide the winner. Under federal law (3 U.S.C. section 5), state law governs on this issue, and would be conclusive in determining the selection of Electors. The law provides that if states have laws to determine controversies or contests as to the selection of Electors, those determinations must be completed six days prior to the day the Electors meet.

FREQUENTLY ASKED QUESTIONS ON ELECTIONS AND VOTING IN FLORIDA

What percentage comprises a majority win in a primary?

50 percent plus 1

How many voting machines must be provided to each precinct?

One voting machine shall be provided for each 400 electors in the county, except that in any county in which 25 percent or more of the registered electors are 60 years of age or older, the supervisor of elections must provide at least one machine for each 350 registered electors.

Where does a candidate, elector or taxpayer file if he wants to contest the election returns?

With the Clerk of the Circuit Court; must be filed within 10 days of certification of results or within 5 days after canvassing board certifies results following a protest.

Where does a candidate or elector file a protest challenging the election returns as erroneous?

With the canvassing board prior to the time the canvassing board certifies the results for the office being protested or within 5 days after midnight of the date the election is held, whichever occurs later.

Florida's Presidential Electors 2000

On September 1, 2000, each political party that is registered in Florida certified to the Division of Elections the names of their presidential and vice presidential candidates. Along with this certification, each party submitted the names and addresses of 25 electors. Each state is entitled to a number of electors equal to the number of members of Congress and Senators from the state. These electors that are nominated by the party take an oath to vote for the candidate on whose behalf they are nominated. In Florida, the presidential and vice presidential candidate receiving the most votes will be entitled to have his or her electors certified as members of the electoral college. The electoral college will meet in each state capital on December 18, 2000 to vote for president and vice president. These votes will then be certified to the president of the Senate who will officiate at the counting in Washington, D.C. on January 6, 2001.

LEGAL ASPECTS AND POSSIBLE NEXT STEPS

- The recount was triggered by the state of Florida, which requires this procedure when less than one-half of 1 percent of the vote separates the candidates.
- Florida's mandatory vote recount is being supervised by the Election Canvassing Commission, which is responsible for certifying the results of any election for federal or statewide office. The commission is made up of the governor (Jeb Bush), state secretary of state (Katherine Harris), and the state director of the Division of Elections (Clay Roberts). (Governor Jeb Bush, George W. Bush's brother, has stepped aside and will not be certifying election results.)
- Election results will not be certified until overseas ballots are counted. Overseas ballots must be postmarked by November 7 and received by November 17.
- Private citizens who have voted in the Florida elections and believe that their constitutional rights ("one man,

one vote") have been violated, may file lawsuits in federal district court. Also, if there is an allegation of a violation of the Voting Rights Act, a lawsuit can also be filed in federal district court.

- Candidates or private citizens who have voted in the Florida elections alleging voting irregularities, or that the "will of the people" was subverted, may file lawsuits in Florida state court.

BACKGROUND ARTICLE

Presidential Elections in the United States: A Primer

(Congressional Research Service)

April 17, 2000

Kevin J. Coleman, Analyst in American National Government

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Government & Finance Division

Summary

Every four years, Americans elect a president and vice president, thereby choosing both national leaders and a course of public policy. The system that governs the election of the president combines constitutional and statutory requirements, rules of the national and state political parties, political traditions, and contemporary developments and practices.

As initially prescribed by the Constitution, the election of the president was left to Electors chosen by the states. Final authority for selecting the president still rests with the Electoral College, which comprises Electors from each state equal in number to the state's total representation in the House and Senate. All but two states award electoral votes on a winner-take-all basis to the candidate with a plurality of the state's popular vote.

The process of electing the president is essentially divided into four stages: (1) the pre-nomination phase, in which candidates compete in state primary elections and caucuses for delegates to the national party conventions; (2) the national conventions--held in the summer of the election year--in which the two major parties nominate candidates for president and vice president and ratify a platform of the parties' policy positions and goals; (3) the general election campaign, in which the major party nominees, as well as any minor party or independent contenders, compete for votes from the entire electorate, culminating in the popular vote on election day in November; and (4) the Electoral College phase, in which the president and vice president are officially elected.

Presidential elections in recent years differ in several important respects from those held earlier in American history. The first is the far wider participation of voters today in determining who the party nominees will be; the political parties have in recent years given a much greater role to party voters in the states (in lieu of party leaders) in determining the nominees. The second difference involves the role of the electronic media and, most recently, the Internet, both in conveying information to the voters, and shaping the course of the campaign. Third, the financing of presidential campaigns is substantially governed by a system of public funding in the pre-nomination, convention, and general election phases, enacted in the 1970s in response to increasing campaign costs in an electronic age and the concomitant fundraising pressures on candidates. Thus, contemporary presidential elections blend both traditional aspects of law and practice and contemporary aspects of a larger, more complex, and more technologically advanced society.

For additional information on the contemporary role of the Electoral College, see CRS Report RS20273, *The Electoral College: How it Operates in Contemporary Presidential Elections*.

Electoral College

When voters go to the polls on election day, they actually cast their votes for a slate of Electors, who are entrusted by the Constitution with election of the president and vice president. The Electors are known collectively as the Electoral College.

The Electoral College in the Constitution

The question of the manner in which the president was to be elected was debated at great length at the

Constitutional Convention of 1787. At one point, the delegates voted for selection by Congress; other proposals considered were for election by: the people at large; governors of the several states; Electors chosen by state legislatures, and a special group of members of Congress chosen by lot. Eventually, the matter was referred to a "committee on postponed matters," which arrived at a compromise: the Electoral College system.

Size of the Electoral College and Allocation of Electoral Votes

The Electoral College, as established by the Constitution and modified by the 12th and 23rd Amendments, currently includes 538 members: one for each senator and representative, and three for the District of Columbia (under the 23rd Amendment of 1961). It has no continuing existence or function apart from that entrusted to it.

Each state has a number of electoral votes equal to the combined numerical total of its Senate and House delegation. Since the size of state delegations in the House of Representatives may change after the reapportionment mandated by the decennial census, the size of state representation in the Electoral College has similarly fluctuated. The most recent House reapportionment and reallocation of electoral votes followed the 1990 census, in effect for the 1992, 1996 and 2000 presidential elections. Current electoral vote allocations are listed below.

Qualifications for the Office of Elector

Article II, section 1 of the Constitution provides that, "No Senator or Representative, or person holding an office of trust or profit under the United States shall be appointed an elector." Aside from this disqualification, any person is qualified to be an Elector for president and vice president.

Number of Electoral Votes by State: 1992-2000

Alabama — 9
Alaska — 3
Arizona — 8
Arkansas — 6
California — 54
Colorado — 8
Connecticut — 8
Delaware — 3
District of Columbia — 3
Florida — 25
Georgia — 13
Hawaii — 4
Idaho — 4
Illinois — 22
Indiana — 12
Iowa — 7
Kansas — 6
Kentucky — 8
Louisiana — 9
Maine — 4
Maryland — 10
Massachusetts — 12
Michigan — 18
Minnesota — 10
Mississippi — 7
Missouri — 11
Montana — 3
Nebraska — 5
Nevada — 4
New Hampshire — 4
New Jersey — 15
New Mexico — 5
New York — 33

North Carolina — 14
North Dakota — 3
Ohio — 21
Oklahoma — 8
Oregon — 7
Pennsylvania — 23
Rhode Island — 4
South Carolina — 8
South Dakota — 3
Tennessee — 11
Texas — 32
Utah — 5
Vermont — 3
Virginia — 13
Washington — 11
West Virginia — 5
Wisconsin — 11
Wyoming — 3
Total — 538
Required for Election: 270

Nomination of Elector Candidates

The Constitution does not specify procedures for the nomination of candidates for the office of presidential Elector. The states have adopted various methods of nomination for Elector candidates, of which the two most popular are by state party convention, used in 36 states, and by state party committee, used in 10 states. In practice, Elector candidates tend to be prominent state and local officeholders, party activists, and other citizens associated with the party that nominates them.

A list of Elector candidates and those chosen as Electors in each state may be obtained from the secretaries of state (Commonwealth), at the state capital. Lists of Electors for 1992 and 1996 and other related information may be obtained from the National Archives and Records Administration's Electoral College home page at: <http://www.nara.gov/fedreg/ec-hmpge.html>

Selection of Electors

The Constitution left the method of selecting Electors and of awarding electoral votes to the states. In the early years of the Republic, many states provided for selection of Electors by the state legislatures. Since 1864, all states have provided for popular election of Electors for president and vice president.

General Ticket System

In 48 states and the District of Columbia, all electoral votes are awarded to the slate that receives a plurality of popular votes in the state. This practice is variously known as the general ticket or winner-take-all system.

The general ticket system usually tends to exaggerate the winning candidates' margin of victory, as compared with the share of popular votes received. For instance, in 1996, Bill Clinton and Al Gore won 49.2 percent of the popular vote, as compared with 40.7 percent by Bob Dole and Jack Kemp. The Democrats' electoral vote margin of 379 to 159 was a much higher 70.4 percent of the total, due to the fact that the Democratic ticket received a plurality vote in 32 states and the District of Columbia.

District System

Currently, Maine and Nebraska provide the only exception to the general ticket method, awarding one electoral vote to the ticket gaining the most votes in each of their congressional districts, and awarding the remaining two (representing their senatorial allotment) to the winners of the most votes statewide. This variation, more widely used in the 19th century, is known as the district system.

The "Faithless Elector"

The Founding Fathers intended that individual Electors be free agents, voting for the candidates they thought most fit to hold office. In practice, however, Electors are not expected to exercise their own judgment, but, rather, to ratify the people's choice by voting for the candidates winning the most popular votes in their state. Despite this understanding, there is no constitutional provision requiring Electors to vote as they have pledged. Over the years, a number of Electors have voted against the voters' instructions, known as the phenomenon of the unfaithful, or "faithless, Elector."

Although a number of states have laws which seek to bind the Electors to the popular vote winners, the preponderance of opinion among constitutional scholars holds that Electors remain free agents. Moreover, all of the seven votes of the faithless Electors between 1948 and 1988 were recorded as cast. The most recent occurrence was in 1988, when a West Virginia Democratic Elector voted for Lloyd Bentsen for president and Michael Dukakis for vice president.

Winning the Presidency

The 12th Amendment of the Constitution requires that winning candidates receive an absolute majority of electoral votes (currently 270 of the 538 total).

Counting the Electoral Votes

Once the voters have chosen the members of the Electoral College, the Electors meet to ratify the popular choices for president and vice president. The Constitution provides (again, in the 12th Amendment) that they assemble in their respective states. Congress has established (in 3 U.S.C. 8) the first Monday after the second Wednesday in December following their election as the date for casting electoral votes, at such place in each state as the legislature directs.

In practice, the Electors almost always meet in the state capital, usually at the state house or capitol building, often in one of the legislative chambers. The votes are counted and recorded, the results are certified by the governor and forwarded to the president of the U.S. Senate (the vice president).

The electoral vote certificates are opened and counted at a joint session of the Congress, held, as mandated (3 U.S.C. 15), on January 6 following the Electors' meeting (or, by custom, on the next day, if it falls on a Sunday); the vice president presides. Electoral votes are counted by the newly elected Congress, which convenes on January 3. The winning candidates are then declared to have been elected.

A major criticism of the Electoral College is that it could deny victory to the candidate with the most popular votes, which can occur when one ticket wins the requisite majority of Electors but gets fewer popular votes than its opponent(s). Popular vote winners have failed to win the presidency on three occasions since adoption of the 12th Amendment: in 1824, 1876, and 1888. In 1824, the electoral vote was split among four candidates, necessitating election by the House of Representatives, which chose the popular vote runner-up. In 1876, due to contested returns from four states, Congress set up an electoral commission, which awarded the disputed votes to the apparent popular vote runner-up, resulting in a one-vote margin in the Electoral College. In 1888, the apparent popular vote runner-up won a comfortable Electoral College majority. Electoral College 'misfires' are listed below.

Presidents Elected Without A Plurality of the Popular Vote
 (*Elected Presidents in bold)

1824	Andrew Jackson	152,933 votes	99 electoral votes
	John Quincy Adams*	115,696 votes	84 electoral votes
	William H. Crawford	46,979 votes	41 electoral votes
	Henry Clay	47,136 votes	37 electoral votes
1876	Samuel J. Tilden	4,287,670 votes	184 electoral votes
	Rutherford B. Hayes*	4,035,924 votes	185 electoral votes
1888	Grover Cleveland	5,540,365 votes	168 electoral votes
	Benjamin Harrison*	5,445,269 votes	233 electoral votes

Electoral College Deadlock and Other Contingencies

The Constitution, in the 12th Amendment, provides for cases in which no slate of candidates receives the required Electoral College majority, a process usually referred to as contingent election. Under these circumstances, the House of Representatives elects the president, choosing from among the three candidates receiving the most electoral votes, with each state casting a single vote.

In the course of the usual presidential election, in which only the two major party candidates have a chance of victory, such occurrences are extremely unlikely. In those elections characterized by the emergence of a strong third party candidate (George Wallace in 1968, John Anderson in 1980, and Ross Perot in 1992), Electoral College deadlock is possible. Only once since adoption of the 12th Amendment, in the four-candidate election of 1824, was the president -- John Quincy Adams -- elected by the House of Representatives.

If there is no electoral vote majority, election of vice president is entrusted to the Senate, with each member casting one vote, choosing from the two candidates with the most electoral votes. Only once, in 1837, did the Senate so elect a vice president -- Richard M. Johnson. Although Democratic presidential nominee Martin Van Buren won a clear Electoral College majority, votes were cast for two Democratic vice presidential candidates, yielding a three-way contest requiring Senate resolution.

In the event contingent election is necessary, the House has two weeks between counting the electoral votes (January 6) and Inauguration Day (January 20) in which to elect a president. If it is unable to do so during this time, the vice president-elect, assuming one has been chosen by the Electors or the Senate, serves as acting president until the House resolves its deadlock. In the event the Senate has been similarly unable to elect a vice president, the speaker of the House of Representatives serves as acting president until a president or vice president is elected, but he must resign the offices of both speaker and representative in order to so serve. In the event there is no speaker, or the speaker fails to qualify, then the president pro-tempore of the Senate (the longest serving senator of the majority party) becomes acting president, under identical resignation requirements.

Further information:

[Electoral College Homepage](#)

[Federal Election Commission](#)

[Center for Voting and Democracy](#)

[Presidential Election Laws](#)

[A Procedural Guide to the Electoral College](#)

["Presidential Elections and Vacancies" : U.S. Code](#)

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(Go to <http://adamsjohn.com/> to see the First Vice President's certification dated December 14, 1792 of the Electoral Votes from the State of Connecticut to learn more).

The Electoral College



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Historical Background

By: The US National Archives and Records Administration

"The Electoral College is one of the more difficult parts of the American electoral process to understand. While election of the president and vice-president was provided for in Article II, Section 1, Clauses 2, 3, and 4 of the U.S. Constitution, the process today has moved substantially away from the framers' original intent. Over the years a combination of several factors has influenced the Electoral College and the electoral process. These include key presidential elections such as the ones between John Adams and Thomas Jefferson in 1796 and 1800, the development of the political party system, and the passage of the 12th Amendment.

The framers of the Constitution considered the election of the president and vice-president to be a major issue, and most were apprehensive about the obvious options. Election of the president by Congress would upset the balance of power between the executive and the legislative branches, while election by the people might not put the best person in the office. Many believed that Americans were too spread out and thus unable to be adequately informed to make such an important decision.

Alexander Hamilton drafted the compromise that was to be included in the Constitution. Under this system, when a citizen voted in the presidential election, he was actually casting a vote to choose a presidential elector. In theory, a citizen's vote is cast the same way today. Hamilton's plan included eight major points.

1. Each state would be allocated a number of electors equal to the sum of its senators and members of the House of Representatives.
2. State legislatures would decide the methods for choosing electors in their respective states.
3. Electors would meet in their own states, each casting two votes on one ballot, each vote for a different candidate for president.
4. The president of the Senate would open and count the electoral votes before a joint session of Congress.
5. The candidate who received the largest number of electoral votes, which was also the majority of the Electoral College, would become president.
6. The candidate who received the second largest number of votes would become vice-president.
7. In the case of a tie between candidates that also constituted a majority of the electoral votes, the House would choose the president from among them. If no person had a majority of the electoral votes, then the House would choose the president from among the five highest candidates on the list. Voting would be by state; a majority of the states would be needed for a choice to be made.

8. The vice-president would always be the person having the largest number of votes after the president. In the case of a tie between two or more, the Senate would choose from them.

The original Electoral College plan worked successfully for the two times that George Washington was elected president. However, a major flaw became apparent after the election of 1796. According to the Constitution each elector cast only one ballot with two names on it. John Adams, a Federalist, received the largest number of votes. Thomas Jefferson, the Democratic Republican, lost to Adams by three votes and became vice-president. The framers were not in favor of political parties and had made no mention of them in the Constitution. Yet here were a president and vice-president from different parties, and Adams and Jefferson were strongly opposed on many major issues including states' rights, the power and size of the national government, and tariffs. The outcome of the election of 1796 would influence the way electors would be chosen as well as how they would vote in future elections.

In the election of 1800 John Adams, the incumbent, again faced Thomas Jefferson. This time the Democratic Republican electors were urged to vote the party ticket, that is, Thomas Jefferson for president and Aaron Burr for vice-president. Seventy-three electors did just that, resulting in a tie for president between Jefferson and Burr. Under the Constitution, the vote moved to the House where Federalists desiring to embarrass Jefferson voted for Burr, forcing the ballot 35 times over six days. Finally, Alexander Hamilton reluctantly supported Jefferson and the tie was broken.

The election of 1800 had several lasting effects on the Electoral College system. It was the first time that a two-candidate ticket was promoted by a party, as well as the beginning of the practice of nominating electors who pledged to automatically vote the party ticket. This new development was directly opposed to the framers' original version of the electors as "free agents" or informed, respectable, independent citizens from each state. By 1804, the 12th Amendment was passed, making up for the weakness in the original Clause 3. Never again would such a tie be possible, as separate ballots would now be cast for president and vice-president.

The Election of 1824 and the featured document, The Tally of the 1824 Electoral College Vote bring to light two important points about the electoral system, one of them constitutional and the other borne of the political party system. The election of 1824 had several candidates as serious contenders. The official Republican candidate, William H. Crawford of Georgia, was nominated by a caucus, a private meeting of party leaders, but he lacked the backing of much of the party. Challenging Crawford and bucking the caucus nominating method, were Republicans Andrew Jackson of Tennessee, Henry Clay of Kentucky, and John Quincy Adams of Massachusetts. Nomination by the caucus had been under fire for years as being undemocratic, and the issue reached its peak by 1824. (Today most states use direct primaries to nominate candidates while a small number still use nominating conventions.)

With so many candidates in the election of 1824, it's not surprising that no candidate received a majority of votes in the Electoral College. Andrew Jackson

had a plurality of both the popular vote (40.3%) and the Electoral College vote, but he did not hold the constitutional requirement of a majority of the electoral votes. For the first time, the presidential election vote proceeded to the House of Representatives. There, John Quincy Adams was chosen primarily because Henry Clay, never a Jackson supporter, placed his support behind Adams. Jackson was outraged after Adams appointed Clay secretary of state, and he proclaimed it a "corrupt bargain." While he was never able to prove any actual bribery or corruption occurred, the accusation endured and influenced the next election, as well as Clay's political career.

Today most Americans perceive the Electoral College as a formality necessitated by the Constitution. Electors meet in their states on the Monday after the second Wednesday in December and cast their votes just as they did in 1824. The votes are sealed and sent by registered mail to Washington, D.C., where they are opened and counted before a joint session of Congress when they convene in January. In recent history rarely has an elector failed to vote automatically for the candidate winning his or her state's popular votes. In 1976, a Republican elector in Washington voted for Ronald Reagan instead of Gerald Ford, the Republican Party's candidate. In 1972, a Republican from Virginia voted for the Libertarian candidate rather than the Republican, Richard Nixon.

There are critics today who point to several remaining flaws in the Electoral College system. The most obvious of these is the risk that the popular vote winner will not receive the majority of votes in the Electoral College. The winner-take-all feature of the system makes this a possibility, yet it has happened only three times in our history: 1824, 1876, and 1888. Another point of criticism is that the electoral vote distribution is not proportional to the popular vote distribution because of the automatic two votes per state provision. If you contrast the number of electoral votes per person in California and Alaska, this point is clear. "Faithless electors," as described earlier in the 1972 and 1976 examples, are also a flaw according to opponents. Yet never has a broken pledge affected the outcome of an election. Finally, critics highlight as unfair the provisions calling for choice by the House or the Senate in the case of a tie or lack of majority. Voting by state gives small states the same weight as large states, and if a state's representatives were divided, its vote could be relinquished. Additionally, a strong third party candidate could make it difficult for any candidate to earn a majority.

Different opponents and critics of the present system have developed various alternatives over the years. Twice in recent history, in 1969 and 1979, constitutional amendments have been introduced to Congress but failed to pass. Proposals range from a district plan similar to the way members of Congress are chosen to a proportional plan where the candidates get the same proportion of the electoral votes as they do the popular vote in each state. Some have even proposed doing away with the Electoral College and moving to direct popular election.

Proponents of the Electoral College claim first that critics exaggerate the risks in our present system, pointing to the very small number of occasions where their concerns have come to fruition. Only two elections in our history ever were decided in the House and none since 1825. Also, the loser of the popular vote has been elected only three times, and that has not happened in more than 100 years. They would add that the present Electoral College is a tried and true system, and we

would be foolish to risk experimenting with a new one. Finally, the system is efficient, it identifies a winner quickly, and it avoids recounts.

The Federal Register's [Electoral College](#) web page is an additional resource for more detailed information regarding the functions of the Electoral College and presidential election statistics from 1789 through 1992.

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Electoral results:

By: *The US National Archives and Records Administration*

- [Electoral College Calculator](#): Create your own election results!
-  [Electoral College Box Scores](#), 1789 through 1996, including Candidates, Electoral Votes, Popular Votes, and Election Notes
- [Electoral Votes, by State](#) , 1789 through 1996
- [Electoral Votes, by State](#), listing individual electors: [1992](#) , [1996](#)
(Information for 2000 election coming after November 7, 2000.)

General Information:

- [Frequently Asked Questions](#)
- [Procedural Guide to the Electoral College](#)
- [Relevant Provisions of the U.S. Constitution and Federal Law](#)
- [The Electoral College and the National Archives and Records Administration](#)
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- [Letter from Archivist to Governors](#)

- [State Responsibilities and Instructions](#)

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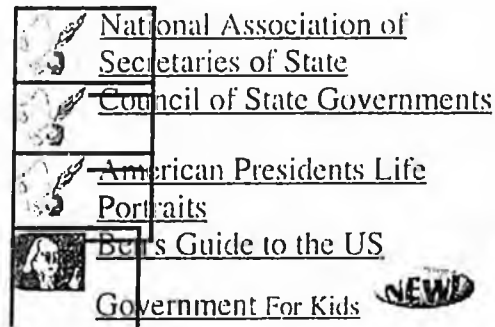
Of interest to persons seeking more information about the U.S. Presidency and the electoral process:

NARA links

- Treasures of Congress Exhibit [The Election of 1800 - Tally of Electoral Votes](#)
- NARA's [Presidential Libraries Home Page](#)



[U.S. House of Representatives](#),
see "Election Statistics."
[Federal Election Commission](#)
[Federalist Papers](#)



US CONSTITUTION Article. II.

By: The US National Archives and Records Administration

Section. 1.

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if

there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote: A quorum for this purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:--"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section. 2.

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other

Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section. 3.

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section. 4.

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."

The House of Representatives Selects a President

[Click here for the 1800 Electoral Vote Tally](#)

Election of 1800

Thomas Jefferson, President (Dem.-Rep.) with popular votes and 73 electoral votes.

- Aaron Burr (Dem.-Rep. party) had 73 electoral votes.
- John Adams (Federalist party) had 65 electoral votes.
- C.C. Pinckney (Federalist party) had 64 electoral votes.
 - John Jay (Federalist party) had 1 electoral vote.

Tie decided by the House of Representatives

Democrat-Republicans: 69
Federalists: 36

"Jefferson or Burr? The former without all doubt." - Quote from Alexander Hamilton to Gouverneur Morris, December 24, 1800

Text by: *The US National Archives and Records Administration*

By the election of 1800, the nation's two parties had taken more definite shape. The Presidential race was hotly contested between Federalist President, John Adams, and Democratic-Republicans, Thomas Jefferson. Because the Constitution did not distinguish between President and Vice-President in the votes cast by each state's electors in the electoral college, both Jefferson and his running mate Burr received 73 votes.

The tie threw the election into the House of Representatives, controlled by the Federalists. For weeks, on each of the 35 ballots taken, neither Democratic-Republican candidate received a majority. Many Federalists saw Jefferson as their principal foe, whose election was to be avoided at all costs, but Federalist leader Alexander Hamilton distrusted Burr more than he feared Jefferson and suggested to others in his party that a Jefferson Presidency would be a moderate one. Jefferson also indirectly conveyed this view to the Federalists and on February 17, 1801, on the 36th ballot, Jefferson was elected.

In addition to ending the political intrigue surrounding the election, Jefferson's inauguration and the Democratic-Republican takeover of Congress set an important precedent. It marked the first peaceful transfer of power between political parties in American history.

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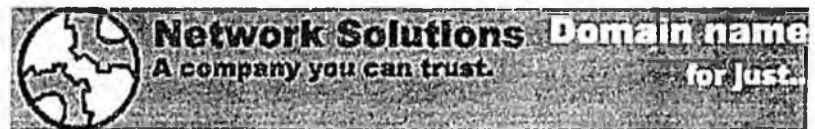
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HJR

25

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April 26, 2001

TO: HOUSE STATE AFFAIRS COMMITTEE

Re: House Bill 213 and House Joint Resolution 25
Limitations on initiatives

I have attached materials relating to House Bill 45, from the previous session, when this bill and joint resolution were considered and rejected. These materials are still pertinent.

It appears that the present bill is even worse than the bill that was previously rejected. Last session, the number of signatures required to meet each of the 30 additional required benchmarks was 4% - in the new bill it is 7%.

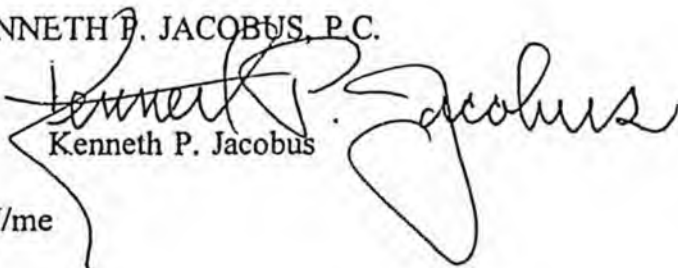
There is no reason that Republicans should lead the charge to deprive the voters of Alaska of their right to initiative. In particular, we want to elect a Republican governor at the next election, and retain Republican seats in the newly reapportioned legislature. We cannot have a proposed Constitutional amendment on the ballot which allows our opponents to argue that the Republicans want to deprive the voters of Alaska of their initiative rights.

If have any particular questions, please let me know.

Very truly yours,

KENNETH P. JACOBUS, P.C.

By


Kenneth P. Jacobus

KPJ/me

Encl.

January 24, 2000

TO: SENATE JUDICIARY COMMITTEE

Re: House Bill 45, Limitations on Initiatives

Dear Chairman Taylor and Committee Members,

I am the legal counsel for the Republican Party of Alaska and have worked on several initiative petitions. I will be testifying today at the hearing on this bill, but did want to submit certain information in writing. These comments are my own as an individual and do not represent any policy or statement of the Republican Party of Alaska.

First, the members of the committee must read two excellent articles by Liz Ruskin and Martha Bellisle at Page One of the Metro Section of the Anchorage Daily News of Sunday, January 23, 2000. These articles present an excellent, accurate and objective view of the issues.

House Bill 45 proposes and requires the adoption of a Constitutional Amendment to limit the rights of Alaskan voters to participate in the initiative process. Article One, Section Two of the Alaska Constitution specifically provides:

All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole.

Especially given the present political situation in Alaska, there is no way that anyone can justify a Constitutional amendment to restrict the initiative power of the people. It will end up being another massive embarrassment to the Republican legislators and Republican Party if this Constitutional amendment is placed on the ballot. There will be massive criticism across the entire political spectrum.

I can understand that certain legislators did not like certain laws that were enacted by the initiative, but this is no reason to restrict the rights of the people to enact these laws. Under our Constitution and our form of government, the power of the people is supreme, and the rights of the people should not be limited because some legislators did not like what the people did.

In addition, there is no problem which needs to be addressed, except the problems created by the Legislature itself when it previously limited the people's initiative rights. These limitations were

Senate Judiciary Committee
January 24, 2000
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in violation of the Constitution of the United States, and greatly increased the costs and risks involved in an initiative petition.

Despite the relative simplicity of the process and lower costs as compared to states such as California or Oregon, we have only a small number of petitions, only a smaller number of which actually make it to the ballot.

PROPOSED ADDITIONAL LIMITATIONS

HB 45 proposes that the present Constitutional requirement of 10% of the number of votes cast statewide in the last general election, including at least one signature from each of 27 election districts, be changed to 10% of the number of votes cast statewide in the last general election, including at least ~~7%~~ from each of 30 election districts. This additional limitation is not appropriate, particularly where we are going to have to amend our basic document of government - the Alaska Constitution - to do so.

One proposed justification for change is that it will force initiatives to be more broadly based. Upon closer examination, this is not a problem. For example, the 1998 Official English for Government initiative, processed under prior law, submitted multiple signatures from all 40 election districts. I am certain, without checking, that the initiatives which are going to be on the ballot in 2000 - hemp and property tax limitation - also have multiple signatures from all or almost all of the election districts. In order to pass the law once it is on the ballot, broad-based support is important. The circulators already seek this broad-based support from the beginning during their signature-gathering processes.

For example, both the hemp and property tax limitation petitions actually had people circulating petitions in most parts of Alaska - all the way from south-east to north of the Arctic Circle. Petition circulators actually flew or drove to other areas of Alaska in order to collect signatures. The petition upon which I am now working - instant run-off voting (IRV) - has actually distributed petitions to volunteer circulators who are responsible for circulation in all 40 election districts. This has been done, in part, in order to educate voters in all areas as to what the proposed law is all about. I am continuing to add additional local areas for circulation. For example, yesterday I mailed a petition to Nikiski for volunteer signature-gathering.

Another proposed justification for change is to insure that petitions are local and volunteer rather than paid efforts. Any proposed change which makes the process more difficult, however, has exactly the opposite result. Each change makes a locally-based volunteer petition more difficult, without affecting the ability of a well-funded petition to get on the ballot. A good example is

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Page 3

the 2000 hemp initiatives. Actually, there were two proposed marijuana initiatives gathering signatures for the 2000 ballot. 99HEMP, the one that will make the ballot, was funded by California-based hemp crusader Jack Herer. 99MJNA, a local initiative to revise state drug laws, tried to rely completely on volunteers and failed miserably in the attempt to gather sufficient signatures. A local initiative to raise alcohol taxes also relied on volunteers. Despite having more than 200 volunteers gathering signatures, it did not obtain sufficient signatures to make the 2000 ballot.

As an aside, no one should fear well-paid initiative petition efforts, even from sources outside of Alaska. If the idea is not good, the voters will defeat it. Also, the Daily News Articles cite a study of 168 initiative petitions in 8 states done by Elisabeth Gerber, a political science professor at the University of California, San Diego. From this study, Professor Gerber concluded that the more money that is spent on an initiative, the more likely it is that the initiative will fail.

At present, about 23,000 valid signatures are needed to place an initiative on the ballot. Petitions have a signature validity rate of from 70 to 75%. Two years ago, if a petition came up short of valid signatures, there was an additional 30 days allowed during which a supplemental petition could be submitted to make up the shortfall. Then, a petitioner could be safe turning in 30,000 signatures, knowing that there was an additional 30 days to make up any shortfall that might occur. (Cost - a combination of \$30,000 @ \$1/signature or substantial volunteer hours) Now that the Legislature has removed the grace period, a petitioner cannot be safe turning in less than 40,000 signatures, because there is no opportunity to make up any shortfall. (Cost - a combination of \$40,000 @ \$1/signature or 1 1/3 times as many volunteer hours) I have not calculated the effect of House Bill 45 on the cost of petitioning because it would be too time consuming with too much estimating involved. I know that a petitioner would need to turn in many more than 40,000 signatures, at substantial additional cost, because a petitioner could not afford to miss the required 4% of valid signatures in each of 30 election districts.

The year 2000 is a presidential election year, will have property tax limitation and hemp legalization on the ballot, and may very well also include a \$25,000 Permanent Fund payout. One can reasonably expect a large voter turn-out. This means that the number of signatures required for an initiative petition will substantially increase after the 2000 general election, even without any change at all in the Alaska Constitution or laws.

HB 45 will kill volunteer petitions. Volunteer petitions already have one foot in the grave because the 30 day grace period has been taken away. I believe that we will see the effect of the removal of the grace period in a month or so. The minimum wage petition turned in sufficient

Senate Judiciary Committee
January 24, 2000
Page 4

signatures. If the petitioners did not actually validate their own signatures prior to turning them in, however, it will be a miracle if they have sufficient valid signatures to make the ballot. These petitioners will have no time to gather the few additional signatures necessary, and all their prior efforts will have gone for nothing.

In summary, there is no problem which needs to be addressed by Constitutionally-restricting the voters' right of initiative and to try to do so is counter-productive in several ways. This bill should not be enacted.

CHANGES WHICH ARE NEEDED

There are various provisions which do need to be enacted, as follows:

(1) Those provisions of the present law which violate the U.S. Constitution need to be repealed.

(2) The grace period should be reinstated at 30 or 45 days, in order to breathe life back into local volunteer petition efforts. This will decrease the number of signatures that need to be collected initially and decrease the cost and effort that must be put in by local volunteers.

(3) The \$1/signature limit should be removed, and allow the matter to be determined by free enterprise. First, price controls never work and people look for ways to get around them. Second, although a year ago I believed that the \$1/signature limitation was Constitutionally valid, I no longer believe that it is. This limit effectively prevents the exercise of the right of petition. The year 2000 volunteer petitions did not make the ballot. The right of petition is now exercised through the use of paid circulators. People who believe in an issue are generally extremely busy, and would rather contribute money to hire people to gather signatures than stand in the winter cold in front of a large box store in Fairbanks gathering signatures themselves. In addition, it takes a certain type of person who is willing to stand in the cold and ask total strangers to sign a petition. Most people do not have that type of personality or physical constitution.

The economy of Alaska and the United States has changed substantially since a year ago. Unemployment is down. It is no longer possible to hire sufficient competent circulators at \$1/signature in order to mount an effort with paid circulators. This point was made in the Daily News Articles by Rick Arnold of National Voter Outreach, a professional signature-gatherer, who can no longer bid on Alaska petitions because of this limitation. In the lower 48, payments of more than \$1/signature are being made. Alaska is known as a difficult location, justifying higher rates, because many signatures must be collected during the winter months to meet an early

LAW OFFICES OF
KENNETH P. JACOBUS, P.C.

Senate Judiciary Committee
January 24, 2000
Page 5

January turn-in date.

In summary, the \$1/signature limit should be removed because I believe that it unconstitutionally prevents the right to petition.

(4) Another problem exists which circulators have been trying to address on a case-by-case basis which relates to access to public areas for purposes of gathering signatures. Circulators, volunteer and paid, are being evicted from places that they clearly should be allowed to gather signatures. A "guaranteed access" law needs to be enacted in order to protect the right to petition.

If you have any questions, or need further information, please let me know and I will try to help.

Very truly yours,

KENNETH P. JACOBUS, P.C.

By


Kenneth P. Jacobus

KPJ:me



To the office of Senator John Torgerson

Mary,

Thanks for listening to my comments concerning changes which in my opinion will make the initiative process very difficult if not impossible for the average voter. I'm referring to HB 45.

I've worked on a number of issues over the years and look forward to working on even more. I'm sure the Senator recognizes the importance of the initiative process in putting before the voters issues which, for one reason or another, the legislature is reluctant to or unwilling to pass. In the past these issues have included medical marijuana and in the future I expect school choice to be in that category.

It is already very difficult to place issues on the ballot. The biggest obstacle to placing issues on the ballot is finding a location to work. One would think that the First amendment would assure petitioners access to public (government) property. Sadly this is not the case. I and my fellow circulators have been threatened with arrest while petitioning at the post offices, the Sullivan Arena, the 5th Avenue parking garage and even from the sidewalk in front of the Fifth Avenue Mall.

I would ask that if we are going to make it harder to put issues before the voters that we also make two more changes. First, restore the grace period. It used to be that if a petition was submitted with enough signatures but with insufficient distribution that circulators were given another 30 days to correct the deficiency. If we raise the distribution requirement even higher, then the grace period needs to be restored. Imagine the frustration of gathering more than enough signatures in every district but one and having all the hard work and expense go for naught simply because we got one too few signatures in just one district even though we got hundreds extra in every other district.

Second, add an amendment guaranteeing the right to petition the public wherever the public is invited. This would mean that at malls and shopping centers petitioners would be able to gather signatures. That is the law in California, Oregon, Washington, New Jersey, New York and Massachusetts thanks to favorable rulings by state supreme courts regarding the wording in the respective state constitutions regarding the right to petition one's government.

Thanks,
Al Anders
248-2636

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Alaska State Legislature Senator Johnny Ellis

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FOR IMMEDIATE RELEASE: January 28, 2000

Contact: Sen. Johnny Ellis, Member of Senate Judiciary Committee, 1-888-330-3704

Anti-Liberty Bill Tolls for Legislature's Republican SuperMajority – Not for Alaska Citizens



Oppose Rep. Bill Williams' House Bill 45

The Senate Judiciary Committee will take public testimony Wednesday, Feb. 2 at 1:30 p.m. on a bill that would severely limit the public's freedom to put initiatives on the ballot. House Bill 45, sponsored by Republican Rep. Bill Williams of Saxman, is the Republican Supermajority's latest effort to thwart or overturn the will of the people. Please call your Legislative Information Office to testify against this bill.

"The system is not broken and doesn't need to be fixed," said Sen. Johnny Ellis, D-Anchorage. "Anything that interferes with the people's ability to petition the government is highly suspect."

Citizen initiatives are authorized by Title 11 of Alaska's Constitution and have been increasingly effective in enacting laws – bypassing the Alaska Legislature. In the 1960s there were only seven initiatives. Today, applications have grown sixfold. Some elected officials believe the increase stems from dissatisfaction with elected officials.

"Clearly, we're seeing more petitions because people are frustrated with the Republicans' extremist agenda," said Sen. Johnny Ellis, D-Anchorage.

In 1996, former Republican Sen. Bert Sharp was successful in passing legislation to limit citizen initiatives. Similar legislation was struck down by the U.S. Supreme Court and defined as "excessively restrictive of political speech." So what does the Majority do? Sponsor *another* bill to limit citizen initiatives. In recent years, Sen. Loren Leman sponsored a bill changing the highly-popular medicinal marijuana initiative and Sen. Pete Kelly sponsored legislation to overturn the airborne wolf-hunting ban, which was enacted by a majority vote of Alaskans.

Testify against HB 45 – The Anchorage Legislative Information Office is located at 716 W. 4th Ave., Suite 200, (907) 269-0111. You can testify against this bill by teleconference.

Oppose HB 45 – Send a FREE Public Opinion Message to your State Legislator TODAY! The Anchorage Legislative Information Office is located at 716 W. 4th Ave., Suite 200, (907) 269-0111. They can help you locate your legislator and send them your message.

Oppose HB 45 – Send a letter to your Legislator TODAY! (Letters are the most effective)
Address: Representative or Senator (name), State Capitol, Juneau, AK 99801

Anchorage Daily News



Michael Carey
Editorial Page Editor

Patrick Dougherty
Editor

Fuher A. Cowell, Publisher, 1993-1999
Gerald E. Grady, Publisher, 1984-1993
Kathenna Fanning, Editor and Publisher, 1971-1983
Lawrence Fanning, Editor and Publisher, 1967-1971
Founded in 1948 by Norman C. Brown

Initiative limits

Be careful with the people's rights

Some lawmakers want to make it harder for Alaskans to put initiatives on the ballot.

There are reasons to re-examine the initiative process. Increased use of ballot initiatives, the growth of a for-profit initiative industry and the fear of government by initiative with a host of unforeseen consequences are three good ones.

But companion pieces of legislation in the Senate Judiciary Committee, House' Bill 45 and House Joint Resolution 7, have been introduced basically because some people don't like what's been on the ballot recently.

Wider discussion of statewide issues is a good idea. But it's questionable whether these bills widen the discussion or curtail it by making it harder to have a discussion that matters.

The legislation would make no change in the total number of petition signatures required to put an initiative on the ballot. The Alaska Constitution puts that number at 10 percent of Alaskans who voted in the last general election.

However, petition backers would have to include in that 10 percent voters in at least 30 of the state's 40 House districts and in each of those districts would

need to collect the signatures equal to at least 4 percent of the number of people in that district who voted in the last general election.

Now, the Alaska Constitution requires at least one signature from two-thirds of the state's House districts.

Rep. Bill Williams, D-Saxman, said the legislation will involve more of the state in the initiative process from the beginning, before anything reaches the ballot.

What that means is that initiative backers couldn't deploy signature collectors at prime Anchorage locations and all but ignore the rest of the state — what one observer called "urban imperialism."

Wider discussion of statewide issues is a good idea. But it's questionable whether these bills widen the discussion or curtail it by making it harder to have a discussion that matters.

Let's remember that all Alaskans can participate in the months-long discussion that precedes an election.

Legislation backers like Pete Buist of the Alaska Trappers Association and Dick Bishop of the Alaska Outdoors Council argue that recent anti-trapping and anti-hunting initiatives have been bankrolled by Outside interests that forced Alaskans to spend time and treasure against them.

But initiatives require an investment of time and money. So does opposition to them.

Few organizations here — on either side of any issue — are entirely free of Outside money. In the battle over the wolf-snaring ban voted down in November 1998, backers had tapped Outside groups like Friends of Animals for about \$117,500 by late October. Foes had about \$94,000 in Outside help.

Whatever the arguments about Outside influence, the heart of the matter is that qualified Alaska voters put enough signatures on the petition to put the initiative on the ballot. Those opposed didn't like seeing it there, and the thought of making the ballot a longer reach is tempting.

There are strong reasons to resist that temptation.

- Is it wise to change the Alaska Constitution and make the initiative right harder to exercise for the sake of blocking a few initiatives we don't like or because in recent years we've had an increase in the initiative process? While the constitution isn't writ in stone, neither should we amend it to fit passing shifts in the political landscape.

- The Legislature can amend law enacted by initiative so that it doesn't violate other laws or leave us with unintended consequences. That's a safeguard built into the system.

- People who call for tougher initiative standards now may regret them come the day they're trying to gather signatures for a cause of their own.

- Alaskans in and out of the Legislature decry "ballot-box biology" over fish and game issues, arguing that the voting booth is no place for such decisions. If that's the issue, let's return to legislation seeking to limit initiatives on those questions only. That legislation is debatable, too. But it does not seek to tighten the initiative process for every issue to keep a few off the ballot.

The Senate Judiciary Committee held a short hearing on the bills this week. More hearings are planned. Good. Let's air the issue out. But it would be a mistake to impose tougher initiative requirements only because we don't like the results of a few elections or because we don't want to clutter the ballot. Democracy is messy and imperfect and entails risk.

Rep. Williams' bill would hardly crush democracy if it passed. But whenever we consider tightening constitutional limits on people's rights, we had best go slowly — and err on the side of those rights.

HJR

30

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HJR 30
(H) Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAA
Title: Relating to an amendment to the Constitution BRU: _____
of the United States prohibiting Component: _____
Sponsor: desecration of the Flag of the United States Component Number: _____
Requester: H(STA)

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

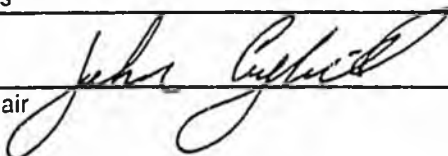
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This resolution has no fiscal impact on state spending.

Prepared by: Rynniva Moss

Phone 465-3719

Representative John Coghill
Committee Chair 

Date 1/22/2002

ALASKA STATE LEGISLATURE

REPRESENTATIVE
PETE KOTT
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Eagle River, Alaska 99577
(907) 694-8944
FAX (907) 694-8945



While in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-3777
FAX (907) 465-2819

House of Representatives
House District 24

Sponsor Statement

HJR 30

This resolution authorizes the Congress of the United States to present a constitutional amendment to the states authorizing Congress to prohibit the physical desecration of the American flag. The resolution supports two measures that are currently in Congress: House Joint Resolution 36, which passed the House on July 17, 2001 on a vote of 298 to 125, and Senate Joint Resolution 7.

Does the First Amendment give us the right to desecrate the American flag? Or is the flag a sacred symbol of our nation, deserving the protection by law? In 1989, *Texas v. Johnson*, the U.S. Supreme Court overturned anti-flag desecration laws that 48 states had on the books. The Court held that flag burning was symbolic expression and must be afforded the complete protection of the First Amendment. *Uniform Flag Act of 1918.*

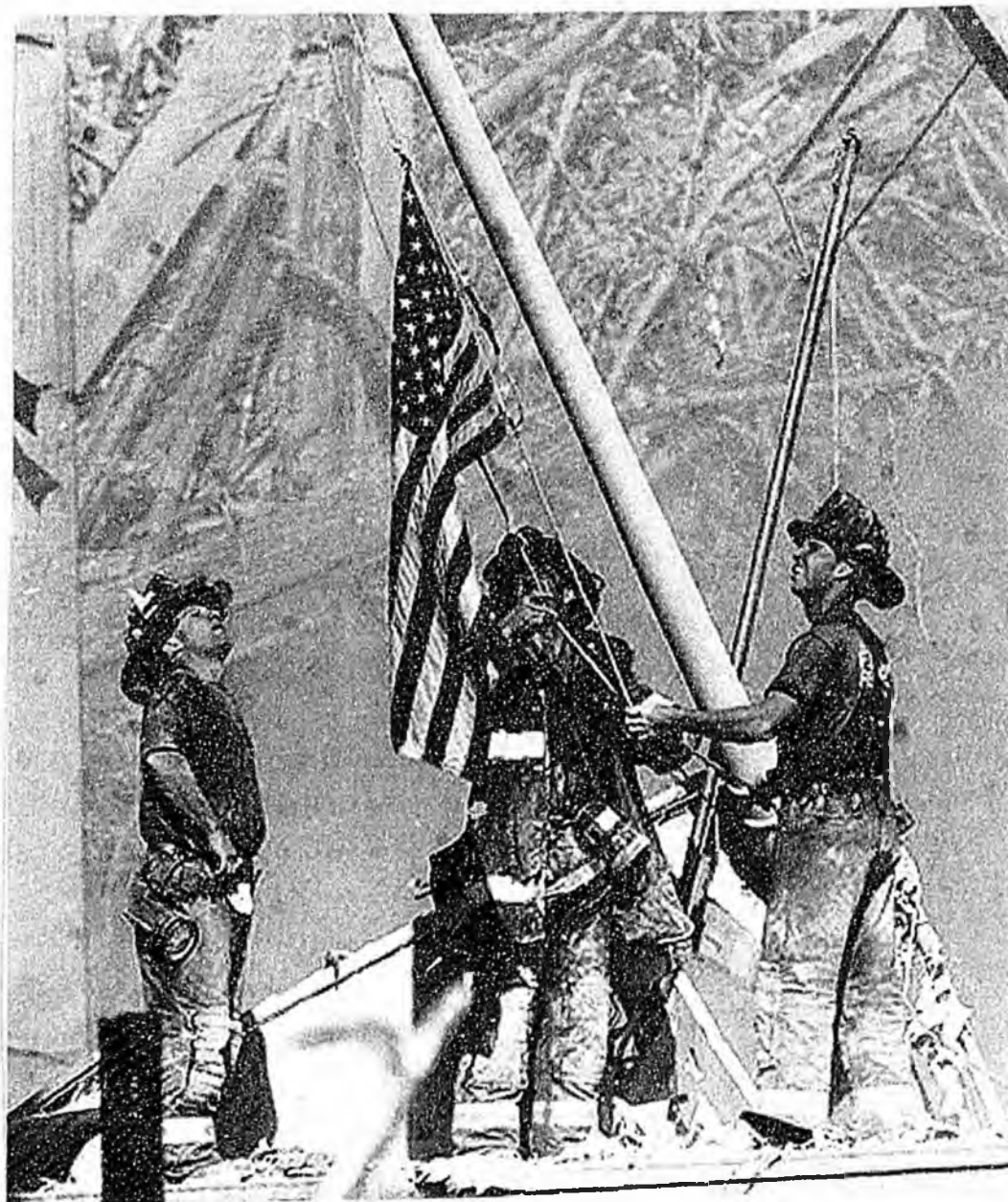
Dissenters to *Texas v. Johnson* argued that the anti-desecration laws protect the *use* of this particular symbol (the American flag), and in no way seek to restrict the ideas that flag desecrators convey. Chief Justice Rehnquist said, "This uniquely deep awe and respect for our flag felt by virtually all of us is bundled off under the rubric of "designated symbols" that the First Amendment prohibits." The dissenting opinion argued that restricting the physical desecration of our national symbol, the government recognizes as fact, the profound regard for the American flag created in the hearts of Americans by 200 colorful years of history.

The 1989 Supreme Court decision set in motion a grassroots campaign of unprecedented success. No other issue on Capitol Hill has the endorsement of 80% of the American people, the overwhelming majority of the US House and Senate and 100% of the state legislatures. HJR30 tells the US Senate to yield to the will of the people and send the proposed flag amendment to the states for ratification.

"The flag is a national property, and the Nation may regulate those who would make, imitate, sell, possess, or use it. I would not question those statutes which proscribe mutilation, defacement, or burning of the flag which otherwise protect its physical integrity, without regard to whether such conduct might provoke violence..... There would seem to be little question about the power of Congress to forbid the mutilation of the Lincoln Memorial.... The flag itself is a monument, subject to similar protection."

- Justice White

Rehnquist dissenting opinion



New York City
SEPTEMBER 11, 2001

Teleconference Order Form

Fax #465-2864

#4782

Sponsor and/or Committee Name			Date
HSTA- Rep. Coghill, Chair			1/22/02
Start/End Time	Chairing site	Juneau Room	Testimony
8 to 10 am	Juneau	Cap102	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Invitational <input type="checkbox"/>
Contact Person and	Phone Number	Other sites may add?	Testimony Limit
Rynniva Moss	465-4963	Yes	
Subject of meeting and/or Bills on agenda			

~~H.R.~~ H.R. 30 Desecration of US Flag

Sites - LIOs		Sites - Offnets	Phone #
Anchorage	<input checked="" type="checkbox"/>		
Barrow			
Bethel			
Cordova			
Delta Junction			
Dillingham			
Fairbanks	<input checked="" type="checkbox"/>		
Glennallen			
Homer			
Juneau			
Kenai			
Ketchikan			
Kodiak			
Kotzebue			
Matsu			
Nome			
Petersburg			
Seward			
Sitka			
Tok			
Valdez			
Wrangell			

Notes

Notes section with multiple blank lines for text entry.

HJR

31



REPRESENTATIVE SCOTT OGAN

Alaska State Legislature

House District 27 • Palmer • Greater Palmer • Sutton • Chickaloon • Sheep Mountain

Sponsor Statement

House Joint Resolution 31

"Relating to requesting the United States Congress to propose an amendment to the Constitution of the United States that would address emergency appointments to and powers of the United States Senate"

The events of Sept. 11, 2001 have demonstrated that a terrorist group bent on destroying our freedom and form of government can threaten our nation.

The framers of the U.S. Constitution never envisioned attacks with weapons of mass destruction against our legislative branch of government, attacks that under current law could for a time deprive the people of their right to representation in the national legislature. Should the unthinkable occur and a majority of representatives be rendered unable to discharge their duties, the U. S. Constitution is silent on the issues of emergency appointments and interim legislative power.

House Joint Resolution 31 respectfully requests the U. S. Congress to propose and submit to the states an amendment to the U.S. Constitution that would establish procedures to ensure that Congress could continue to function in the aftermath of an emergency, such as a major natural disaster or attack.

The proposed amendment might establish procedures whereby, if a majority of the seats in the U. S. Senate became vacant, the legislatures of each of the states with vacant seats would make appointments within 10 days to fill those vacancies. The proposed amendment might also permit the Senate to exercise temporarily all of the powers of the Congress if a majority of the seats in the House of Representatives were to become vacant. It might also establish procedures under which the Senate could act temporarily as a unicameral body until vacancies in the House were filled.

While there may be other ways to ensure the nation's legislative branch of government could operate until the next election following an emergency, HJR 31 seeks to spur discussion leading toward any workable solution.

It is unfortunate that we even have to consider such contingencies, but one of the best responses to terrorist threats is to guarantee the continued operation of our republic that apparently arouses such enmity and hatred elsewhere in the world.

SO/wc 1/22/02

Interim: 600 E. Railroad Ave. #1, Wasilla, AK 99654
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Session: State Capitol, Juneau, AK 99801 465-3878
1 (800) 862-3878 Fax: (907) 465-3265

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHJR 31(MLV)
 (H) Publish Date: 2/1/02

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Powers of US Sen/Emergency Appoin BRU _____
 Sponsor Representative Ogan Component _____
 Requester _____ Component No. _____

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						
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CHANGE IN REVENUES ()						
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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)

Prepared by: Leona Oberts, MLV Committee Aide
 Division _____
 Approved by: Representative Mike Chenault
 Agency Committee Chair

Phone 465-2811
 Date/Time 1/31/02 12:47 PM
 Date 1/31/02

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHJR 31(MLV)
 (H) Publish Date: 2/1/02

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Powers of US Sen/Emergency Appoin BRU _____
 Sponsor Representative Ogan Component _____
 Requester _____ Component No. _____

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--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)*

Prepared by: Leona Oberts, MLV Committee Aide
 Division _____
 Approved by: Representative Mike Chenault
 Agency Committee Chair

Phone 465-2811
 Date/Time i/31/02 12:47 PM
 Date 1/31/02



REPRESENTATIVE SCOTT OGAN

Alaska State Legislature

House District 27 • Palmer • Greater Palmer • Sutton • Chickaloon • Sheep Mountain

The following U.S. Constitutional information has been prepared by Representative Ogans's office for the discussion of HJR 31.

Amendment XVII

The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies:

Provided, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Passed by Congress May 13, 1912. Ratified April 8, 1913.

Note: Article I, section 3, of the Constitution was modified by the 17th amendment.

Article I, Section 3: The Senate of the United States shall be composed of two Senators from each state, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without the concurrence of two thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

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The New York Times
ON THE WEB

*Distributed By
Representative Scott Ogan
District 27*

December 25, 2001

Bush Formalizes Lines of Succession at 7 Cabinet Departments

By THE ASSOCIATED PRESS

WASHINGTON, Dec. 24 (AP) — President Bush has formalized the line of succession at several crucial federal agencies in case a cabinet secretary is killed or incapacitated, a housekeeping task with fresh meaning after Sept. 11.

With no fanfare, Mr. Bush signed a series of executive orders in the last week that mandates a long list of officials and the order in which they would take control of their cabinet agencies. The orders do not affect in any way the succession for the presidency, officials said.

At the Treasury Department, one of three under secretaries would take control "during any period" in which the secretary and deputy secretary "have died, resigned or are otherwise unable to perform the functions and duties of the office of secretary," Mr. Bush's order says.

The job would fall to the under secretary who took his or her oath of office first. At other departments, like Labor and Housing and Urban Development, the agencies' chief lawyers, the general counsel or solicitor general, were put first in line after the secretary and deputy secretary.

Administration officials said the lines of succession were required by Congress when it passed the Federal Vacancies Reform Act of 1998, in the Clinton presidency. No one got to it until after Sept. 11.

"This is a housekeeping detail that sets up a line of succession

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Ordinary water proves best solution in cleaning your house

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within cabinet agencies and has no impact on the presidential succession," Tim Flanigan, the deputy White House counsel, said today.

Administration officials acknowledged that the task took on new significance after Sept. 11 to ensure that government business could continue, even in the worst cases of terrorism.

If a cabinet secretary or deputy cannot be located, is killed or is seriously wounded, there is an official ready to step in without any bureaucratic struggles, the officials noted.

The orders also address the more mundane issue of what happens when a cabinet secretary is simply out of town or must excuse himself from a decision to avoid a conflict of interest, they said.

Outside experts say a doomsday plan is perhaps more important now than during the cold war and its threat of nuclear war because terrorist attacks are less predictable.

"There's a kind of predictability to conventional war," said Charles Jones, a professor emeritus at the University of Wisconsin, "but with terrorism there is such an uncertainty about what might happen, who is being targeted, which government building might be struck and how."

There is no uncertainty about who succeeds the president — the vice president, followed by the House speaker and then the president pro tem of the Senate. The latter is a largely ceremonial office traditionally held by the oldest senator in the party that controls the Senate. It is now held by Senator Robert C. Byrd, Democrat of West Virginia.

Shirley Warshaw, a professor at Gettysburg College who wrote a book on power sharing between White Houses and their cabinets, said the departments already had internal procedures on succession that Mr. Bush's orders simply formalized.

Mr. Bush signed executive orders last Tuesday that set the succession lines at seven cabinet departments: Treasury,

Housing and Urban Development, Commerce, Agriculture, Labor, Veterans Affairs and Interior. The plans were published in the Federal Register shortly afterward.

Other cabinet-level departments like Justice were not addressed by Mr. Bush because they already had succession lines written into law, officials said.

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HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: January 31, 2002

FURTHER REFERRALS:

Date of Committee Action: 19 Feb 02
CSHR 31 (MLV)

The STATE AFFAIRS Committee considered:

HJR 31

HOUSE JOINT RESOLUTION NO. 31

POWERS OF US SEN/EMERGENCY APPOINTMENTS

Relating to requesting the United States Congress to propose an amendment to the Constitution of the United States that would address emergency appointments to and powers of the United States Senate.

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

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

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

<u>NEW FISCAL NOTES</u>				
*For Chief Clerk's Office Use Only				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LAA/MLV				✓

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
<i>Doggy Wilson</i>	Wilson	✓			
<i>Kevin Crawford Jr</i>	CRAWFORD			✓	
<i>[Signature]</i>	STRUBS	X			
<i>Deannette James</i>	JAMES	X			
<i>[Signature]</i>	Forte	✓			
<i>[Signature]</i>	Huges	✓			
Chair: <i>[Signature]</i>	Coyne	✓			
Chair: <i>[Signature]</i>					

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHJR 31(MLV)
 (H) Publish Date: 2/1/02

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Powers of US Sen/Emergency Appoin BRU _____
 Component _____
 Sponsor Representative Ogan Component No. _____
 Requester _____

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 ()						
-------------------------------	--	--	--	--	--	--

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)

Prepared by: Leona Oberts, MLV Committee Aide Phone 465-2811
 Division _____ Date/Time 1/31/02 12:47 PM
 Approved by: Representative Mike Chenault Date 1/31/02
 Agency Committee Chair

(Revised 9/2001 OMB)

COMMITTEE COPY

FISCAL NOTE

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CAPITAL EXPENDITURES						
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