ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672
10671 SENATE STATE AFFAIRS
516

solicitation. Reviewed technical specifications, financial requirements plus the environmental impact on the community and its constituents on contracts negotiated for the corporation. Attended pre-bid conferences and meetings geared towards educating the public on projects that were implementing government programs. Reported on the company's financial performance during its Annual Stockholders meeting. Responsible for the recruitment of administrative and technical managers. Assigned and distributed work responsibilities to the division heads and project managers. Managed acquisition or sale of major equipment or instruments requiring the Board of Director's concurrence. Undertook disposition of incentive saving from completed projects. Approved personnel, action recommendations such as promotions, layoffs, terminations, transfers.

Served as the company's Geodetic Consultant for projects with foreign counterparts such as: James M. Montgomery, CampDresser & McKee, Kampsax Kruger, Green International. Scope of project involvement include:

- Detailed Engineering and Design of Roads and Building Structures Medium-scale
- Irrigation Systems and Water Impounding Projects Geothermal Watershed
- Photogrammetric Mapping Drainage, Sewer Lines, and Flood Control Overhead
- Power Distribution Lines Ports and Property Development Water Utilities Development

MOLAVE CONSULTANCY SVCS United St. Pasig, MetroManila – PHILS. (09/15/85-07/31/87)
Project Director, Member (Board of Director)

As a member of the technical group composed of engineers, managers, and planners that organized the firm to provide consultancy services to the government and private sector mainly in areas related to the development of rural communities. Services coverage included:

- Infrastructure – Highways and bridges with particular emphasis on the development of primary, secondary, and feeder roads, upland access roads, trails and foot bridges.
- Water Management – Water supply, irrigation drainage and sewerage with efforts mainly directed in the development of water resources, wells and springs in villages and outlying areas, designing and constructing mini-dams including small hydro-electric stations and simple cost-effective irrigation systems where water sources are limited.
- Training and Technology Transfer – Was involved in the preparation of feasibility studies relative to the Philippines loan application for $30 million with the US-IBRD (United States International Bank for Rehabilitation and Development) as well as feasibility studies for the development and agricultural projects as they relate to the betterment of small communities.
- Design and/or Construction – School buildings, village and community hospitals including communal buildings, utilizing native labor and materials to the extent possible.

MARBELLA CLUB, INC. CCP Bldg. Complex Roxas Blvd., MetroManila – PHILS. (01/16/84-08/15/87)
Technical Consultant

Duties — Reviewed and approved project cost estimates prepared by technical staff for bidding or contract negotiation purposes. Developed work schedules to synchronize the different survey crews activities with contract completion dates and stipulations. Inspected project sites nationwide. and coordinated in the identification of work methodology and equipment needs. Directed work for all projects covered under the company's surveying capabilities.

TONER & NORDLING – Registered Engineers 100 North Franklin Street, Juneau – ALASKA 99801

Surveyor (10/70-03/76)

Responsible for raw data gathering in the field used in the design of civil works or a variety of projects. Job entailed extensive travel throughout the state. Coordinated with land owners, village officials regarding subdividing parcels of property for housing purposes. Acted as the company's technical representative in meeting with village or city officials on community projects. List of projects involved but not limited to:

- Juneau International Airport Phase I & II
- State of Alaska Tax Maps
- Mendenhall Shopping Mall
- Berners Bay and Red Bay Road Projects
- Smith and Gravel Pit
- City and Borough Water Storage project
- Turnkey Housing and Land Development in Southeast Alaska
- Subdivision Surveys: Sunrise, Lakeshore, Riverview, Green Acres, Sunset, Lakeview, Riverside Drive, Tall Timber, and Mendenhaven Phase I & II

EDUCATIONAL ATTAINMENT:

Bachelor of Science in CIVIL ENGINEERING (April 1970)
University of the Philippines - Diliman, Quezon City MetroManila – PHILIPPINES

CONFERENCES & TRAINING:

- April 6-7, 1995: NHI Course #38032: AASHTO Roadside Design Guide Conducted by U.S. Department of Transportation, Federal Highway Administration National Highway Institute. Held in Juneau, Alaska
- January 30, 1991: Introduction to MAC at University of Alaska Southeast-Juneau
- November 9-16, 1981: Observation trips, lectures, and demonstrations on modern electronic surveying instrument and photogrammetric equipment of HEWLETT-PACKARD in Los Angeles, California
- October 15-19, 1981: Observation trips, lectures, and demonstrations on modern electronic surveying instrument and photogrammetric equipments of CARL ZEISS in Oberkochen, West Germany
- October 11-14, 1981: Observation trips, lectures, and demonstrations on modern electronic surveying instrument and photogrammetric equipments of WILD in Heerbrugg, Switzerland
- October 5-8, 1981: 38th Photogrammetric Conference held in Stuttgart, West Germany. Sponsored by Carl Zeiss and the University of Stuttgart

SB

92

Alaska Permanent Fund Corporation
P.O. Box 25500 Juneau, AK 99802-5500
Telephone (907) 465-2047
Facsimile (907) 586-2057

MEMORANDUM

DATE: April 28, 2001

TO: Senator Gene Therriault, Chair
Legislative Budget & Audit Committee

FROM: Robert D. Storer, Executive Director RDS

SUBJECT: **Sponsor Statement on Senate Bill 92**

SB 92 is an important improvement to current Permanent Fund law. The enhanced continuity of Board membership that this legislation provides is identical to that currently enjoyed by the Alaska State Pension Investment Board and 18 other boards.

The Board is unanimous in its support for this proposal because the members know, first hand, that it takes a great deal of time to gain sufficient knowledge of the Fund's operations and investment policies to be able to make informed decisions. As an investment professional working with public funds in Alaska for nearly two decades, I can attest that the Permanent Fund is a mature fund and that overseeing its complex investment structure is necessarily a demanding task. The institutional memory and experience of longer-serving members is definitely helpful to new members in fulfilling their fiduciary responsibilities.

With removal only for cause, the next Governor will appoint two cabinet members to the Board of Trustees shortly after he or she takes office. A third (public) member will then be appointed in July of the first year of the Governor's term. In July of the following year, roughly one and one-half years after taking office, the Governor will appoint a second public member, with his or her appointments at that time constituting a majority of the members of the Board. This more deliberate schedule for filling Board seats, which clearly reflects the intent of one-year staggered terms, would provide important continuity for the APFC by eliminating the risk that a new Governor may summarily replace all Trustees at one time. In short, we believe this bill serves the best long-term interests of the Fund and the people of Alaska.

LAW OFFICES OF
SIMPSON, TILLINGHAST, SORENSEN & LONGENBAUGH, P.C.

ONE SEALASKA PLAZA, SUITE 300 · JUNEAU, ALASKA 99801
TELEPHONE: 907-586-1400 · FAX: 907-586-3065

MEMORANDUM

TO: Robert D. Storer
Executive Director, APFC

FROM: Ronald W. Lorensen, STS&L

DATE: March 7, 2001

RE: SB 92--"For cause" removal of public members of APFC Board of Trustees in light of Bradner v. Hammond

Our File No. 846.14

In my recent testimony to the Senate State Affairs Committee on SB 92 ("for cause" removal of public members of the Alaska Permanent Fund Corporation Board of Trustees), I explained why I thought that the Alaska Supreme Court's decision in Bradner v. Hammond[1] did not mean that the bill would be unconstitutional if enacted. I thought it might be helpful to put those thoughts in writing, along with some further discussion of the Bradner decision.

In Bradner, the Court was presented with a legislative enactment[2] that, in addition to confirmation of the head of each principal department (i.e., commissioners), required legislative confirmation of all departmental deputy commissioners and of the directors of a number of named divisions within state government. The Alaska constitution (Article III, Section 25) expressly provided for legislative confirmation of the heads of each principal department, but it was silent regarding the confirmation of subordinate departmental officers. Governor Hammond challenged the enactment on grounds that it violated the doctrine of separation of powers by impermissibly interfering with the executive's power of appointment.

After discussing the purpose and importance of the separation of powers doctrine (and the "complementary doctrine" of checks and balances), the Court agreed with the governor's position. In that discussion, the Court made some observations about those doctrines that are important to keep in mind, generally, when analyzing the effect of a legislative enactment that is

[1] 553 P. 2d 1 (Alaska 1976)
[2] Section 1, Chapter 82, SLA 1975

challenged for encroaching on the powers of either (or both) the executive or judicial branch. In particular, the Court pointed out that:

> Both doctrines address and are designed to resolve the problem of efficient government and have as their goal the protection of the electorate from tyranny.

Bradner, at 6 - 7. It then went on to quote with favor a statement by former U.S. Supreme Court Justice Brandeis in which he said the purpose of the doctrine of separation of powers was "not to promote efficiency but to preclude the exercise of arbitrary power."[3]

The legislature's attempt in Bradner to throw a wider confirmation net around the governor's appointees than allowed by the constitution directly and clearly implicated the concerns identified by the Court. Confirmation necessarily requires that the legislature become involved in each and every one of the governor's appointments that is subject to confirmation. History (both in Alaska and elsewhere) has shown that the confirmation process can all too easily become politicized, frequently turning into debates (and compromises) over issues that are unrelated to the merits of the appointment, itself. Those situations exemplify the "tyranny" and the "exercise of arbitrary power" that the separation of powers doctrine was designed to protect against.

On the other hand, the effect on the workings of government of a general law that defines the conditions under which certain public officials, once appointed, may be removed from office is different by several orders of magnitude. Unlike the confirmation process where absolutely no objective standards for legislative approval exist, the "for cause" removal standard proposed by SB 92 sets out a very specific standard[4] that is uniform in its application and for which relief can be obtained by an aggrieved official through the judicial branch if it is not properly applied. Further--and perhaps even more importantly--under a "for cause" removal standard, the legislature plays no role in individual removal decisions: there is no opportunity for inter-branch "tyranny" or "exercise of arbitrary power" to arise.

When I described these important differences at the committee's hearing, Senator Therriault asked if they weren't just a matter of degree, rather than raising different legal principles. I think he was correct in making that point, since our courts would almost certainly say that removal of a public official is an integral aspect of the executive's power of appointment. However, in my experience the resolution of many constitutional questions has ultimately boiled down to one of degree.

---

[3] *Id.* at 6, n. 11, quoting dissenting opinion of Brandeis, J., in Myers v. United States, 272 U.S. 52, at 293 - 95.

[4] See my January 11, 2001 memo to the APFC Trustees discussing the "for cause" standard.

Take, for example, AS 37.13.050(b) which sets out certain specific qualifications for the public members of APFC Board.[5] Because that provision imposes those qualifications for appointment to the Board, it has the direct effect of limiting the governor's appointment power: he cannot simply appoint any person he choses. Yet I doubt that even the most ardent supporter of the primacy of the executive's appointment power would seriously argue that such legislatively imposed qualifications violate our constitution.

A "for cause" removal requirement for a public member of the APFC Board falls somewhere between the appointment qualifications of AS 37.13.050(b) (clearly constitutional) and a requirement that those members be subject to legislative confirmation (clearly unconstitutional). I don't know precisely where the line between what's permissible and what's not might ultimately be drawn, but I do think that SB 92's proposed "for cause" requirement would fall on the permissible side of that line.

cc: Jim Baldwin, Assistant Attorney General
Jim Kelly, APFC

[5] That provision states: "The four public members of the board must have recognized competence and wide experience in finance, investments, or other business management-related fields."

Alaska Permanent Fund Corporation
P.O. Box 25500 Juneau, Alaska 99802-5500
(907) 465-2047

MEMORANDUM

DATE: February 20, 2001

TO: Senator Gene Therriault, Chair
Other Members of the Senate State Affairs Committee

FROM: Robert D. Storer, Executive Director RDS

SUBJECT: **Senate Bill 92 -- Removal of members of the Board of Trustees only for cause**

On behalf of the Board of Trustees of the Alaska Permanent Fund Corporation, I am writing to thank you for LB&A's introduction of Senate Bill 92, and your prompt scheduling of the bill on February 22. I will be present at the hearing and look forward to answering any questions you may have.

SB 92 is an important improvement to current Permanent Fund law. The enhanced continuity of Board membership that this legislation provides is identical to that currently enjoyed by the Alaska State Pension Investment Board (ASPIB). Note: I have attached a memorandum prepared by our legal counsel which provides some helpful background on this issue.

The Board is unanimous in its support for this proposal because the members know, first hand, that it takes a great deal of time to gain sufficient knowledge of the Fund's operations and investment policies to be able to make informed decisions. As an investment professional working with public funds in Alaska for the past 18 years, I can attest that the Permanent Fund is a mature fund and that overseeing its complex investment structure is necessarily a demanding task. The institutional memory and experience of longer-serving members is definitely helpful to new members in fulfilling their fiduciary responsibilities.

In short, we believe this bill serves the best interests of the Fund and the people of Alaska.

Here is one example of why continuity is important. The Trustees recently decided not to invest in private equities even though over time we believe this asset class would provide superior returns to those provided by public equities. Because returns from private equities typically underperform in the short term and only generate their expected higher returns over time, investing in this asset class requires patience and an institutional commitment on the part of the Board.

Part of why the Board decided against investing in private equities was because of its collective concern that the next Governor might replace the entire Board at one time, thereby wiping out the Board's history with – and understanding of – this asset class, including memory of the careful deliberative process this Board followed in considering alternative investments. Worse, new, inexperienced Trustees might simply choose to liquidate those investments at a time when returns are low, rather than staying the course for the longer term.

With removal only for cause, the next Governor will appoint two cabinet members to the Board of Trustees shortly after he or she takes office. A third (public) member will then be appointed in July of the first year of the Governor's term. In July of the following year, roughly one and one-half years after taking office, the Governor will appoint a second public member, with his or her appointments at that time constituting a majority of the members of the Board. This more deliberate schedule for filling Board seats would provide important continuity for the APFC that would likely not occur under the present appointment scheme by which a new Governor could summarily replace all Trustees at one time.

I look forward to discussing this issue with you further, and thank you for your consideration.

Attachment

LAW OFFICES OF
SIMPSON, TILLINGHAST, SORENSEN & LONGENBAUGH, P.C.

ONE SEALASKA PLAZA, SUITE 300 · JUNEAU, ALASKA 99801
TELEPHONE: 907-586-1400 · FAX: 907-586-3065

MEMORANDUM

To: Trustees, Alaska Permanent Fund Corporation

From: Ron Lorensen, STS&L

Date: January 11, 2001

Re: "For cause" standard for removal of public officers
Our File No.: 846.14

In response to the Board's request at its December 8, 2000 meeting, I have researched court decisions that articulate standards for the "for cause" removal of both public and private officers and employees. In addition, to determine whether and how the term is defined in the Alaska statutes, I have also attempted to identify all instances in which removal of a public officer or employee is statutorily provided for on a "for cause" basis. The majority of "for cause" removal statutes in Alaska do not provide any standards beyond the "for cause" requirement.

I. Judicial Approach to "Cause/For Cause".

The Alaska statutes dealing with the removal of public officers and employees use three different terms to state the standard for removal--"for cause," "good cause," and "just cause." There is no apparent significance to the choice of the term used, and courts have recognized that the terms are interchangeable.[1]/ The focus of each term is whether "cause" for removal exists.

The following excerpts from two court cases and one law review article reflect that there is no single, widely accepted definition of "cause" in the cases. Nonetheless, they do reflect a common theme:

> "Good cause" cannot be just any reason the Board deems sufficient for the discharge of the teacher. ... Not only must there be "good cause" and substantial evidence in support of the charge, but in order for the facts to sustain such a charge they must bear reasonable relationship to the teacher's fitness or capacity to perform his duties in that position. . . . We find the test of good cause with respect to public officers generally to be facts which are related to the office and affect the administration thereof. Lucero v. Mathews, 901 P.2d 1115, 1122 (Wyoming 1995) (citations omitted).

[1]/ *See, for example,* Lockhart v. Cedar Rapids Community Sch. Dist., 577 N.W. 2d 845 (Iowa 1998), at 846-47 (equating "proper cause" with "just cause" and "for cause").

> There is no all-encompassing definition of "just cause." This term does encompass, however, reasons that relate to an employee's performance in his or her job and the impact of that performance on an employer's ability to attain its reasonable goals. "Just cause" also includes reasons based on an employer's legitimate budgetary or personnel requirements, unrelated to employee fault. "Just cause" does not include "reasons which are arbitrary, unfair, or generated out of some petty vendetta." Lockhart v. Cedar Rapids Community Sch. Dist., 577 N.W. 2d 845, 847 (Iowa 1998) (citations omitted)
>
> In years of exposure and study and thought, both to and of the bad as well as the good, some conclusions have inevitably emerged, and one of them is a definition of what "just cause" probably is, for here and now. It seems to be that cause which, to a presumably-reasonable determiner ... appears to be (not necessarily is), fair and reasonable, when all of the applicable facts and circumstances are considered, and are viewed in the light of the ethic of the time and place. That's a mouthful, in words, but it really is only, bottom-line, another expression of the now-common expression, "fair shake." Hill & Westhoff, "No Song Unsung, No Wine Untasted," 47 Drake Law Review 399, 411 (1999).

Here's my own shot at a definition of "cause": Fair minded people will know it when they see it, taking into account the needs of the office and the performance and conduct of the incumbent.

II. "Cause" for Removal in the Alaska Statutes.

Of the terms "for cause," "good cause," and "just cause," "for cause" is used most frequently in the Alaska statutes to express a "cause" standard for removal of a public officer or employee. That term appears in a total of 15 different provisions. The "good cause" standard comes in second with a total of three provisions. "Just cause" appears only once. Twelve of these 19 "cause" provisions state only the simple standard, without either definition or example. Six provisions include multiple examples of "cause," such as AS 31.05.007(d) which provides that the governor may remove a member of the Alaska Oil and Gas Conservation Commission "for cause including but not limited to incompetence, neglect of duty or misconduct in office" or AS 47.30.663(c) which provides for removal of a member of the Alaska Mental Health Board "only for cause, including, but not limited to, poor attendance or lack of contribution to the board's work."[2]/ One provision, AS 08.04.030, provides only a single example of "cause."

---

[2]/ The most comprehensive listing appears at AS 43.05.414(c), which provides examples of "good cause" for removal of the state's administrative law judges. That provision states:

> (c) In this section, "good cause" includes
>
> (1) violation of the Alaska code of judicial conduct adopted by the Alaska Supreme Court;
>
> (2) conviction of a crime of moral turpitude:

Under that section a member of the Board of Public Accountancy may be removed by the governor "for neglect of duty or other just cause." No statute attempts to set out a comprehensive definition of "cause."

It should be noted that, within the 19 provisions that require "cause" for removal of a public officer or employee, seven condition the standard with the word "only" (i.e., "may be removed only for cause"). The other 12, including AS 37.10.210(d) which establishes a "for cause" standard for removal of members of the Alaska State Pension Investment Board (ASPIB),[3]/ do not use "only" or any similar word of limitation. Because the role and responsibilities of the APFC Board are so similar to those of ASPIB, I did not use the word "only" in the accompanying draft bill amending AS 37.13.070(a) to provide a "for cause" standard for removal of the public members of the APFC Board. Although the use of "only" in some "for cause" provisions appears to make a somewhat stronger statement about the applicable standard for removal, from a legal point of view I believe that omitting that word from the bill does not have any substantive effect. The appropriate standard for removal of a public officer is either "at will" or "for cause"--it can't be both.

I hope the preceding information is helpful.

cc: Robert D. Storer, Executive Director, APFC
Jim Baldwin, Assistant Attorney General, Department of Law

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(3) unjustified failure to handle the caseload assigned or similar nonfeasance of office;

(4) failure to meet the requirements of AS 43.05.425 relating to qualification for office; and

(5) unreasonable failure to comply with the statutes or regulations regarding the confidentiality of taxpayer information.

[3]/ As suggested at the December 8 Board meeting, I went back through the legislative history materials on the bill that created ASPIB to see whether there was any discussion of the intended meaning of "for cause" removal of ASPIB members. From the written record, it does not appear that there was.

SENATE STATE AFFAIRS COMMITTEE DATE March 13, 2001	SUBJECT OF MEETING: SB 92-REMOVAL OF MEMBERS OF THE PF BOARD

PLEASE SIGN IN

PLEASE PRINT: NAME	ADDRESS (MAILING & ZIP)	REPRESENTING	DO YOU WANT TO TESTIFY?
AARP			
Jim Baldwin		ACA	

Who can be removed "for cause"

04.06.070 director of Alcohol Beverage Control Board

08.01.020 Boards & Commissions ~ 3 or more unexcused absences

08.04.030 Accountants mention specifically a

08.20.025 Chiropractors

08.63.040 Marital and Family Therapy

08.80.105 Pharmacists & Pharmacies

10.25.140 Cooperatives – BoDs

16.43.030 CFEC

18.85.040 Public Defender

31.05.007 AOGCC

37.10.210 ASPIB •

39.52.410 Boards & Commissions ~ under Excentive Ethics

41.37.050 Citizens' Advisory Commission on Federal Areas in AK •

43.05.415 Chief Administrative Law Judge ~ Office of Tax Appeals DOR

47.30.021 AK Mental Health Trust Authority •

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB 92
() Publish Date:

Revision Date/Time (Note if correction): 2/20/01 3:00 PM
Dept. Affected: Revenue
Title: Removal of Members of the Permanent Fund Board
BRU: APFC
Component: APFC
Sponsor: Senate Rules (request of Leg Budget & Audit)
Requester: Senate State Affairs
Component Number: 9

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2001) cost: 0.0

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

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

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

The provisions of SB 92 would not have any financial cost to the APFC operating budget.

Prepared by: Robert D. Storer
Phone (907)465-2047
Division: Alaska Permanent Fund Corporation
Date/Time 2/20/01 3:00 PM
Approved by: Larry Persily, Deputy Commissioner
Date Feb. 21, 2001
Agency: Department of Revenue

For distribution information, call the Governor's Legislative Office

(Rev 2/7/2001 OMB)

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-2075

June 10, 1996

Honorable Tony Knowles
Governor
State of Alaska
P.O. Box 110001
Juneau, AK 99811-0001

Re: HCS CSSB 89(FIN) -- Relating to the board and staff of the Permanent Fund Corporation
Our file 883-96-0072

Dear Governor Knowles:

At your legislative office's request on your behalf, we have reviewed HCS CSSB 89(FIN), a bill relating to the board and staff of the Permanent Fund Corporation.

Section 1 of the bill would increase the number of members on the board from six to seven, by adding another public member appointed by the governor. Section 2 of the bill would require that at least one public member have "recognized competence and experience in investment portfolio management." Section 3 of the bill makes a technical change to conform to the increase in the number of public members. Section 4 of the bill would allow the governor to remove a public member only for cause, and defines cause as either incompetency or misfeasance or malfeasance in office. Section 5 of the bill would require the governor to base the decision to appoint a board member solely on the best financial interest of the fund, would prohibit the governor from attempting to influence the board to make an investment decision that violates prudent investment principles, and would make a violation of this section a violation of the executive branch ethics act (AS 39.52). Section 6 would provide that the fund executive director, and other fund employees with investment responsibilities, serve at the pleasure of the board, but would allow the board to enter into employment contracts with these employees that do not exceed two years in duration. Finally, sec. 7 of the bill would specify that each board member has a fiduciary duty to the fund, and must perform official actions solely in accordance with that duty.

As we indicated in testimony before the legislature, we believe that section 4 of this bill may violate your appointment power under art. III, sec. 26 of the Alaska Constitution, by making the

public members removable only for cause.[1] We have previously discussed this appointment power question in our review of the 1991 bill which would have established the Alaska State Pension Investment Board, and which also contained a removal-for-cause provision.[2] See 1991 Inf. Op. Att'y Gen. 311 (883-91-0071; June 11). What we said there is equally applicable here:

> The removal-for-cause provision may constitute a usurpation of the executive power of appointment. The ability to remove an appointee is an incident of the power of the appointment. The governor's ability to assure that appointees remain faithful to his or her philosophies and programs is preserved when appointees may be removed at the governor's pleasure. Article III of the Alaska Constitution specifically authorizes the legislature to provide for the removal of members of regulatory and quasi-judicial boards and commissions. Alaska Const., art. III, sec. 26. There is no other specific grant of power to the legislature to prescribe grounds for removal for other agencies governed by a board. Because the corporation is not a regulatory or quasi-judicial agency, the legislature lacks the power to restrict the governor's removal power in the manner set out in this bill.

Id. at 312.

We find no other constitutional or legal problems with the bill.

Sincerely,

Bruce M. Botelho
Attorney General

---

[1] Comments by certain legislators indicated to us that this provision was included in lieu of a legislative confirmation requirement, which art. III, sec. 26 of the Alaska Constitution would not allow. Under that section, confirmation power is limited to those boards and commissions at the head of an principal department (such as the Board of Education) and those with regulatory or quasi-judicial powers. The board of the Permanent Fund Corporation is neither type of board. And the Alaska Supreme Court ruled in Bradner v. Hammond, 553 P.2d 1 (Alaska 1976), that the legislature could not confer confirmation power upon itself beyond that specified in the constitution.

[2] That bill was vetoed by Governor Hickel, at our recommendation, because of numerous legal problems. A better bill establishing the investment board became law the next year.

Journal Text

10/16/96 Senate Journal Page 4390
SB 89

Message of June 14 was received, stating:

Dear President Pearce:

Under the authority of art. II, sec. 15 of the Alaska Constitution, I have vetoed the following bill:

HOUSE CS FOR CS FOR SENATE BILL NO. 89(FIN)
An Act relating to the members of the board and staff of the Alaska Permanent Fund Corporation.

I have taken this action out of a strongly held belief that the trustees of the Alaska Permanent Fund Corporation must be answerable to Alaskans for the decisions they make in managing over $18 billion of public money. This bill, among other things, would change existing law by making trustees removable only for very specific causes. Under existing law, the board serves at the pleasure of the governor and must answer to the governor for management decisions. The governor, in turn, must answer to the voters for the governors stewardship of the Alaska Permanent Fund. It is in this very basic way that the Alaska Permanent Fund Corporation will remain responsive to the will of the people.

Sincerely,
/s/
Tony Knowles
Governor

Bill Root: [ ] [Display History/Action] [Clear Bill Root]

Return to BASIS Main Menu(19th Legislature)
Return to the Legislature Home Page
BASIS Last Updated 12/31/96

Mike BRADNER, Speaker of the House, Alaska State Legislature, et al., Appellants, v. Jay S. HAMMOND, Governor of the State of Alaska, Appellee

No. 2802

Supreme Court of Alaska

553 P.2d 1; 1976 Alas. LEXIS 396

August 2, 1976

COUNSEL:
[**1]

Terrance Sandalow, Ann Arbor, Michigan, Billy G. Berrier, Juneau, for Appellants.

Robert M. Johnson, Rodger W. Pegues, Asst. Attys. Gen., and Avrum M. Gross, Atty. Gen., Juneau, for Appellee.

JUDGES:
Boochever, C.J., Rabinowitz and Erwin, JJ., Dimond, Justice Pro Tem., and Taylor, Superior Court Judge sitting as Justice Pro Tem. Connor and Burke, JJ., not participating.

OPINIONBY:
RABINOWITZ

OPINION:

[*2] This appeal arises from a declaratory judgment suit which appellants instituted in superior court seeking a declaration that Section 1 of Chapter 82, SLA 1975 is constitutional. This legislative measure effected significant changes in the procedures for appointment and removal of subcabinet officials, including deputy commissioners and division heads of the executive branch of Alaska's government. n1 Specifically, it removed certain division directors from the classified service and placed them in the partially exempt service, provided that the appointment of deputy heads of each principal executive department and 19 specified directors of divisions were subject to confirmation by the legislature in joint session, and it prescribed procedures pertaining to the confirmation process. [**2]

n1 Chapter 82, SLA 1975 provides:

Section 1. AS 39.05.020 is amended to read:

Sec. 39.05.020. Appointment of department heads and other executive officers. The governor shall appoint the head of each principal executive department in the state government. Each appointment is subject to confirmation by a majority of the members of the legislature in joint session. The following executive appointments are also subject to confirmation by a majority of the members of the legislature in joint session:

(1) The deputy head of each principal executive department of the state;

(2) director, division of banking;

(3) director, division of insurance;

(4) director, division of family and childrens services;

(5) director, division of corrections;

(6) director, division of oil and gas;

(7) director, division of elections;

(8) director, division of policy planning and research;

(9) director, division of personnel;

(10) director, division of budget and management;

(11) director, division of medical assistance;

(12) director, division of mental health;

(13) director, division of public health;

(14) director, office of telecommunications;

(15) director, division of marine transportation;

(16) director, division of waters and harbors;

(17) director, division of lands;

(18) state geologist, division of geological and geophysical surveys;

(19) director, division of agriculture;

(20) director, division of aviation.

Section 2. AS 39.05.080(2) is amended to read:

(2) When appointments are presented to the legislature for confirmation,

(A) the presiding officer of each house shall assign the name of each appointee to a standing committee of that house for a hearing, report and recommendation; standing committees of the two houses assigned the same person's name for consideration may meet jointly to consider the qualifications of the person appointed and may issue either a separate or a joint report and recommendation concerning that person; then

(B) the legislature shall, before the end of the session in which the appointments are presented, in joint session assembled, act on the appointments by confirming or declining to confirm by a majority vote of all of the members the appointments presented.

Sec. 3. AS 39.25.040 is amended to read:

Sec. 39.25.040. Director of personnel. The head of the division of personnel is the director of personnel appointed by the commissioner of administration and responsible to the commissioner of administration for the execution of the duties and responsibilities imposed by this chapter and the rules adopted under this chapter. The director of personnel must have at least three years of practical working experience in the field of personnel administration.

Sec. 4. AS 39.25.120(2) is amended to read:

(2) the directors, division of personnel, division of mental health, division of public health, division of medical assistance, and those other directors of the major divisions of the principal departments of the executive branch as are specifically designated by the governor; ....

[**3]

The legislative history of Chapter 82 discloses that on April 28, 1975, Alaska's Ninth State Legislature enacted Free Conference Committee Substitute to Senate [*3] Bill 98. After initial passage, Governor Hammond vetoed the bill on the ground that Section 1 thereof impinged upon the executive power of appointment. On May 21, 1975, the legislature, in joint session, overrode the veto. The act then became law the following day as Chapter 82 of the 1975 Session Laws of Alaska (hereinafter Chapter 82).

Subsequent to enactment of Chapter 82, Governor Hammond appointed persons to posts affected by the Act's provisions. Under AS 39.05.080(1), part of the codification of Chapter 82, the governor was obliged to present to the legislature for confirmation the names of these persons. The governor refused to do so. Appellants then commenced this action for a declaratory judgment n2 of the constitutionality of Chapter 82. The superior court granted Governor Hammond's motion for summary judgment, declaring Section 1 unconstitutional. This appeal followed.

n2 AS 22.10.020(b) provides:

> In case of an actual controversy within the state, the superior court, upon the filing of an appropriate pleading, may declare the rights and legal relations of an interested party seeking the declaration, whether or not further relief is or could be sought. The declaration has the force and effect of a final judgment or decree and is reviewable as such. Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against an adverse party whose rights have been determined by the judgment.

[**4]

The controlling constitutional provisions we are called on to interpret here are contained in Article III of Alaska's constitution and concern the appointive powers of the governor. n3 Article III, Section 1 provides:

The executive power of the State is vested in the governor.

n3 There is no dispute that our constitution was designed with a strong executive in mind. Executive Committee Chairman Victor Rivers

reported to the floor that "we are all strongly agreed on the principle of the strong executive." Alaska Constitutional Convention Proceedings at 1984 (hereinafter ACCP). *Accord,* ACCP at 1102, 1741, 1986-88, 2038, 3103.

Article III, Section 25 further provides that:

The head of each principal department shall be a single executive unless otherwise provided by law. He shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and shall serve at the pleasure of the governor, except as otherwise provided in this article [**5] with respect to the secretary of State. The heads of all principal departments shall be citizens of the United States.

This provision explicitly empowers the governor to appoint and dismiss the head of each principal department. It subjects these executive appointments to confirmation by a majority of the members of the legislature in joint session. Article III, Section 26 treats related offices and provides:

When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board of commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.

As with Section 25, Section 26 vests the power of appointment in the governor and the power to confirm in the legislature in joint session. Removal of Section 26 board or commission members is as provided by law and, therefore, not necessarily at the governor's pleasure. [**6]

As analyzed by appellants, the sole question in this appeal is whether Sections 25 and 26 of Article III describe the outer [*4] limits of the legislature's confirmation authority, or whether the legislature may by statute require confirmation of other high-level, policy-making officials within the executive branch. In arguing that Sections 25 and 26 only establish a constitutional minimum requiring that certain appointments within the executive branch must be legislatively confirmed, appellants emphasize that neither Section 25 nor 26 prohibits the legislature from requiring confirmation of other executive appointments. Admitting that the power to enact legislative confirmation requirements in addition to those provided for in Sections 25 and 26 is not explicitly conferred on the legislature by Alaska's constitution, appellants advance the contention that the validity of Chapter 82 turns on whether such enactments are within the ambit of the constitution's general grant of legislative power to the legislative branch of Alaska's government. n4

n4 Article II, Section 1 of the Alaska Constitution provides in part that "the legislative power of the State is vested in a legislature ...."

In support of their thesis that the confirmation power is within the legislative power grant of Article II, Section 1, appellants contend that the record of the constitutional convention demonstrates that the delegates "clearly understood that the legislature would have authority to enact statutory confirmation requirements." Additionally, appellants point to the circumstance that since the inception of statehood both the executive and legislative branches "have consistently acted upon the understanding that the legislature has such authority" and this long-standing interpretation should be accorded significant weight by the judiciary in matters of constitutional interpretation. *Okanogan Indians v. United States (The Pocket Veto Case) 279 U.S. 655, 49 S. Ct. 463, 73 L. Ed 894 (1929); Hampton v. United States, 276 U.S. 394, 48 S. Ct. 348, 72 L. Ed. 624 (1928); Downes v. Bidwell, 182 U.S. 244, 21 S. Ct. 770, 45 L. Ed. 1088 (1901); see generally* 16 Am.Jur.2d Constitutional Law § 83 (1964); 16 C.J.S. Constitutional Law § § 32-34 (1956).

In addition appellants emphasize that this interpretation dates back to the first years of statehood. Contemporaneous interpretation of fundamental law by those participating in its drafting has traditionally been viewed as especially weighty evidence of the framers' intent. *Myers v. United States, 272 U.S. 52, 47 S. Ct. 21, 71 L. Ed. 160 (1926); Cooper Mfg. Co. v. Ferguson, 113 U.S. 727, 5 S. Ct. 739, 28 L. Ed. 1137 (1885); Norfolk & W. Ry. Co. v. Board of Public Works, 124 W.Va. 562, 21 S.E.2d 143 (1942); Jones v. Williams, 121 Tex. 94, 45 S.W.2d 130 (1931).*

[**7]

In opposition, appellee Hammond primarily argues that the power to confirm executive officers is an executive power which may be lawfully exercised by the legislature only to the extent granted by the Alaska Constitution. Viewed in this manner, appellee analyzes the power to confirm executive officers as part of the appointment process, incapable of existence independent of the power of appointment, and characterizes this confirmation authority as a power "super-added" to the legislature's general legislative powers. Thus, appellee would find that Sections 25 and 26 set the maximum rather than the minimum parameters of the legislature's power to confirm appointments of executive officers. This follows, according to appellee, from the fact that legislative confirmation is a delegated function taken from an executive function, and thus the breadth of this delegated authority must be strictly construed. n5 Applying this strict interpretative criterion, appellee concludes that Chapter 82 is violative of the separation of [*5] powers doctrine implied in Alaska's constitution.

n5 Countering appellants' contention, appellee's reading of Alaska's constitutional history demonstrates "an intent by the constitutional framers to restrict legislative confirmation of those officers set forth in Art. III, § § 25 and 26."

The attorney general candidly admitted at oral argument that examination of practice between the legislative and executive branches since statehood indicates that the executive has at least acquiesced to legislative confirmation of certain subcabinet officials. However, he argued that the political reality of a legislature dominated by the same party as that of the governor, as well as the minor interference such intervention created, indicates that the executive stance in the past should not be read as a "constitutional interpretation by a coordinate branch of government," but rather as a product of a realistic ordering of executive goals at the time.

[**8]

After study of the excellent briefs and oral arguments of respective counsel, on March 25, 1976, this Court issued an order affirming the superior court's declaration that Section 1, Chapter 82, SLA 1975 is unconstitutional. In this order we further indicated that a full opinion would be issued in due course. n6

n6 At oral argument respective counsel advised that if a decision was not forthcoming in the immediate future, Governor Hammond, without prejudice to his position in this appeal, intended to submit the names of various subcabinet appointments to the legislature in order to facilitate confirmation hearings. Our March order was in response to these disclosed time constraints.

In *Alaska State-Operated School System v. Mueller, 536 P.2d 99, 103 (Alaska 1975),* we observed that "those who wrote our constitution followed the traditional framework of American government. The governmental authority of the State of Alaska was distributed among the three branches, the executive, the legislative and the [**9] judicial." Analyzing this tripartite form of government provided for Alaska, this court concluded, in *Public Defender Agency v. Superior Court, Third Judicial District, 534 P.2d 947, 950 (Alaska 1975),* that ".... it can be fairly implied that this state does recognize the separation of powers doctrine." n7 Our recent opinion in *Continental Insurance Cos. v. Bayless & Roberts, Inc., 548 P.2d 398, 410-11 (Alaska 1976),* acknowledges that the underlying rationale of the doctrine of separation of powers is the avoidance of tyrannical aggrandizement of power by a single branch of government through the mechanism of diffusion of governmental powers. n8 It is clear that the doctrine is not a common law concept; it is, however, a brooding omnipresence by virtue of its conceptually central role in the structure of American constitutional government.

n7 In *Public Defender Agency v. Superior Court, Third Judicial District, 534 P.2d 947, 950 (Alaska 1975),* we also said that "although the Alaska Constitution does not expressly address itself to the doctrine of separation of powers, we have noted that often what is implied is as much a part of the constitution as what is expressed. *Wade v. Nolan, 414 P.2d 689, 698 (Alaska 1966).*"

In reaching this conclusion that the doctrine of separation of powers is implicit in the Alaska Constitution, we cited *Lira v. Billings, 196 Kan. 726, 414 P.2d 13, 16 (1966),* where the Kansas Supreme Court acknowledged that the doctrine is implied from the existence of three separate constitutional provisions calling for three branches of government. [**10]

n8 *Continental* dealt in part with the inherent contempt powers of the courts of Alaska. There

we observed that the inherent power to punish for contempt exists independently of statute and that although the legislature may regulate the procedure and enlarge the power, it cannot ".... 'without trenching upon the constitutional powers of the court, and destroying the autonomy of that system of checks and balances which is one of the chief features of our triple-department form of government, fetter the power itself.'" *Continental Ins. Cos. v. Bayless & Roberts, Inc., 548 P.2d 398, 410 (Alaska 1976)*, quoting *In re Shortridge, 99 Cal. 526, 528, 34 P. 227, 229 (1893).*

The doctrine prohibits one branch from encroaching upon and exercising the powers of another branch. *Myers v. United States, 272 U.S. 52, 47 S. Ct. 21, 71 L. Ed. 160 (1926); Giss v. Jordan, 82 Ariz. 152, 309 P.2d 779 (1957).*

A problem inherent in applying the doctrine of "separation of powers" stems from the fact that the doctrine is descriptive of only one facet of American government. The complementary doctrine [**11] of checks and balances must of necessity be considered in determining the scope of the doctrine of separation of powers. n9 Both doctrines address and are designed to resolve the problem of efficient government versus tyrannical government n10 and have as their goal [*6] the protection of the electorate from tyranny. n11 In the instant appeal, the parties, in recognition of the controlling nature of the issue, dispute the meaning of the doctrine of separation of powers, and its implications for the determination as to whether Chapter 82 is violative of Alaska's constitution. In our view, the doctrine is of importance to the resolution of the merits of this appeal, for if the doctrine clearly precludes legislative intervention (by confirmation) in the appointment of executive officials, or requires "strict departmentalization," then Chapter 82, which purports to authorize legislative "meddling" in the exercise of an executive power, is unconstitutional because it would be violative of separation of powers requirements.

n9 ".... a dynamic relationship of cooperation and conflict ...." R. Tresolini & M. Shapiro, American Constitutional Law 9 (3d ed. 1970) [hereinafter Tresolini]. [**12]

n10 Tresolini, *supra* note 9, at 11. *Compare O'Donoghue v. United States, 289 U.S. 516, 530, 53 S. Ct. 740, 77 L. Ed. 1356, 1360 (1933) and United Public Workers of America v. Mitchell, 330 U.S. 75, 91, 67 S. Ct. 556, 565, 91 L. Ed. 754, 768 (1947).*

n11 Justice Brandeis wrote, dissenting in *Myers v. United States, 272 U.S. 52, 293-95, 47 S. Ct. 21, 85, 71 L. Ed. 160, 242-43 (1926):*

The doctrine of the separation of powers was adopted by the Convention of 1787 not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy .... In America, as in England, the conviction prevailed then that the people must look to representation assemblies for the protection of their liberties. And protection of the individual, even if he be an official, from the arbitrary or capricious exercise of power was then believed to be an essential of free government.

Compare C. Antieau, 2 Modern Constitutional Law § 11:13, at 200 (1st ed. 1969):

The doctrine of separation of powers was deemed necessary by the framers of the Constitution for two principal purposes: first, to protect the liberty of the citizen; and second, to safeguard the independence of each branch of the government and protect it from domination and interference by the others.

Cf. Warren v. Boucher, 543 P.2d 731, 734, 737 (Alaska 1975).

[**13]

In determining if Chapter 82 violates the doctrine of separation of powers, which is implicit in Alaska's constitution, it is necessary to answer the threshold question whether the appointment of executive officers is a legislative or executive function. Under the structure envisaged by Alaska's fundamental charter, the legislative power of the state is vested in the legislature, n12 the executive power in the governor, n13 and the judicial power in a supreme court, a superior court and such additional courts as established by the legislature. n14

n12 Art. II, § 1, Alaska Const.

n13 Art. III, § 1, Alaska Const.

n14 Art. IV, § 1, Alaska Const.

Appellee contends that the appointment of executive officers is an executive function. n15 We find appellee's contention most persuasive. In addition to vesting the executive power of the state in the governor, Section 16 of Article III provides that "the governor shall be responsible for the faithful execution of the laws." In view of the responsibilities [**14] imposed by Section 16, and the authority granted by Section 1, the governor is necessarily clothed with the power to appoint subordinate executive officers to aid him in carrying out the laws of Alaska. n16 Thus, we conclude that the appointment of executive officers is an executive function; n17 for without such a power, the responsibility for executing executive duties would be diffused and the goal of separation of branches of government, avoiding too [*7] great a concentration of power in one branch, would be defeated.

n15 There is no dispute here that the appointees subjected to legislative confirmation by Chapter 82 are executive officers.

n16 *Ahearn v. Bailey, 104 Ariz. 250, 451 P.2d 30 (1969).*

n17 In *Springer v. Philippine Islands, 277 U.S. 189, 202, 48 S. Ct. 480, 482, 72 L. Ed. 845, 849 (1927),* the Supreme Court said:

> Legislative power, as distinguished from executive power, is the authority to make laws, but not to enforce them or appoint the agents charged with the duty of such enforcement. The latter are executive functions.

See also Myers v. United States, 272 U.S. 52, 115-16, 47 S. Ct. 21, 24-25, 71 L. Ed. 160, 165-66 (1926).

[**15]

Given our conclusion that under Alaska's constitution the appointment of subordinate executive officers by the governor is an executive function, it is then necessary to determine the nature of the legislature's confirmation powers. Here we are in agreement with appellee's analysis that under Alaska's constitution confirmation is a specific attribute of the appointive power of the executive. n18 Other courts which have been called upon to resolve this issue have been unanimous in their holdings that confirmation is not a distinct legislative power, but rather a part of the executive power of appointment which has in turn been delegated in some specific instances by constitution to the legislative branch of government. n19

n18 In *Myers v. United States, 272 U.S. 52, 169, 47 S. Ct. 21, 43, 71 L. Ed. 160, 187 (1926),* the Supreme Court termed confirmation a power "super added" to those possessed by the legislature.

n19 *Myers v. United States, 272 U.S. 52, 138-39, 47 S. Ct. 21, 32-33, 71 L. Ed. 160, 174-75 (1926); Wittler v. Baumgartner, 180 Neb. 446, 144 N.W.2d 62, 67 (1966); Spears v. Davis, 398 S.W.2d 921 (Tex. 1966); Walker v. Baker, 145 Tex. 121, 196 S.W.2d 324 (1946); State v. Dowling, 167 La. 907, 120 So. 593 (1928); People v. Shawver, 30 Wyo. 366, 222 P. 11 (1924).*

[**16]

In light of the nature of the legislature's power of confirmation, the question whether Sections 25 and 26 of Article III describe the outer limits of the legislature's confirmation authority, or whether the legislature may by statute require confirmation of other high-level, policy making officials within the executive branch, admits of but one resolution. As to this issue, we think the provisions of Sections 25 and 26 of Article III are clear and unambiguous. n20 Thus, we conclude that Sections 25 and 26 mark the full reach of the delegated, or shared, appointive function to Alaska's legislative branch of government. n21

n20 *Compare Warwick v. State ex rel. Chance, 548 P.2d 384, 391-96 (Alaska 1976).*

n21 In *O'Donoghue v. United States, 289 U.S. 516, 530, 53 S. Ct. 740, 743, 77 L. Ed. 1356 (1933),* the Supreme court said:

> The Constitution, in distributing the powers of government, creates three distinct and separate departments - the legislative, the executive, and the judicial. This separation is not merely a matter of convenience or of governmental mechanism. Its object is basic and vital, *Springer v. Philippine Islands, 277 U.S. 189, 201, 48 S. Ct. 480, 72 L. Ed. 845;* namely, to preclude a commingling of these essentially different powers of government in the same hands. *And this object is none the less apparent and controlling because there is to be found in the Constitution an occasional specific provision conferring upon a given department certain functions, which, by their nature, would otherwise fall within the*

general scope of the powers of another. Such exceptions serve rather to emphasize the generally inviolate character of the plan.

[**17]

The lack of ambiguity in Sections 25 and 26 of Article III of the Alaska Constitution mandate that this court interpret these express provisions as embodying not only the maximum parameters of the delegation of the executive appointive authority through the legislative confirmation function but, further, that they delineate the full extent of the constitution's express grant to the legislative branch of checks on the governor's power to appoint subordinate executive officers. In our view, the separation of powers doctrine requires that the blending of governmental powers will not be inferred in the absence of an express constitutional provision. n22 [*8] To hold otherwise would emasculate the restraints engendered by the doctrine of separation of powers and result in potentially serious encroachments upon the executive by the legislative branch, because there would be no logical termination point to the legislature's confirmation of executive appointments. n23

n22 *Compare Leege v. Martin, 379 P.2d 447, 450 (Alaska 1963). See also State v. Campbell, 536 P.2d 105, 110-11 (Alaska 1975),* where we said:

> This court is admittedly under a duty to reconcile, whenever possible, challenged legislation with the constitution by rendering a construction that would harmonize the statutory language with specific constitutional provisions. However, in fulfilling that duty, the extent to which the express language of the provision can be altered and departed from and the extent to which the infirmities can be rectified by the use of implied terms is limited by the constitutionally decreed separation of powers which prohibits this court from enacting legislation or redrafting defective statutes.

[**18]

n23 Our holding makes it unnecessary to discuss any of the other arguments advanced in this appeal.

The superior court's judgment is Affirmed.

CONNOR and BURKE, JJ., not participating.

SB

93

SENATE STATE AFFAIRS COMMITTEE DATE: February 20, 2001	SUBJECT OF MEETING: SB 93-ARCTIC WINTER GAMES TEAM ALASKA TRUST

PLEASE SIGN IN

PLEASE PRINT: NAME	ADDRESS (MAILING & ZIP)	REPRESENTING	DO YOU WANT TO TESTIFY?
Bethy Martin	DOR/Treasury	Revenue	Available for questions if needed
Denise Henderson	Rep Kott's Office		HCR5

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB 93
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Revenue
Title: An Act relating to the Arctic Winter Games Team Alaska Trust.
BRU: Revenue Operations
Component: Treasury
Sponsor: Senator Phillips
Requester: Senate State Affairs
Component Number: 121

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 **ARCTIC WINTER GAMES TEAM ALASKA TRUST**						
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2001) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: The bill includes no appropriations, so at this time there would be no cost to the department to fulfill its duties under AS 37.14.600. The legislation, in AS 37.14.610(a), would allow the department to allocate and collect its costs for administering the new trust fund. The Treasury Division charges each of the funds under its administration a share of the division's overall costs, as well as any incremental costs directly associated with the fund. For example, the Children's Trust has about $9 million. The division charges the Children's Trust about $33,400 in allocated costs plus $1,500 for management fees. Allocated costs include accounting services, data processing support, fixed-income management handled within the division and annual audit expenses. Management fees are 1.5 basis points for domestic equities and 15 basis points for international equity investments. Although the rate for equity management fees for the Arctic Winter Games Trust would be same as for the Children's Trust, the allocated expenses for the Arctic Games Trust probably would be less. The division maintains two accounts for the Children's Trust, while only one account would be needed for the Arctic Games Trust. In addition, the legislation in AS 37.14.600(b)(7) directs the Department of Revenue to "monitor use of trust money by the Arctic Winter Games Team Alaska." Depending whether the Arctic Winter Games Team Alaska has sufficient staff and an annual audit to assist with the work, the Treasury Division may need to contract with a private auditor an annual review to ensure compliance with the law.

Prepared by: Betty Martin, Comptroller
Phone 465-2352
Division Treasury
Date/Time 2/19/01 9:50 AM
Approved by: Larry Persily, Deputy Commissioner
Date Feb. 19, 2001
Agency Department of Revenue

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Senate Bill 93

"An Act relating to the Arctic Winter Games Team Alaska trust; and providing for an effective date."

Sponsor:

Senator Randy Phillips

Sponsor Statement

The purpose of SB 93, establishing the Arctic Winter Games Team Alaska Trust, is to provide a consistent funding source for the State of Alaska's ongoing commitment to the Arctic Winter Games and Team Alaska.

Under the leadership of Governor Walter J. Hickel, the Arctic Winter Games were founded 30 years ago. During this time the state has given support for annual membership dues and for Team Alaska as it participates in the biennial Games. However, the funding has not been maintained at a consistent level and requires ongoing annual appropriations.

The Arctic Winter Games Team Alaska Trust would simplify the current funding mechanism and provide stability to the state's commitment to the Games. This will be particularly important as the Games are held in Nuuk, Greenland in 2002 and Northern Alberta in 2004, requiring a greater financial burden on participants who cover many of the costs themselves or through sponsorship programs.

SITE: ~~JUNEAU LIO~~	SUBJECT OF MEETING: SJ 12
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DATE: 2-19-01	UPDATE #:

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✓	Wendell Shiftler	(F6x) ON INTERNATIONAL COMMITTEE	AWGIC	Y
✓	Phyllis Tate	(F6x.)	AWGIC	Y
X	Dan Sullivan	Anc.	AWG - Team AK.	Y SB93
✓	Gary Matthews	Anc.	"	Y SB93
✓	John Rodda	Anc. ON INTERNATIONAL COMMITTEE	"	Y SB93
✓	Jim Powell			

TEAM ALASKA

Draft Budget for 2002 Games Cycle

Based upon 2000 Cycle -- guesstimates and focs are at bottom of page

				FY 2001		FY 2002		Total	
Income									
Income-Dues									
		100-Grants			75000.00		145000.00		220000.00
			101-Grant Dues	0.00				0.00	
			102-Grant Ops	75000.00		145000.00		220000.00	
Income-Operations									
		150-Corporate Sponsorships			0.00		92500.00		92500.00
			151 Dev. Director			90000.00		90000.00	
			152-Other BOD Solicited Monies			2500.00		2500.00	
		200-Dues			1250.00		1250.00		2500.00
			201-Biennial Individual	250.00		250.00		500.00	
			209-Donations	1000.00		1000.00		2000.00	
		300-Fees			0.00		245000.00		245000.00
			301-Registration Fees			245000.00		245000.00	
		400-Sales			0.00		12200.00		12200.00
			401-Pins			500.00		500.00	
			402-Jackets			1500.00		1500.00	
			403-Hats			200.00		200.00	
			407-Air Fares			10000.00		10000.00	
					76250.00		495950.00		572200.00
Expenses				**FY99**		**FY00**		**Total**	
Expenses-Dues									
0900		International Committee			21000.00		0.00		21000.00
		10	International Dues	21000.00		0.00		21000.00	
Expenses-Operations									
1000		***Materials & Supplies***			11200.00		100200.00		111400.00
	1100	Office Materials and Supplies							
		1110	Photocopy	600.00		2000.00		2600.00	
		1120	Postage and Shipping	600.00		3000.00		3600.00	
		1140	Supplies	800.00		1200.00		2000.00	
	1200	Development/Fundraising							
		1230	Printing and Photocopy	2000.00		600.00		2500.00	
		1240	Corp. Rec (materials & advt)	0.00		1500.00		1500.00	
		1250	Corp. Rec advertising	1000.00		3000.00		4000.00	
	1300	500-Games Gear							
		1310	Pins	0.00		10000.00		10000.00	
		1320	Hats	5000.00		0.00		5000.00	
		1330	Uniforms	0.00		75000.00		75000.00	
		1340	T-shirts	0.00		1000.00		1000.00	
		1350	Misc (promo materials)	1200.00		0.00		1200.00	
		1360	Spec Risk Ins	0.00		3000.00		3000.00	
2000		***Contract Labor***			28000.00		42000.00		70000.00
	2100	Operations							
		2110	Chef de Mission Contract	18000.00		18000.00		36000.00	
	2200	Development/Fundraising							
		2210	Dev. Director Contract	10000.00		18000.00		28000.00	
		2220	Dev. Director Commission	0.00		6000.00		6000.00	
3000		***Administration***			3800.00		3820.00		7620.00
	3100	BOD Expenses							
		3110	BOD Meeting Travel	1000.00		1000.00		2000.00	
		3120	BOD Retreats	500.00		500.00		1000.00	
		3130	BOD Liability Insurance	1300.00		1300.00		2600.00	
		3140	BOD Corp Reg. Fees			20.00		20.00	
		3150	BOD C of C Dues	500.00		500.00		1000.00	
		3180	BOD Meeting Meals & Rental	500.00		500.00		1000.00	
4000		***Other Expenses***							
	4100	Utilities-Games Prep Office			11000.00		404500.00		415500.00

		200-Administration							
	4120	Telephone Service & Tolls	3000.00		4000.00		7000.00		
	4140	Heating Oil	2500.00		2500.00		5000.00		
	4150	Misc Office Overhead	1000.00		1000.00		2000.00		
	4160	Mstl&SportCourd Exp	0.00		1000.00		1000.00		
4200		Utilities-Devp Office							
	4220	Telephone Service & Tolls	500.00		1500.00		2000.00		
4300		Mission Expenses							
	4310	On-Site Vehicle Rental	0.00		4000.00		4000.00		
	4320	Cell-Phone Rental/Communications	0.00		1500.00		1500.00		
4400		600-Games Travel							
	4410	Chef's Inspection Trip	4000.00		0.00		4000.00		
	4420	Chef's Travel To Games	0.00		4000.00		4000.00		
	4430	Team Travel Within Alaska	0.00		15000.00		15000.00		
	4440	Team Travel To/From Games	0.00		350000.00		350000.00		
	4450	BOD Travel To/From Games	0.00		20000.00		20000.00		
				75000.00		550520.00		625520.00	
			Income	76250.00	Income	495950.00	Income	572200.00	
			Expense	75000.00	Expense	550520.00	Expense	625520.00	
			Balance	1250.00	Balance	-54570.00	Balance	-53320.00	
		Registration Fees	350	700	245000				
			im members	fee	total				
		Air fares	350	1000	350000				

Revised Copy
2-20-01

Arctic Winter Games

Team Alaska

February 15, 2001

Dear Legislators,

Thirty two years ago, the State of Alaska, in a cooperative effort with the Yukon and Northwest Territories, created the Arctic Winter Games as a means to promote friendly competition and social interaction between northern countries. The first games were held in 1970, and since that time, the Games have been held every two years at various locations throughout the north. With nineteen sports as well as cultural displays and performances from each participating region, the Arctic Winter Games have become the northern world's greatest amateur event.

Arctic Winter Games Team Alaska (AWGTA) is a non-profit corporation that carries out the state's mission by selecting team members, coaches, and support staff from throughout Alaska. AWGTA purchases team uniforms, sports equipment, makes the travel arrangements and ensures the care and well being of the athletes during the competition. All of this is accomplished with just one paid employee (the Chef de Mission) and dozens of volunteers, including the eleven member board of directors, who are selected from the interior, southcentral and southeast regions of Alaska.

Funding is always a concern for AWGTA. It takes approximately $400,000 to send our team to the games. Our revenues are a combination of state grants, corporate contributions and athlete's fees. Unlike most events of this size and stature, the athletes actually pay about a third of the team costs out of their own pocket. Rising costs, particularly for the upcoming 2002 Games in Greenland, will soon make the cost per athlete prohibitive, especially for our athletes from rural Alaska. The future of AWGTA is of great concern to all participants.

SB 93 creates the Arctic Winter Games Team Alaska Trust as a means to guarantee the future of this thirty year success story. Properly endowed, (estimate $5,000,000) the Trust will generate sufficient revenues to finance future costs of Team Alaska and also generate sufficient revenues to assist the host cities when it is Alaska's turn to stage the Arctic Winter Games, approximately once every decade. In 1996, for example, the Arctic Winter Games were held in Eagle River and the state contributed $800,000 to the Host Society. Grants to Team Alaska average approximately $225,000 for each set of games.

3400 Sagan Circle • Anchorage, Alaska 99517 • Phone (907) 243-0071 • Fax (907) 243-0998

Over the next twenty years, the state of Alaska will receive over $500,000,000 from the tobacco settlement. This settlement was reached because it was proven that the tobacco companies marketed their product to America's youth. We have a moral obligation to see that some of that settlement money goes back to our youth. There is no better cessation program than youth athletics. There is no more efficient statewide delivery system offering athletic opportunity for our youth than AWGTA.

Please, support SB 93 and when it comes time to fund the trust that it creates, please say yes once again to Alaska's youth. You will not only be removing a recurring expense from the state budget, but you will guarantee the future of an event that has had a positive impact on thousands of young people from every corner of Alaska. Thank you for your consideration.

Sincerely,

Daniel A. Sullivan

Daniel A. Sullivan
Development Director

The 2000 Arctic Winter Games

Celebrating 30 years of international sports competition, social exchange and cultural exhibition among the northern nations.

1970–2000

ARCTIC WINTER GAMES

TEAM ALASKA

Contributor Information Package

Presented by

ARCTIC WINTER GAMES TEAM ALASKA

ARCTIC WINTER GAMES

TEAM ALASKA

FROM THE DESK OF GOVERNOR WALTER J. HICKEL

Dear Friends,

Thirty years ago, I had the honor of working with leaders from the Yukon and Northwest Territories of Canada to create the Arctic Winter Games, an international sporting competition between Alaska and our northern neighbors. From the beginning, however, the Arctic Winter Games have encompassed far more than just sports. Indeed, for thirty years they have served as an outstanding forum for promoting friendship and understanding between countries who call the arctic regions their home.

From humble beginnings, the Arctic Winter Games have become one of the most admired amateur sporting events in the world. There are nearly 2,000 athletes and coaches, eighteen sporting events, and exhibitions and performances that showcase our unique northern culture. Participating contingents now include two regions of Russia, four Canadian provinces and territories, Greenland and Alaska. The Games are held every two years, hosted on a rotating basis among the various regions.

The 2000 Arctic Winter Games will be held March 5-11 in Whitehorse, Yukon Territory. The young athletes of Team Alaska need your help. I ask that you read the enclosed materials and join me in supporting Team Alaska. There are sponsorship opportunities for every budget and I am confident you will find your participation in this great Alaskan tradition to be a truly rewarding experience.

Sincerely yours,

Walter J. Hickel

Governor Walter J. Hickel
Honorary Chairman, Team Alaska 2000

TEAM ALASKA

The 350 athletes and coaches that comprise Team Alaska come from every corner of the state. In fact, over 40 Alaska cities towns and villages will have athletes participating in the 2000 Arctic Winter Games. Over the thirty year history of the Games, over 4,000 athletes have been members of Team Alaska, and many thousands more have participated in the tryouts. No other event involves such a diverse cross section of Alaskans. The Arctic Winter Games...truly an All Alaskan event!

Communities Represented in the 1998 Arctic Winter Games

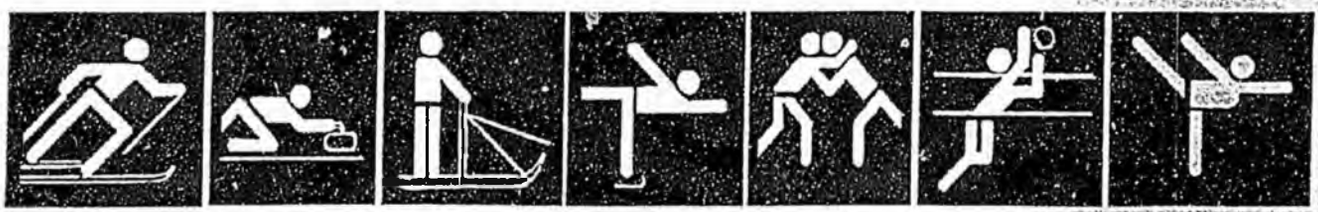
Anchorage	Ester	Ketchikan	Talkeetna
Barrow	Fairbanks	Kodiak	Tok
Bethel	Fort Wainwright	Nikiski	Toksook Bay
Chugiak	Girdwood	Ninilchik	Trapper Creek
Copper Center	Glennallen	Nome	Valdez
Delta Junction	Healy	North Pole	Wasilla
Dillingham	Homer	Palmer	Willow
Douglas	Juneau	Platinum	Wrangell
Eagle River	Kasigluk	Seward	
Eielson AFB	Kenney Lake	Soldotna	

WHERE DO ARCTIC WINTER GAMES ATHLETES COME FROM?

YOUR TOWN!

AMATEUR ATHLETICS AT ITS FINEST

During the twelve months before the 2000 Games, Team Alaska's leader (the Chef de Mission) and his sport coordinators begin selecting athletes from throughout the state to fill roster spots on the eighteen sports teams. Some athletes are chosen through tryouts while others are nominated for participation by coaches in their home towns. The Arctic Winter Games feature as many athletes and events as the Winter Olympics! The Games are unique in that they provide one of the few opportunities in the world of sports for developing athletes to compete at the international level.



THE EIGHTEEN ARCTIC WINTER GAMES SPORTS

- Alpine Skiing
- Snowboarding
- Arctic Sports (Dene)
- Arctic Sports (Inuit)
- Badminton
- Basketball
- Cross Country Skiing
- Curling
- Dog Mushing
- Gymnastics
- Ice Hockey
- Indoor Soccer
- Ski Biathlon
- Snowshoeing
- Snowshoe Biathlon
- Speed Skating
- Volleyball
- Wrestling

Team Alaska and the other participating delegations include a cultural contingent which performs throughout the host community during the week of the Games. The visiting contingents also perform in the "Cultural Gala", one of the highlights of the Games.

TEAM ALASKA BOARD OF DIRECTORS & STAFF

Arctic Winter Games Team Alaska is a 501(c)(3) non-profit corporation, founded in 1970. The Corporation is governed by a twelve member Board of Directors who are selected from various regions around the state. The corporation's primary mission is to organize and transport the Team Alaska athletes to the host community and to supervise their participation in the Games. Since the Arctic Winter Games are held every two years, and at different locations, the organizational process never really stops.

The State of Alaska is one of the charter members of the Arctic Winter Games and the Lt. Governor is the official government representative before the Arctic Winter Games International Committee. The International Committee selects the cities who will host the Games and provides guidance to the host community. Alaska also has two standing board members on the International Committee.

Arctic Winter Games Team Alaska Board of Directors

Interior Region
Randy Pitney, President
Joe Nava, Vice President
Joe Adams, Secretary
Bonnie Williams
Phyllis Tate

South Central Region
Dixie Waddell, Regional Vice President
Chris Spoerhase
Gary Matthews
Joe Crosson
(1 seat vacant)

Southeast Region
George Smith, Regional Vice President
Jim Powell

International Committee
Wendell Shiffler
John Rodda

Government Representative
Lt. Governor Fran Ulmer

Staff
John Estle, Chef de Mission
Dan Sullivan, Development Director

THIRTY YEARS IN REVIEW

1970 - Yellowknife, NT: The first Arctic Winter Games are officially opened by Canadian Prime Minister Elliott Truedeau. A great tradition begins!

1972 - Whitehorse, Yukon: The second Games feature contingents from Quebec and Greenland, with observers from Russia and Labrador as well.

1974 - Anchorage, Alaska: The largest city north of 60 on the North American continent hosts the third games.

1976 - Shefferville, Quebec: The host city was tiny Shefferville, a French speaking mining town. The size of all contingents was reduced to suit the available facilities.

1978 - Hay River/Pine Point: Held in two locations, the first passenger rail sevice was implemented in the NT to enable competitors to commute between the two communities

1980 - Whitehorse, Yukon: Hosting for the second time, Whitehorse set a new standard for Games organization. Expanded cultural programs were one of the highlights.

1982 - Fairbanks, Alaska: The Games return to Alaska and the organizers put on a great show, with the entire community lending support.

1984 - Yellowknife, NT: A new arena in Yellowknife allows for indoor opening and closing ceremonies. Alaska arrives in the first 747 ever to land in Yellowknife.

1986 - Whitehorse, Yukon: A small contingent from Northern Alberta joins the Games, as well as a contingent from Northern Quebec. The growth of the Games continues.

1988 - Fairbanks, Alaska: Northern Alberta officially joins the International Committee and expands its team. Laser lights and ice sculptures add to the show.

1990 - Yellowknife, NT: The Greenland contingent grows to 50 athletes and the Magadan region of Russia sends a cultural delegation.

1992 - Whitehorse, Yukon: The Games enjoy national television coverage in Canada. The Greenland and Northern Alberta teams expand and Russia sends its first competitors.

1994 - Slave Lake, Alberta: The small town of Slave Lake proved wonderful hosts as more sports and athletes than ever before participate in the Games.

1996 - Chugiak-Eagle River, Alaska: A beautiful setting at the base of the Chugiak mountains, outstanding facilities and great weather make for a tremendous success. Athletes from both the Tyumen and Magadan regions of Russia make their mark.

1998 - Yellowknife, NT: The Games return to the Northwest Territories for the last time before division creates two new territories. Experience shows as the organization of the Games is notch.

2000 - Whitehorse, Yukon: Hosting for the th time, Whitehorse will stage a great set of Games for the 30th anniversary of this great northern tradition. The last Games of the millenium.

FUTURE SITES

2002 - Nuuk, Greenland: The Games will travel further east than ever before as Greenland hosts for the first time. Logistics will be a great challenge for the new hosts.

2004 - Northern Alberta

2006 - Alaska

Subject: SB 93 fiscal note
Date: Mon, 19 Feb 2001 14:11:53 -0900
From: "Larry Persily" <paper@alaska.com>
To: <Kim_Ross@legis.state.ak.us>

Kim,

Our fiscal note is attached. As I explained, I've already sent the "official" copy to the governor's legislative office for distribution to Leg Finance and Senate State Affairs.

I'm sending this on my personal email account because (for some unknown reason) I'm not able to send attachments on my state email account today. If you have questions, you can email me at Larry_Persily@revenue.state.ak.us

Thanks / Larry

SB 93.xls	Name: SB 93.xls Type: Microsoft Excel Worksheet (application/vnd.ms-excel) Encoding: base64 Download Status: Not downloaded with message

Joe -
Betty Martin, Treasury Comptroller, will testify 2-20-01.

ALASKA STATE LEGISLATURE
SENATOR RANDY PHILLIPS
Senate District L

Session (Jan-May)
State Capitol, Rm 103
Juneau, AK 99801
(907) 465-4949
(907) 465-4979 Fax
Toll Free Anchorage Area
800-478-4950

Interim
P.O. Box 142
Eagle River, AK 99577
(907) 694-4949
(907) 694-4948 Fax

February 15, 2001

Honorable Gene Therriault
Senate State Affairs Committee
State Capitol
Juneau, AK 99801

Re: SB 93 Arctic Winter Games
Request for Hearing

Dear Chairman Therriault,

As sponsor of SB93, "An Act relating to the Arctic Winter Games Team Alaska trust; and providing for an effective date," I respectfully request a hearing in the Senate State Affairs Committee as soon as possible.

I would also like to request a teleconference to Anchorage and Fairbanks.

Thank you for your assistance.

Sincerely,

Senator Randy Phillips

SB

102

SENATE STATE AFFAIRS COMMITTEE DATE: February 27, 2001	SUBJECT OF MEETING: SB 102-SOCIAL SECURITY # & DRIVER'S LICENSES

PLEASE SIGN IN

PLEASE PRINT: NAME	ADDRESS (MAILING & ZIP)	REPRESENTING	DO YOU WANT TO TESTIFY?
Kevin Shores	Dept. of Law - Juneau	Law - CSED	Questions only request
SHIRLEY DEAN	CSED - JUNEAU	CSED	Q only

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB 102
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Administration
Title: An act relating to the information required
BRU: Motor Vehicles
in an application for; and to display of social security....
Component:
Sponsor: Senator Therriault
Requester: S (STA)
Component Number: 2348

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 bill will have no fiscal impact on DMV. Procedures contained in this bill have already been implemented by DMV administrative policy.

Prepared by: Charles R. Hosack
Phone 269-5559
Division Motor Vehicles
Date/Time 2/23/2001 1:00:00 PM
Approved by: Jim Duncan, Commissioner
Date 2/23/01
Agency Department of Administration

For distribution information, call the Governor's Legislative Office

(Rev 1/26/2000 OMB)

Fiscal Note

Alaska State Legislature

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

Senate

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

Senate District Q

Senate Bill 102: **"An act relating to the information required in an application for, and to display of social security numbers on, certain licenses and instructional permits; and providing for an effective date."**

Sponsor: **Senator Gene Therriault**

Sponsor Statement

Senate Bill 102 removes the social security numbers from the face of drivers' licenses. It also allows someone who does not have a social security number to obtain a license.

Social security numbers provide a gateway to identity theft. An identification card, primarily a driver's license, is often used for check cashing, boarding planes, and other identification purposes. By removing this unique number from the driver's license, SB 102 attempts to preserve the privacy of each Alaskan. While the social security number is still required on the application for a driver's license, learner's permit, and state identification, it would no longer be displayed on the actual card.

SB 102 also places in statute a current policy recently adopted by the Department of Motor Vehicles. If a person does not have a social security number, (s)he can sign a sworn affidavit regarding their status and be granted a license. In the past, the State of Alaska did not grant a license if an applicant did not have a social security number.

Recognizing the desire to protect the identities of Alaskan residents, I have drafted this bill with an immediate effective date. The DMV has the technological capability to prevent social security numbers from appearing on identification cards and licenses; no equipment change would be necessary.

Under SB 102, all current licenses will remain valid. The change affects those issued after the effective date.

Email: Senator_Gene_Therriault@legis.state.ak.us

U.S. Department of Health and Human Services
Administration for Children & Families
Office of Child Support Enforcement

PIQ-99-05

DATE: July 14, 1999

TO: State IV-D Directors and Regional Program Managers

FROM: David Gray Ross
Commissioner
Office of Child Support Enforcement

RE: Inclusion of Social Security Numbers on License Applications and Other Documents

It has come to our attention that there is some confusion regarding the issue of inclusion of social security numbers on license applications and other documents.

Section 466(a)(13) of the Social Security Act (Act) requires States to implement procedures requiring that the social security number(s) of any applicant for a professional, driver's, occupational, recreational or marriage license be recorded on the application. In addition, section 466(a)(13) of the Act requires procedures requiring that the social security number(s) of any individual subject to a divorce decree, support order or paternity determination or acknowledgment be placed in the records relating to the matter and that the social security number(s) of any individual who has died be place in the death records and recorded on the death certificate. Some States have asked how this requirement applies to those applicants or individuals that do not have social security numbers.

We interpret the statutory language in section 466(a)(13) of the Act to require that States have procedures which require an individual to furnish any social security number that he or she may have. Section 466(a)(13) of the Act does not require that an individual have a social security number as a condition of receiving a license, etc. We would advise States to require persons who wish to apply for a license who do not have social security numbers to submit a sworn affidavit, under penalty of perjury, along with their application stating that they do not have a social security number. Such an affidavit should also be required for divorce, support or paternity matters where an individual indicates that he or she does not have a social security number or in death cases where a family member, next of kin indicates that the deceased did not have a social security number.

This is consistent with the position we took in PIQ-97-04 regarding the requirement for inclusion of social security numbers on voluntary paternity acknowledgement affidavits. In PIQ-97-04 we stated that, although section 452(a)(7) of the Act specified that the social security number of each parent is one of the minimum requirements of an affidavit to be used for the voluntary acknowledgment of paternity, the omission of one or both of the social security numbers would not invalidate the acknowledgment.

If you have questions regarding this subject, please contact Jan Rothstein of my staff at (202) 401-5073.

SB

126

SENATE STATE AFFAIRS COMMITTEE DATE: March 15, 2001	SUBJECT OF MEETING: SB 126-RIGHT OF ACTION FOR LEGAL SEPARATION

PLEASE SIGN IN

PLEASE PRINT: NAME	ADDRESS (MAILING & ZIP)	REPRESENTING	DO YOU WANT TO TESTIFY?
Lauren Hugonin	130 Seward rm 209 Juneau 99801	ANDVSA	No

LEGAL SERVICES

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

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

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

MEMORANDUM March 19, 2001

SUBJECT: Legal Separations (CSSB 126(STA), draft version "L")

TO: Senator Gene Therriault
Attn: Joe Balash

FROM: Terri Lauterbach
Legislative Counsel

Enclosed is a draft CS for SB 126.

As you requested, there is a new section 5 that would require certain reports from and between the court system, the state registrar, and the legislature. Section 6 repeals section 5 in three years so that the court system must give only three annual reports to the state registrar.

I have also added clarifications to sec. 4 of the draft, the applicability section. I have added references to actions for divorce and annulment so that the consolidation requirement of AS 25.24.430 (Page 2, lines 2 - 4) will apply after the bill takes effect even though the complaint for legal separation was filed before the bill took effect. I have also added a reference to orders for legal separation issued after the bill takes effect so that the orders must follow the requirements of the bill even if the initial complaint for legal separation was filed before the bill took effect.. For instance, the order would have to specify whether it was an interim or final order. See AS 25.24.450 on page 2 of the draft for other provisions applicable to orders (decrees).

If I may be of further assistance, please advise.

TML:glc
01-261.glc

Enclosure

22-LS0005\L
Lauterbach
3/19/01

CS FOR SENATE BILL NO. 126(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR WILKEN

A BILL

FOR AN ACT ENTITLED

"An Act establishing a right of action for a legal separation; requiring a report about legal separations; and amending Rule 42(a), Alaska Rules of Civil Procedure."

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

*** Section 1.** AS 25.24 is amended by adding new sections to read:

Article 3A. Legal Separation.

Sec. 25.24.400. Complaint for legal separation. A husband or a wife may separately or jointly file a complaint in the superior court for a legal separation. A legal separation may be granted no more than once to the same married couple.

Sec. 25.24.410. Grounds for a legal separation. A legal separation may be granted by the court based on a finding that

(1) an incompatibility of temperament exists between the parties; and

(2) the continuation of the parties' status as married persons preserves or protects significant legal, financial, social, or religious interests.

Sec. 25.24.420. Residency required. One of the parties to a complaint for

legal separation must be a resident of the state at the time the action is commenced.

Sec. 25.24.430. Consolidation of actions. If, at any time, a party to an action for legal separation files an action for divorce or annulment, the court shall consolidate the new action with the action for legal separation.

Sec. 25.24.440. Applicability of other statutes. The following statutes relating to divorce actions shall be applied similarly to an action for legal separation: AS 25.24.060, 25.24.140, 25.24.150, 25.24.152, 25.24.160, and 25.24.170.

Sec. 25.24.450. Decree. (a) If a court finds that the grounds specified under AS 25.24.410 exist, the court shall enter a decree of legal separation.

(b) Unless otherwise provided in the decree, provisions for child custody and visitation, child support, and spousal support included in a decree of legal separation are final orders subject to modification only as provided in AS 25.20.110 and AS 25.24.170.

(c) If the decree of legal separation includes provisions for division of property and debts of the marriage, the decree must state whether the division is an interim or final order. To the extent the division is not a final order, the court shall determine the parties' respective rights to and responsibilities for property and obligations not finally distributed and as to any property or debts accrued by either party while the order is in effect.

Sec. 25.24.460. Effect of separation. A decree of legal separation does not restore the parties to the status of unmarried persons. A decree of legal separation modifies the parties' rights and responsibilities as married persons only to the extent specified in the decree of separation.

* **Sec. 2.** AS 09.05.015(a) is amended to read:

(a) A court of this state having jurisdiction over the subject matter has jurisdiction over a person served in an action according to the rules of civil procedure

(1) in an action, whether arising in or out of this state, against a defendant who, when the action is commenced,

(A) is a natural person present in this state when served;

(B) is a natural person domiciled in this state;

(C) is a domestic corporation; or

(D) is engaged in substantial and not isolated activities in this state, whether the activities are wholly interstate, intrastate, or otherwise;

(2) in an action that may be brought under statutes of this state that specifically confer grounds for personal jurisdiction over the defendant;

(3) in an action claiming injury to person or property in or out of this state arising out of an act or omission in this state by the defendant;

(4) in an action claiming injury to person or property in this state arising out of an act or omission out of this state by the defendant, provided, in addition, that at the time of the injury either

(A) solicitation or service activities were carried on in this state by or on behalf of the defendant; or

(B) products, materials, or things processed, serviced, or manufactured by the defendant were used or consumed in this state in the ordinary course of trade;

(5) in an action that

(A) arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to perform services in this state or to pay for services to be performed in this state by the plaintiff;

(B) arises out of services actually performed for the plaintiff by the defendant in this state, or services actually performed for the defendant by the plaintiff in this state if the performance in this state was authorized or ratified by the defendant;

(C) arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to deliver or receive in this state or to ship from this state goods, documents of title, or other things of value;

(D) relates to goods, documents of title, or other things of value shipped from this state by the plaintiff to the defendant on the order or direction of the defendant; or

(E) relates to goods, documents of title, or other things of value

actually received by the plaintiff in this state from the defendant without regard to where delivery to the carrier occurred;

(6) in an action that arises out of

(A) a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to create in either party an interest in, or to protect, acquire, dispose of, use, rent, own, control, or possess by either party real property situated in this state;

(B) a claim to recover a benefit derived by the defendant through the use, ownership, control, or possession by the defendant of tangible property situated in this state either at the time of the first use, ownership, control, or possession or at the time the action is commenced; or

(C) a claim that the defendant return, restore, or account to the plaintiff for an asset or thing of value that was in this state at the time the defendant acquired possession or control over it;

(7) in an action to recover a deficiency judgment upon a mortgage note or conditional sales contract or other security agreement executed by the defendant or a predecessor of the defendant to whose obligations the defendant has succeeded and the deficiency is claimed

(A) in an action in this state to foreclose upon real property situated in this state;

(B) following sale of real property in this state by the plaintiff; or

(C) following resale of tangible property in this state by the plaintiff;

(8) in an action against a defendant who is or was an officer or director of a domestic corporation where the action arises out of the defendant's conduct as such officer or director or out of the activities of the corporation while the defendant held office as a director or officer;

(9) in an action for the collection of taxes or assessments levied, assessed, or otherwise imposed by a taxing authority after April 10, 1968;

(10) in an action that arises out of a promise made to the plaintiff or

some third party by the defendant to insure upon or against the happening of an event if

(A) the person insured was a resident of this state when the event out of which the cause of action is claimed to arise occurred;

(B) the event out of which the cause of action is claimed to arise occurred in this state; or

(C) the promise to insure was made in the state;

(11) in an action against a personal representative to enforce a claim against the deceased person represented if one or more of the grounds stated in (2) - (10) of this subsection would have furnished a basis for jurisdiction over the deceased if living, and it is immaterial under this paragraph whether the action was commenced during the lifetime of the deceased;

(12) in an action for annulment, divorce, **legal separation,** or separate maintenance when a personal claim is asserted against the nonresident party [,] if

(A) the parties resided in this state in a marital relationship for not less than six consecutive months within the six years preceding the commencement of the action;

(B) the party asserting the personal claim has continued to reside in this state; and

(C) the nonresident party receives notice as required by law.

*** Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE CHANGE. AS 25.24.430, enacted by sec. 1 of this Act, amends Rule 42(a), Alaska Rules of Civil Procedure, by requiring consolidation of subsequent divorce and annulment actions with legal separation actions filed by the same parties.

*** Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) This Act applies to complaints for legal separation, divorce, and annulment that are filed on or after the effective date of this Act and orders of legal separation issued on or after the effective date of this Act.

(b) An order of legal separation issued by a court in the state before the effective date of this Act

(1) is not subject to or rendered void by this Act; and

(2) remains enforceable between the parties regardless of whether the issuing court was authorized to issue the order.

* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

REPORTS. (a) The administrative director of the Alaska Court System shall annually, beginning September 30, 2002, report to the state registrar the number of legal separations granted by courts in the state during the 12 calendar months preceding the date of the report.

(b) The state registrar shall, by January 15, 2005, submit a report to the legislature containing the statistics received from the court system under (a) of this section and the recommendations, if any, of the state registrar for legislation on how information relating to legal separations should be organized and whether the information should be made accessible to members of the public through the Bureau of Vital Statistics.

* **Sec. 6.** Section 5 of this Act is repealed May 1, 2005.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB 126
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Law
Title "An Act establishing a right of action for a legal separation; and amending Rule 42(a), Alaska Rules of Civil ..."
BRU Civil Division
Component Collections and Support
Sponsor Senator Wilken
Requester Senate State Affairs Committee
Component No. 2210

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2001) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

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

SB 126 creates a new cause of action which allows married couples to remain legally married but obtain many of the legal benefits of a divorce or dissolution action. The couple remain married, however the rights and responsibilities of the couple can be modified by the decree, including provisions for child custody and visitation, child support, spousal support, and provisions for division of property and debts.

Passage of SB 126 will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson
Phone 465-5370
Division Attorney General's Office
Date/Time 3/14/01 2:48 PM
Approved by: Kathryn Daughhetee for Bruce M. Botelho, Attorney General
Date 3/14/01
Agency Department of Law

For distribution information, call the Governor's Legislative Office

(Rev 11/2000 OMB)

States with Legal Separation in Statute

Alabama

Arizona

California

Colorado

Connecticut

Illinois

Indiana

Kentucky

Louisiana

Maine

Missouri

Montana

New Hampshire

New York

Ohio

Oregon

Rhode Island

District of Columbia

Information provided by the National Conference of State Legislatures

GARY WILKEN
SENATOR
Districts 29 & 30
West Fairbanks

Senate Standing Committees
Member: Finance
Member: Health, Education, & Social Services (HESS)
Member: Legislative Budget & Audit
Member: State Affairs

Alaska State Legislature
Senate

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Fairbanks, Alaska 99701
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SPONSOR STATEMENT

Senate Bill 126

Senate Bill 126 establishes a right of action for legal separation. Currently, Alaskan couples who develop incompatibility issues that they can not resolve have only the option of either a divorce or an annulment. A legal separation would provide a third avenue for Alaskans. A legal separation is similar to a divorce in that it would provide provisions for child custody and support, spousal support, and property division. However, a legal separation allows couples to retain their legal status as married for financial, social, or religious reasons.

Seventeen other states and the District of Columbia have some type of legal separation law. This bill gives the State of Alaska the authority to issue legal separations and defines the parameters. Although a small number of legal separations are currently being issued in the State of Alaska, there is no statute that specifically gives the court the authorization to do so. The only references to legal separations are found in statutes dealing with child custody and support.

While the need to make legal separations an option for couples originated from a constituent, there are other instances in the state for which clarification of legal separations is needed. On Dec. 1, 2000, the Alaska Supreme Court issued a decision on the case of Glasen vs. Glasen [Supreme Court No. S-8943; Opinion No. 5337]. This was a case in which the couple did receive a legal separation in 1991, reconciled, then divorced in 1997. The issue was over the continued viability of the terms of the legal separation granted in 1991. The appellant wanted those terms to be incorporated into his 1997 decree.

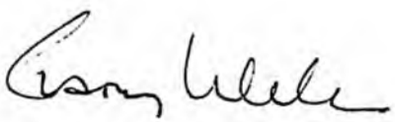
The decision issued by the Supreme Court agreed with the superior court saying that the court did not have to include the provisions set in the 1991 legal separation into the later divorce decree as there is not a statute directly authorizing any court to issue separation degrees. The court did not attempt to define legal separations, nor did it decide whether courts could issue legal separations.

Sponsor Statement for SB 126

Senate Bill 126 responds to the recognition by the Supreme Court for clarification in Alaska law regarding legal separations. The process defined in Senate Bill 126 for legal separation parallels the process for a divorce and clarifies that the provisions for child custody and visitation, child support, and spousal support entered in a legal separation constitute a final order, as if entered into a divorce. On a case by case basis, the court will decide whether the division of property and debts in a legal separation is a final or interim order. The bill also amends Alaska Rules of Civil Procedure by adding legal separation to the actions over which the state has jurisdiction.

The bill would only apply to legal separations filed on or after its effective date. Legal separations issued prior would not be voided, nor would they be subject to the provisions of this bill.

Senate Bill 126 clearly defines legal separation as a valid action in Alaska in State Law. This option will assist the courts, attorneys, and most importantly, Alaskans who need to formally handle the consequences of a separation with their spouse, yet retain the legal status as a married couple. I respectfully request your consideration and support of SB 126.



GARY WILKEN
SENATOR
Districts 29 & 30
West Fairbanks

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MEMORANDUM

TO: Senator Gene Therriault
Senate State Affairs Committee Chairman

FROM: Senator Gary Wilken

DATE: March 7, 2001

RE: SB 126 - Establishing a right of action for legal separation

---

I respectfully request a hearing for Senate Bill 126 - establishing a right of action for legal separation.

Currently, Alaskan couples who develop incompatibility issues that they cannot resolve have only the option of either a divorce or an annulment. A legal separation is similar to getting a divorce in that it would provide provisions for child custody and support, spousal support, and property division. However, a legal separation would allow a couple to retain their legal status as married for financial, social, religious, or other reasons.

Legal separations are not clearly defined in state law, although some are issued. In a recent Supreme Court decision, the court clearly stated that there is currently no statute that authorizes legal separations. Senate Bill 126 would clarify legal separations for the courts and would allow another option for Alaskans.

Thank you for your cooperation and assistance in scheduling a hearing. If you have any questions, please call me, or Ms. Kara Moriarty of my staff at 465-3709.

Gary Wilken

SB

127

SENATOR KIM ELTON

Memo

To: Senator Therriault

From: Senator Elton

Date: March 9, 2001

Re: SB127: Optional Blanket Primary

I respectfully request that you schedule a committee hearing on SB127. Attached you will find a copy of the bill, along with the sponsor statement.

My staff will provide additional materials for the bill packet.

ALASKA SENATE
STATE CAPITOL • JUNEAU, ALASKA 99801-1182 • (907) 465-4947 • FAX (907) 465-2108
SENATOR_KIM_ELTON@LEGIS.STATE.AK.US

SENATOR KIM ELTON

Sponsor Statement

Senate Bill 127

"A Act providing for a blanket primary system, and permitting political parties to select their nominees by alternative means; and providing for an effective date."

The blanket primary has been used in Alaska since 1947 with only a few exceptions. With 51 percent of Alaska voters not registered with a major political party, Alaska is full of independent voters who, through the initiative process, have adopted and maintained the blanket primary as our state's primary of choice.

Last year, however, Alaska was forced to reorganize our election system into a partially closed primary. This was because of a U.S. Supreme Court decision stating that the blanket primary infringed upon political parties' right to free association and because the Republican Party of Alaska wished to restrict who is able to vote for Republican candidates.

The result of last year's partially closed primary ballot was an extra cost of nearly a quarter of a million dollars, an all-time low voter turnout (17 percent), and an overwhelming number of calls to the Division of Elections from unhappy voters. This method put an additional financial burden on the state, and proved to be extremely unpopular among voters.

Because the Alaska Constitution does not mandate that the state hold a primary election, the state isn't in any way obligated to pay for the process of selecting a political party's candidate for the general election ballot.

SB127 meets the requirement of the U.S. Supreme Court because it doesn't force parties to participate in a blanket primary. However, if the state pays for and conducts a primary election, the election will allow full voter choice. Parties that opt not to participate in the freedom-of-choice ballot can use their own selection process, be it conventions, caucuses or other methods.

ALASKA SENATE
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HISTORY OF NOMINATING SYSTEMS USED IN ALASKA

1947—VOTERS REPLACE OPEN PRIMARY WITH BLANKET PRIMARY

In this state, primaries were open until 1947 when voters passed a referendum to adopt a blanket primary. The issue appears to have generated little debate and enjoyed strong support at the polls.[4] Over the next several years, however, the question of the blanket primary increasingly became a partisan issue. As described in a previous Legislative Research report, Democrats tended to oppose the blanket primary, believing that it eroded what little party loyalty and discipline existed in Alaska, and also believing that Republicans used it to their advantage by crossing party lines to nominate the weakest Democratic candidate. Republicans—in the minority at the time—supported the blanket primary in the hope that Republican candidates would benefit by attracting conservative Democrats and non-aligned voters.[5]

1960—SINGLE BALLOT OPEN PRIMARY ADOPTED

In 1959, with Democrats controlling both houses and the governor's office, the First Alaska State Legislature replaced the blanket primary with the single-ballot open primary. The following year lawmakers adopted a comprehensive election code that incorporated the change.[6]

1967—BLANKET PRIMARY RESTORED

During the several years following adoption of the single ballot open primary, Republican lawmakers—with some bipartisan support—proposed a number of bills to change the scheme. It was 1967, however—at which point Republicans had gained the majority in both houses and the governor's office—before they were able to restore the blanket primary.[7] The blanket primary continued in use until 1992, although by 1990, the Republican Party was no longer in favor of the system.

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[4] News articles and election returns cited by Gordon Harrison, in "Alaska's Blanket Primary and the *Tashjian* Decision," Legislative Research Agency Report 91.080, p. 4-5; we have included a copy of this report as Attachment C.

[5] Interview with Judge Thomas B. Stewart, as recounted by Harrison, p.6.

[6] Chapter 41 SLA 1959 changed the blanket primary to a single ballot open primary scheme; Chapter 83 SLA 1960 incorporated the change into the election code.

[7] Harrison, pp. 6-7.

1990—First Challenge Based on Conflict Between Statute and Party Rules (*Doyle v. State*)

In the spring of 1990, the Republican Party of Alaska (RPA) attempted to change the blanket primary to a modified-closed primary based on a change they had made in their party rules.[8] Under the newly adopted rule, only registered Republicans, registered Independents, and individuals without a stated party affiliation would be allowed to vote in the Republican primary.[9] State election officials declined to make the change because the request was both ambiguous and made too late to be implemented. Such a change, they contended, would need pre-clearance by the U.S. Department of Justice as required under the federal Voting Rights Act of 1965. Dissatisfied with the State's response, the RPA filed suit in June of 1990, in U.S. District Court. In *Doyle v. State*, the RPA asked the court to enjoin the State from conducting the August primary in a manner contrary to the Party's new rule.[10]

The court considered the various arguments, including an *amicus curiae* brief filed jointly by the Democratic Party of Alaska and the Alaska Federation of Natives, in which they joined with the state in asserting—among other arguments—that such a change in election procedure could disadvantage minority voters, in violation of the Voting Rights Act. On July 16, 1990, the court denied the Republican Party's request for a preliminary injunction, and as a result, the blanket primary went forward in August 1990, as scheduled.[11]

1992—Second Challenge Based on Conflict of Statute and Party Rules; Partially Closed Primary Held Under Court-Authorized Stipulation (*Zawacki v. State*)

In 1992, the blanket primary was changed to a partially closed primary system. This change came as a result of the RPA once again challenging the constitutionality of the blanket primary system in Federal Court.[12] In *Zawacki v. State*, the court made a preliminary ruling that under the *Tashjian* decision, Alaska's blanket primary infringed on the Party's associational rights. In light of the court's remarks, the parties stipulated to a change in the primary scheme from a blanket to

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[8] The RPA had adopted the new rule at their statewide convention. Their attempt to change the primary relied on the logic of the U.S. Supreme Court's decision in *Julia H. Tashjian, Secretary of State of Connecticut v. Republican Party of Connecticut et al.* (479 U.S. 208 [1986]). In the *Tashjian* case, the Court held that the State's closed primary scheme was unconstitutional in light of a change in the Republican Party rules to allow unaffiliated voters to participate in the primary for certain offices. The Court noted that prohibiting unaffiliated voters from participating in the primary of a party inviting such participation "limits the Party's associational opportunities at the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community. " *Tashjian*, 479 U.S. 208, 216.

[9] As described in *O'Callaghan v. Coghill*, 888 P.2d 1302 (Alaska 1995).

[10] *Allen Grant Doyle, Jr. and the Republican Party of Alaska v. State of Alaska et al.*; referenced by title and without case number by Harrison, p. 9.

[11] Harrison, pp. 9-12. We have been unable to locate a decision on this case; because of that, and because the primary made the plaintiff's immediate concerns moot, we assume that the RPA did not proceed with the action and the case was dismissed. According to Mr. Harrison, it was presumed that the conservative wing of the RPA sought to close its primary to Democratic voters to prevent them from "crossing-over" to vote for Arliss Sturgulewski, a moderate Republican candidate for governor.

[12] *Zawacki v. State*, A92-414 CIV (D. Alaska 1992).

a partially closed system with two ballots. One ballot, based on the RPA rules, listed the Republican candidates and was available only to Republican, nonpartisan and undeclared voters. The second ballot, based on the statute (AS 15.25.060), listed all other candidates and was available to all voters. Voters could chose only one ballot. The Division of Elections adopted emergency temporary regulations providing for separate ballots as described by the stipulation. By joint agreement of the parties, the case was dismissed.[13]

1994—Alaska Superior Court Upholds Legality of the Partially Closed Primary (*O'Callaghan v. Coghill*)

Before the 1994 primary, the Division of Elections adopted permanent regulations identical to those used in 1992.[14] A voter, Mike O'Callaghan, had filed a complaint in the Alaska Superior Court, contesting the legality of the 1992 primary system based on the grounds that the stipulated regulations were inconsistent with state law. Before the 1994 primary, Mr. O'Callaghan also moved for a temporary restraining order to prevent the State from implementing the permanent regulations providing for separate ballots. The court denied the motion for a temporary restraining order and granted summary judgment in favor of the State, which had argued that the blanket primary was "clearly unconstitutional" under *Tashjian*. As a result of the court's decision, the partially closed primary remained in effect in 1994.

1995—Alaska Supreme Court Reconsiders Constitutionality of Blanket Primary and Legality of Partially Closed Primaries (*O'Callaghan v. Coghill [Appeal]*)

On appeal, the Alaska Supreme Court found in *O'Callaghan v. Coghill* (*O'Callaghan I*) that a stipulation (such as that arising from *Zawacki*) declaring a law unconstitutional could not be valid unless the law was clearly unconstitutional. The Court also found that the State had not met the standard of "clear unconstitutionality."[15] Unable to rule on the legality of the 1992 and 1994 primary elections without determining the constitutionality of the blanket primary, the Court ordered additional briefing on that point and invited participation by other political parties and the Legislative Affairs Agency, as well as any others who so chose.[16]

Mr. O'Callaghan and the State submitted supplemental briefs, although by this point the State had changed its position from arguing against the constitutionality of the blanket primary to defending it. The RPA and the Alaskan Voters for an Open Primary were allowed to intervene in the case, known by this point as *O'Callaghan v. State* (*O'Callaghan II*); the Alaska Federation of Natives filed an *amicus curiae* brief, and the Alaskan Independence Party filed a submission in

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[13] Described in *O'Callaghan v. Coghill*, 888 P.2d 1302, 1303 (Alaska 1995).

[14] 6 AAC 28.100.150.

[15] The Court noted that because the State interests behind Alaska's blanket primary appeared to be very different from the State interests asserted in defense of the Connecticut statute, the *Tashjian* decision could not be relied upon to decide whether State interest in Alaska outweighed the burden the blanket primary imposed on associational rights. Thus, the Court found, Alaska's blanket primary statute was not "clearly unconstitutional" under *Tashjian*. *O'Callaghan v. Coghill*, at 1305.

[16] Described in *O'Callaghan v. State*, 914 P.2d 1250, 1251 (Alaska 1996); we have included a copy of this decision as Attachment D.

place of such a brief. By this point, only the RPA was arguing that the blanket primary was unconstitutional.[17]

1996—Alaska Supreme Court Restores Blanket Primary as Constitutional, Declares Partially Closed Primaries Held Illegally (*O'Callaghan v. State [Appeal]*)

In *O'Callaghan II*, the Court found Alaska's blanket primary system not unconstitutional merely because it conflicted with a political party's rules. The Court's order, issued April 12, 1996, therefore held the blanket primary to be constitutional; and the degree of interference in the RPA's associational rights to be minor and justified by the State's interests in "encouraging voter turnout, maximizing voters' choice among candidates, and ensuring that elected officials have relatively broad based constituencies."[18] In finding the blanket primary to be constitutional, the Court concluded that the regulations under which the 1992 and 1994 primaries had been conducted were invalid and ordered that the 1996 primary be conducted as defined in statute.[19] With the 1996 *O'Callaghan II* decision, Alaska turned for the third time to the blanket primary system.

2000—U.S. Supreme Court Holds California Blanket Primary Unconstitutional (*California Democratic Party v. Jones*)

With the issue of the blanket primary's constitutionality seemingly resolved, the Alaska Division of Elections prepared for the primary election scheduled for August of 2000 as it had for the primary of 1998. On June 26, 2000, however, the U.S. Supreme Court, in a split decision on *California Democratic Party v. Jones*, ruled California's blanket primary to be unconstitutional in light of the party rules calling for a closed Democratic primary.[20]

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[17] *O'Callaghan v. State, at 1253.*

[18] *O'Callaghan v. State, at 1263.* In regard to the last objective, the Court noted as follows: "The objective of ensuring that officers elected are representative of a broad cross-section of the electorate, rather than accountable to the narrower interests which may control a party organization, is in essence the reason for the shift, begun at the turn of the century and now generally prevalent, from nomination by party convention to nomination by direct primary. . . . In Alaska, where a majority of voters are not affiliated with any party, a closed or partially-closed primary system can plausibly be viewed as bestowing on a minority of the electorate a disproportionately powerful role in the selection of public officeholders. If political parties and politically affiliated voters are to have more power in the election process, that is power taken from unaffiliated voters." (At 1262.)

[19] AS 15.25.060, Preparation and Distribution of Ballots. Although the ruling in *O'Caliaghan v. State* declared the 1992 and 1994 primaries to have been illegally conducted, it specified that new elections would not be ordered. The U.S. Supreme Court declined to review the decision in 1997.

[20] *California Democratic Party v. Jones.* (U.S. Supreme Court Bench Opinion No. 99-401). Until 1996, California's was a closed, partisan primary; in 1996, Proposition 198 changed the system to a blanket primary, despite party rules prohibiting persons not members of the party from voting in the party's primary. Lower courts affirmed the constitutionality of the change, but on appeal, the U.S. Supreme Court held the resulting burden on the party's associational right to be unjustified.

2000—ALASKA SUPREME COURT RULES BLANKET PRIMARY UNCONSTITUTIONAL UNDER *JONES*, RETURN TO PARTIALLY CLOSED PRIMARY VALID (*O'CALLAGHAN V. STATE, DIRECTOR OF ELECTIONS*)

Immediately following the *Jones* decision, the Republican Party of Alaska requested a closed primary. With under two months until that primary, the Alaska Division of Elections promulgated emergency regulations temporarily adopting, again, the partially closed primary system.[21] On July 5, 2000, voter Mike O'Callaghan filed a complaint contesting the legality of the regulations, based on the decision in *O'Callaghan II*; on July 12th, the Superior Court denied relief; Mr. O'Callaghan appealed.[22] In *O'Callaghan v. State, Director of Elections (O'Callaghan III)*, issued July 25, 2000, the Alaska Supreme Court found as follows:

> Having reviewed *Jones*, we find no constitutionally significant differences between Alaska's primary election law and the California law declared unconstitutional in *Jones.* Nor do we find any principled basis for concluding that Alaska's blanket primary election statute remains constitutional in light of *Jones.* Because the United States Constitution's Supremacy Clause requires states to adhere to the Supreme Court's constitutional interpretation in *Jones*, we hold that *O'Callaghan II's* ruling that AS 15.25.060 is constitutional is no longer tenable.[23]

In discussing the arguments, the Court noted the following in regard to permissible alternatives to the blanket primary and the Division of Election's actions:

> Although *Jones* does expressly point out that a non-partisan blanket primary would pass constitutional muster, *Jones* says nothing to suggest that this is the only constitutionally permissible form of primary ballot or that the non-partisan ballot form deserves preference over other constitutionally permissible forms. . . . In sum, given the time constraints facing the division, the untried and relatively elaborate demands it would face in implementing a non-partisan primary, and the basic incompatibility of that process with Alaska's statutory goal of requiring—to the maximum permissible extent—that political parties nominate their candidates through an open and public electoral process, we find no basis for concluding that the division overstepped its emergency powers by opting for the partially closed primary ballot.[24]

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[21] As you may know, Lt. Governor Fran Ulmer voiced strong disagreement with the Majority's opinion in *Jones*. In a press release issued by the Office of the Lt. Governor on June 29, 2000, she stated, "I believe this opinion will reduce voter participation and interest in the primary. Alaskans are independent and prefer a system which allows them to vote as they choose, regardless of party. I am disappointed with the Majority's emphasis on the rights and protection of political parties over the rights and protection of individual voters." The press release reported the Lt. Governor's announcement that the temporary change would cost an estimated $400,000, and reported her request that the RPA either suspend their rules or agree not to challenge the State if a blanket ballot went forward until the Legislature could resolve the issue. In regard to the request, the Lt. Governor noted, "So far, they [the Republicans] have indicated they are not inclined to do either one."

[22] *O'Callaghan v. State, Director of Elections*, 6 P.3d 728 (Alaska 2000); we have included a copy of this decision as Attachment E.

[23] *O'Callaghan v. State, Director of Elections*, at 730.

[24] *O'Callaghan v. State, Director of Elections*, at 732.

Thus, in light of the *Jones* decision and the RPA rules requiring a partially closed Republican primary in Alaska, we arrive at the present shore. For your convenience, we also present a condensed version of this history in the attached Table.

I hope you find this information useful. Please do not hesitate to contact us if you have questions or need additional information.

Table One: History of Primary Elections in Alaska

Year	Type of Primary	Notes
	open	An open ballot is used in Territorial Alaska until 1947.
1947	blanket	Blanket primary adopted after popular referendum is overwhelmingly approved.
1960	open	Legislature replaces the blanket primary with a single ballot open primary in 1959 (ch 41 SLA 1959); the system is incorporated into election law in 1960 (ch 83 SLA 1960).
1967	blanket	Legislature restores the blanket primary. Bill introduced at request of Governor Hickel (ch 1 SLA 1967).
		Prior to the 1990 primary, the RPA attempts to partially close its ballot based on a change in party rules. The State declines because of ambiguities in the request and because of insufficient time for pre-clearance by the U.S. Department of Justice as required under the federal Voting Rights Act. In an effort to force the issue, the RPA seeks to enjoin the State from conducting the 1990 primary in a manner contrary to the RPA rules (*Doyle v. State*). The U.S. District court denies the RPA motion, and the primary goes forward as scheduled.
1992	partially closed	Prior to the 1992 primary, the Republican Party of Alaska (RPA) challenges the constitutionality of the blanket primary (*Zawacki v. State*); parties stipulate to two ballots--one listing RPA candidates and available to Republican, nonpartisan, and undeclared voters; the other listing all other parties' candidates and available to all voters. Voters choose only one ballot.
1994	partially closed	Prior to the 1994 primary, Division of Elections adopts permanent regulations for partially closed primary. Voter Mike O'Callaghan contests the legality of the system and moves to enjoin the State from implementing the regulations. The State contends blanket primary is "clearly unconstitutional" under *Tashjian v. Republican Party of Connecticut*. Alaska Superior Court denies O'Callaghan's motion and grants summary judgment in favor of State (*O'Callaghan v. Coghill*).
1996	blanket	On appeal, Alaska Supreme Court reviews supplemental briefs. State reverses its position and now defends the constitutionality of the blanket primary. The RPA intervenes and argues that blanket primary is unconstitutional (*O'Callaghan v. State*). Court finds blanket primary to be constitutional and the degree of interference with RPA associational rights to be minor and justified by State's interests. Court also rules the 1992 and 1994 primaries to have been illegally conducted and orders the 1996 primary to be conducted as defined in statute (AS 15.25.060).
2000	partially closed	Two months prior to 2000 primary, the U.S. Supreme Court rules the California blanket primary to be unconstitutional in light of party rules calling for a closed Democratic primary (*California Democratic Party v. Jones*). The RPA requests a closed primary in Alaska, and the State promulgates emergency regulations for a partially closed election. Voter Mike O'Callaghan contests the legality of the regulations, and on appeal, the Alaska Supreme Court holds that--because of the similarity of situations in California and Alaska, and the requirements of the Supremacy Clause in the U.S. Constitution--the 1996 ruling (declaring the blanket primary to be constitutional) is no longer tenable (*O'Callaghan v. State, Division of Elections*).

Notes: Although considerable variation exists among state primary election systems, direct primaries are generally described as *blanket*, *open*, or *closed*.

Under a *blanket* primary system, candidates running for office, regardless of party affiliation, are listed on the same ballot, and voters may cross party lines to choose freely among the nominees for the various offices. In this type of system, the candidates with the most votes from each party win the nomination and face each other in the general election.

Under an *open* primary system, candidates are listed by party on separate ballots. Voters may choose the ballot of any party, but they must select nominees for all offices from that ballot.

Under a *closed* primary system, voters must be registered party members, and they must vote on a ballot listing only that party's nominees.

Sources:

Gordon Harrison, "Alaska's Blanket Primary and the *Tashjian* Decision," Legislative Research Agency Report 91.080; *O'Callaghan v. Coghill*, 888 P.2d 1302 (Alaska 1995); *O'Callaghan v. State*, 914 P.2d 1250, (Alaska 1996); *California Democratic Party v. Jones*, (U.S. Supreme Court Bench Opinion No. 99-401); and *O'Callaghan v. State, Director of Elections*, 6 P.3d 728 (Alaska 2000).

Table 5.3
METHODS OF NOMINATING CANDIDATES FOR STATE OFFICES

State or other jurisdiction	*Method(s) of nominating candidates*
Alabama	Primary election; however, the state executive committee or other governing body of any political party may choose instead to hold a state convention for the purpose of nominating candidates.
Alaska	Primary election.
Arizona	Primary election.
Arkansas	Primary election.
California	Primary election or independent nomination procedure.
Colorado	Assembly/primary; however, a political party may hold a pre-primary assembly (no later than 65 days before the primary) for the designation of candidates. Each candidate who receives at least 30 percent of the delegates' vote of those present and voting is certified as a candidate for the office by the assembly with the candidate receiving the most votes listed first. If no candidate receives at least 30 percent of the vote, a second ballot shall be taken on all candidates, and the two candidates with the highest number of votes will be certified for the office by the assembly. If any candidate receives less than 10 percent of the votes from the assembly, they are precluded from petitioning further. Minor parties may nominate one candidate per office directly to the general election ballot.
Connecticut	Convention/primary election. Major political parties hold state conventions (convening not earlier than the 68th day and closing not later than the 50th day before the date of the primary) for the purpose of endorsing candidates. If no one challenges the endorsed candidate, no primary election is held. However, if anyone (who received at least 15 percent of the delegate vote on any roll call at the convention) challenges the endorsed candidate, a primary election is held to determine the party nominee for the general election.
Delaware*	Primary election.
Florida	Primary election.
Georgia	Primary election.
Hawaii	Primary election.
Idaho	Primary election. New parties nominate candidates for general election after qualifying for ballot status.
Illinois	Primary election.
Indiana*	Primary election held for the nomination of candidates for governor and U.S. senator; state party conventions held for the nomination of candidates for other state offices.
Iowa	Primary election; however, if there are more than two candidates for any nomination and none receives at least 35 percent of the primary vote, the primary is deemed inconclusive and the nomination is made by the party convention. (Applicable only for recognized political parties.
Kansas	Primary election; however, candidates of any political party that receive less than 5 percent but more than 1 percent of the total votes cast for statewide offices in the general election must nominate candidates by either caucus or convention.
Kentucky*	Primary election. A slate of candidates for governor and lieutenant governor that receives the highest number of its party's votes but which number is less than 40 percent of the votes cast for all slates of candidates of that party, shall be required to participate in a runoff primary with the slate of candidates of the same party receiving the second highest number of votes.
Louisiana*	Primary election. Open primary system requires all candidates, regardless of party affiliation, to appear on a single ballot. Candidate who receives over 50 percent of the vote in the primary is elected to office; if no candidate receives a majority vote, a runoff election is held between the two candidates who received the most votes.
Maine	Primary election.
Maryland	Primary election.
Massachusetts*	Primary election.
Michigan	Primary election held for nomination of candidates for governor, U.S. congressional seats, state senators and representatives; court of appeals, circuit and district courts; state conventions held for nomination of candidates for lieutenant governor, secretary of state and attorney general. State convention also held to nominate candidates for Justice of Supreme Court, State Board of Education, Regents of University of Michigan, Trustees of Michigan State University, Governors of Wayne State University.
Minnesota	Primary election.
Mississippi	Primary election.
Missouri	Primary election.
Montana	Primary election.
Nebraska	Primary election.
Nevada*	Primary election.
New Hampshire	Primary election. Non-party candidates may petition for general election ballot.
New Jersey	Primary election. Independent candidates are nominated by petition for the general election.
New Mexico	Convention/primary election.
New York*	Committee meeting/primary election. The person who receives the majority vote at the state party committee meeting becomes the designated candidate for nomination; however, all other persons who received at least 25 percent of the convention vote may demand that their names appear on the primary ballot as candidates for nomination.
North Carolina*	Primary election, or ballot access by petition.
North Dakota	Convention/primary election. Political parties hold state conventions for the purpose of endorsing candidates. Endorsed candidates are automatically placed on the primary election ballot, but other candidates may also petition their name on the ballot.
Ohio	Primary election.

See footnotes at end of table.

SUPREME COURT OF THE UNITED STATES

No. 99–401

CALIFORNIA DEMOCRATIC PARTY, ET AL., PETITIONERS *v.* BILL JONES, SECRETARY OF STATE OF CALIFORNIA, ET AL.

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

[June 26, 2000]

JUSTICE SCALIA delivered the opinion of the Court.

This case presents the question whether the State of California may, consistent with the First Amendment to the United States Constitution, use a so-called "blanket" primary to determine a political party's nominee for the general election.

I

Under California law, a candidate for public office has two routes to gain access to the general ballot for most state and federal elective offices. He may receive the nomination of a qualified political party by winning its primary,[1] see Cal. Elec. Code Ann. §§15451, 13105(a)

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[1] A party is qualified if it meets one of three conditions: (1) in the last gubernatorial election, one of its statewide candidates polled at least two percent of the statewide vote; (2) the party's membership is at least one percent of the statewide vote at the last preceding gubernatorial election; or (3) voters numbering at least 10 percent of the statewide vote at the last gubernatorial election sign a petition stating that they intend to form a new party. See Cal. Elec. Code Ann. §5100 (West 1996

Jones Decision

(West 1996); or he may file as an independent by obtaining (for a statewide race) the signatures of one percent of the State's electorate or (for other races) the signatures of three percent of the voting population of the area represented by the office in contest, see §8400.

Until 1996, to determine the nominees of qualified parties California held what is known as a "closed" partisan primary, in which only persons who are members of the political party– *i.e.*, who have declared affiliation with that party when they register to vote, see Cal. Elec. Code Ann. §§2150, 2151 (West 1996 and Supp. 2000)– can vote on its nominee, see Cal. Elec. Code Ann. §2151 (West 1996). In 1996 the citizens of California adopted by initiative Proposition 198. Promoted largely as a measure that would "weaken" party "hard-liners" and ease the way for "moderate problem-solvers," App. 89–90 (reproducing ballot pamphlet distributed to voters), Proposition 198 changed California's partisan primary from a closed primary to a blanket primary. Under the new system, "[a]ll persons entitled to vote, including those not affiliated with any political party, shall have the right to vote . . . for any candidate regardless of the candidate's political affiliation." Cal. Elec. Code Ann. §2001 (West Supp. 2000); see also §2151. Whereas under the closed primary each voter received a ballot limited to candidates of his own party, as a result of Proposition 198 each voter's primary ballot now lists every candidate regardless of party affiliation and allows the voter to choose freely among them. It remains the case, however, that the candidate of each party who wins the greatest number of votes "is the nominee of that party at the ensuing general election." Cal. Elec. Code Ann. §15451 (West 1996).[2]

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and Supp. 2000).

[2]California's new blanket primary system does not apply directly to

Petitioners in this case are four political parties– the California Democratic Party, the California Republican Party, the Libertarian Party of California, and the Peace and Freedom Party– each of which has a rule prohibiting persons not members of the party from voting in the party's primary.[3] Petitioners brought suit in the United States District Court for the Eastern District of California against respondent California Secretary of State, alleging, *inter alia*, that California's blanket primary violated their First Amendment rights of association, and seeking declaratory and injunctive relief. The group Californians for an Open Primary, also respondent, intervened as a party defendant. The District Court recognized that the new law would inject into each party's primary substantial numbers of voters unaffiliated with the party. 984 F. Supp. 1288, 1298–1299 (1997). It further recognized that this might result in selection of a nominee different from the one party members would select, or at the least cause the same nominee to commit himself to different positions. *Id.*, at 1299. Nevertheless, the District Court held that the burden on petitioners' rights of association was not a severe one, and was justified by state interests ultimately reducing to this: "enhanc[ing] the democratic

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the apportionment of presidential delegates. See Cal. Elec. Code Ann. §§15151, 15375, 15500 (West Supp. 2000). Instead, the State tabulates the presidential primary in two ways: according to the number of votes each candidate received from the entire voter pool and according to the amount each received from members of his own party. The national parties may then use the latter figure to apportion delegates. Nor does it apply to the election of political party central or district committee members; only party members may vote in these elections. See Cal. Elec. Code Ann. §2151 (West 1996 and Supp. 2000).

[3]Each of the four parties was qualified under California law when they filed this suit. Since that time, the Peace and Freedom Party has apparently lost its qualified status. See Brief for Petitioners 16 (citing Child of the 60s Slips, Los Angeles Times, Feb. 17, 1999, p. B–6).

nature of the election process and the representativeness of elected officials." *Id.*, at 1301. The Ninth Circuit, adopting the District Court's opinion as its own, affirmed. 169 F. 3d 646 (1999). We granted certiorari. 528 U. S. 1133 (2000).

II

Respondents rest their defense of the blanket primary upon the proposition that primaries play an integral role in citizens' selection of public officials. As a consequence, they contend, primaries are public rather than private proceedings, and the States may and must play a role in ensuring that they serve the public interest. Proposition 198, respondents conclude, is simply a rather pedestrian example of a State's regulating its system of elections.

We have recognized, of course, that States have a major role to play in structuring and monitoring the election process, including primaries. See *Burdick* v. *Takushi*, 504 U. S. 428, 433 (1992); *Tashjian* v. *Republican Party of Conn.*, 479 U. S. 208, 217 (1986). We have considered it "too plain for argument," for example, that a State may require parties to use the primary format for selecting their nominees, in order to assure that intraparty competition is resolved in a democratic fashion. *American Party of Tex.* v. *White*, 415 U. S. 767, 781 (1974); see also *Tashjian*, *supra*, at 237 (SCALIA, J., dissenting). Similarly, in order to avoid burdening the general election ballot with frivolous candidacies, a State may require parties to demonstrate "a significant modicum of support" before allowing their candidates a place on that ballot. See *Jenness* v. *Fortson*, 403 U. S. 431, 442 (1971). Finally, in order to prevent "party raiding"– a process in which dedicated members of one party formally switch to another party to alter the outcome of that party's primary– a State may require party registration a reasonable period of time before a primary election. See *Rosario* v. *Rockefeller*, 410

U. S. 752 (1973). Cf. *Kusper* v. *Pontikes*, 414 U. S. 51 (1973) (23-month waiting period unreasonable).

What we have not held, however, is that the processes by which political parties select their nominees are, as respondents would have it, wholly public affairs that States may regulate freely.[4] To the contrary, we have continually stressed that when States regulate parties' internal processes they must act within limits imposed by the Constitution. See, *e.g.*, *Eu* v. *San Francisco County Democratic Central Comm.*, 489 U. S. 214 (1989); *Democratic Party of United States* v. *Wisconsin ex rel. La Follette*, 450 U. S. 107 (1981). In this regard, respondents' reliance on *Smith* v. *Allwright*, 321 U. S. 649 (1944), and *Terry* v. *Adams*, 345 U. S. 461 (1953), is misplaced. In *Allwright*, we invalidated the Texas Democratic Party's rule limiting participation in its primary to whites; in *Terry*, we invalidated the same rule promulgated by the Jaybird Democratic Association, a "self-governing voluntary club," 345 U. S., at 463. These cases held only that, when a State prescribes an election process that gives a special role to political parties, it "endorses, adopts and enforces the discrimination against Negroes," that the parties (or, in the case of the Jaybird Democratic Association, organizations that are "part and parcel" of the parties, see *id.*, at 482 (Clark, J., concurring)) bring into the process– so that the parties' discriminatory action becomes state action under the Fifteenth Amendment. *Allwright*, *supra*, at

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[4] On this point, the dissent shares respondents' view, at least where the selection process is a state-run election. The right not to associate, it says, "is simply inapplicable to participation in a state election." "[A]n election, unlike a convention or caucus, is a public affair." *Post*, at 6 (opinion of STEVENS, J.). Of course it is, but when the election determines a party's nominee it is a party affair as well, and, as the cases to be discussed in text demonstrate, the constitutional rights of those composing the party cannot be disregarded.

664; see also *Terry*, 345 U. S., at 484 (Clark, J., concurring); *id.*, at 469 (opinion of Black, J.). They do not stand for the proposition that party affairs are public affairs, free of First Amendment protections– and our later holdings make that entirely clear.[5] See, *e.g.*, *Tashjian*, *supra*.

Representative democracy in any populous unit of governance is unimaginable without the ability of citizens to band together in promoting among the electorate candidates who espouse their political views. The formation of national political parties was almost concurrent with the formation of the Republic itself. See Cunningham, The Jeffersonian Republican Party, in 1 History of U. S. Political Parties 239, 241 (A. Schlesinger ed., 1973). Consistent with this tradition, the Court has recognized that the First Amendment protects "the freedom to join together in furtherance of common political beliefs," *Tashjian*, *supra*, at 214–215, which "necessarily presupposes the freedom to

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[5]The dissent is therefore wrong to conclude that *Allwright* and *Terry* demonstrate that "[t]he protections that the First Amendment affords to the internal processes of a political party do not encompass a right to exclude nonmembers from voting in a state-required, state-financed primary election." *Post*, at 6 (internal quotation marks and citation omitted). Those cases simply prevent exclusion that violates some independent constitutional proscription. The closest the dissent comes to identifying such a proscription in this case is its reference to "the First Amendment associational interests" of citizens to participate in the primary of a party to which they do not belong, and the "fundamental right" of citizens "to cast a meaningful vote for the candidate of their choice." *Post*, at 13. As to the latter: Selecting a candidate is quite different from voting for the candidate of one's choice. If the "fundamental right" to cast a meaningful vote were really at issue in this context, Proposition 198 would be not only constitutionally permissible but constitutionally required, which no one believes. As for the associational "interest" in selecting the candidate of a group to which one does not belong, that falls far short of a constitutional right, if indeed it can even fairly be characterized as an interest. It has been described in our cases as a "desire"– and rejected as a basis for disregarding the First Amendment right to exclude. See *infra*, at 16.

identify the people who constitute the association, and to limit the association to those people only," *La Follette*, 450 U. S., at 122. That is to say, a corollary of the right to associate is the right not to associate. "Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being.'" *Id.*, at 122, n. 22 (quoting L. Tribe, American Constitutional Law 791 (1978)). See also *Roberts* v. *United States Jaycees*, 468 U. S. 609, 623 (1984).

In no area is the political association's right to exclude more important than in the process of selecting its nominee. That process often determines the party's positions on the most significant public policy issues of the day, and even when those positions are predetermined it is the nominee who becomes the party's ambassador to the general electorate in winning it over to the party's views. See *Timmons* v. *Twin Cities Area New Party*, 520 U. S. 351, 372 (1997) (STEVENS, J., dissenting) ("But a party's choice of a candidate is the most effective way in which that party can communicate to the voters what the party represents and, thereby, attract voter interest and support"). Some political parties– such as President Theodore Roosevelt's Bull Moose Party, the La Follette Progressives of 1924, the Henry Wallace Progressives of 1948, and the George Wallace American Independent Party of 1968– are virtually inseparable from their nominees (and tend not to outlast them). See generally E. Kruschke, Encyclopedia of Third Parties in the United States (1991).

Unsurprisingly, our cases vigorously affirm the special place the First Amendment reserves for, and the special protection it accords, the process by which a political party "select[s] a standard bearer who best represents the party's ideologies and preferences." *Eu*, *supra*, at 224 (internal quotation marks omitted). The moment of choosing the party's nominee, we have said, is "the crucial

juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community." *Tashjian,* 479 U. S., at 216; see also *id.*, at 235–236 (SCALIA, J., dissenting) ("The ability of the members of the Republican Party to select their own candidate . . . unquestionably implicates an associational freedom"); *Timmons,* 520 U. S., at 359 ("[T]he New Party, and not someone else, has the right to select the New Party's standard bearer" (internal quotation marks omitted)); *id.*, at 371 (STEVENS, J., dissenting) ("The members of a recognized political party unquestionably have a constitutional right to select their nominees for public office").

In *La Follette*, the State of Wisconsin conducted an open presidential preference primary.[6] Although the voters did not select the delegates to the Democratic Party's National Convention directly– they were chosen later at caucuses of party members– Wisconsin law required these delegates to vote in accord with the primary results. Thus allowing nonparty members to participate in the selection of the party's nominee conflicted with the Democratic Party's rules. We held that, whatever the strength of the state interests supporting the open primary itself, they could not justify this "substantial intrusion into the associational freedom of members of the National Party."[7] 450

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[6] An open primary differs from a blanket primary in that, although as in the blanket primary any person, regardless of party affiliation, may vote for a party's nominee, his choice is limited to that party's nominees *for all offices*. He may not, for example, support a Republican nominee for Governor and a Democratic nominee for attorney general.

[7] The dissent, in attempting to fashion its new rule– that the right not to associate does not exist with respect to primary elections, see *post*, at 6– rewrites *Democratic Party of United States* v. *Wisconsin ex rel. La Follette*, 450 U. S. 107 (1981), to stand merely for the proposition that a political party has a First Amendment right to "defin[e] the organization and composition of its governing units," *post*, at 3. In fact, however, the state-imposed burden at issue in *La Follette* was the "intrusion by those