

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 SRES 12720

to deny operational maintenance costs if the operator believes that the best course of action is to shut down the entire facility in order to carry out necessary repairs? Denial of operational capability maintenance costs could discourage operators from shutting down when in fact a complete shut down is the most prudent course of action.

- c. Should Not Discourage Innovation. The oil and gas industry is constantly evolving. A tax regime should not discourage innovative techniques. Examples of such techniques are the astounding advances that have been made in recent decades in the area of directional drilling, coiled tube drilling, and subsea completions. Any attempt to rigidly codify "good oilfield practices" could inadvertently retard the natural learning experience that comes with allowing operators to experiment with differing techniques.

## 2. Practical Considerations:

- a. Standard Terminology. The phrase "Standard Practices of the Industry" in subsection (19) is vague and ambiguous. On the one hand it could mean the written standards adopted by professional organizations intended as guidance documents for the industry; or it could simply mean the standard practice prevailing in the industry in a particular locale.

In determining whether an operator's conduct has resulted in waste of a resource the AOGCC has generally used "good oilfield practices" as a standard by which to measure an operators practice in installing operating and maintaining equipment. See AS 31.05.170(15).

- b. AOGCC's preferred term. Good oilfield practices is the term used to indicate that operations are carried out in a proper and workman like manner. It is used in the same way as the phrase "everything is A.P.I.," which refers to the American Petroleum Institute's set of standards covering aspects of petroleum operations. Williams & Meyers, Manual of Oil and Gas Terms (13<sup>th</sup> ED.) p 453. It is therefore, AOGCC's recommendation that the phrase "good oilfield practices" be substituted for the current phrase "standard practices of the industry".
- c. Absence of Regulatory Guidelines for Maintenance. There is lack of current regulatory guidelines. Much of the equipment and systems in oilfields that are subject to maintenance are not currently regulated by either AOGCC or DEC. This raises questions about how to gauge "improper maintenance" in the absence of regulatory responsibility for such systems and equipment.

- d. Regulations. There will be a need for AOGCC and other agencies to promulgate regulations if AOGCC is assigned responsibility under this bill. These regulations should provide general guidance to the industry, including new operators coming into the State, concerning what constitutes "good oilfield practices." Toward this end we would look to the American Petroleum Institute's standards and recommended practices, as well as standards recognized by the National Association of Corrosion Engineers (NACE), the American Society of Mechanical Engineers (ASME), the International Standards Organization (ISO) and similar respected organizations.
- e. Agency Expertise. There is a need for specialized expertise. AOGCC geologists and engineers work to regulate operations downhole and immediately around the production string but traditionally have not moved further downstream except when required to determine whether a failure of equipment resulted from an operator's failure to employ good oilfield practices thereby resulting in "waste" of hydrocarbon resources.

We are aware that Governor Palin has announced activation of the Petroleum Systems Integrity Office ("PSIO") and AOGCC is one of the agencies designated to participate on that team. We contemplate that the PSIO staff will implement a quality assurance program with inspections conducted by or under the direction of PSIO to ensure compliance with approved programs. AOGCC will have a designated representative working with PSIO and AOGCC expertise can be called upon as necessary to consult with the Department of Revenue through PSIO. Such an arrangement will avoid duplication of effort and ensure consistency of standards, directives, and inspection reports since all would be coordinated through PSIO.

### 3. Difficulties In Determining Root Cause:

In some instances it will be obvious that there has been improper maintenance. In other instances, the AOGCC would be required to consider design, installation, operation, and maintenance, all of which are integral to a determination of negligence. Additionally some determinations will require detailed investigation including but not limited to destructive and non-destructive metallurgical testing and application of other expertise not readily available within the AOGCC.

### 4. Date Stamping Negligent Conduct:

Standards are continually evolving and it will be important to decide whether conduct that led to the failure should be judged in light of the standards prevailing when

the original decisions were made or judged by the most current standards. Additionally, properties are often sold or traded within the industry. Is it good policy to deny a good faith purchaser the benefit of leasehold expenditures incurred as result of mistakes which may have been made many years before by the prior owner?

## TIME LINE - PPT

<u>Event</u>	<u>Description</u>	<u>Date</u>
PPT Concept Introduced	PPT Overview - H & S Resources	1/18/2006
Joint Finance Meeting	PPT Overview - H & S Finance	2/1/2006
PPT SB 305	Introduced	2/21/2006
PPT SB 305	1st Hearing S Res	2/22/2006
BP Spill Incident	5:45am 3/2/06: GC-2	3/1/2006
PPT SB 305	S Res Moved out	3/29/2006
Senate Resources Mtg.	BP Spill Update	4/26/2006
PPT SB 305	Failed to concur 10:10	5/9/2006
PPT SB 2001	Introduced	5/20/2006
PPT SB 2001	CC Report Failed	6/8/2006
PPT HB 3001	Introduced	7/12/2006
Draft Gross Tax Biil	Distributed by Sen. Wagoner	7/27/2007
PVM Memo #1	Memo to Wagoner - "Gross"	8/5/2006
BP Shutdown	August shut down corrosion	8/7/2006
PPT HB 3001	Transmitted to Senate	8/7/2006
PPT HB 3001	NGD Heard & Held	8/7/2006
PPT HB 3001	NGD Heard & Held	8/8/2006
PVM Memo #2	Memo re 30 cent - unknown recipient	8/8/2006
Amend #7	30 cent provision	8/9/2006
Amend #9	improper maintainence	8/9/2007
Amend #10	replaced #7 30 cent provision	8/9/2006
Amend #11	floor for gross - passed	8/9/2006
Amend #13	replaced #9 improper maintenance	8/9/2006
PPT HB 3001	NGD Amendments - Moved out	8/9/2006
PPT HB 3001	Transmitted to House	8/10/2006
PPT HB 3001	House Concur	8/10/2006
Joint Resources Mtg.	BP Corrosion Issue Hearing	8/18/2006

Wagoner handed out  
as an "anonymous" email  
[redacted] he received

Inter ofc  
communication from BP

From: [redacted]  
Sent: Friday, June 04, 1999 6:46 PM  
To: [redacted]  
Subject: FW: PW Inhibitor at GC2 and GC3

Here's one for our HSE files. We'll see if this is a "safe" way to do business  
[redacted]

From: PBU, CIC Prod Chem Todd/Spano  
Sent: Friday, June 04, 1999 11:42 AM  
To: PBU, GC2 OpsTmLdr; PBU, GC2 Lead Techs; PBU, GC3 OpsTmLdr; PBU, GC3 Lead Techs  
Cc: PBU, Matl Coord - FOC; PBU, CIC NS TL Felix/Phillips; Crawford, Gary R, Patsley, Dominic M.; Woollam, Richard C.; 'RA Brown'; Sprague, Kip P  
Subject: PW Inhibitor at GC2 and GC3

All,

Due to budgetary constraints, the decision has been made to discontinue the PW inhibitor (EC1081A) currently being injected at GC2 and GC3. The GC2 bulk tank should run out within the next two days and it will not be refilled. Please shut the pump down and flush the equipment with water once the tank is empty. The GC3 tank was recently filled and is estimated to last about 13 more days (around June 17th). Again, when the tank is empty, please shut the pump down and flush the equipment with water.

The current plan is to inject the remaining inventory of EC1081A into the high risk S-69 line that runs from M to S pads. At a 40 ppm rate, we will have enough product to treat this 40,000 BWD for about 250 days.

Best Regards,

John Todd

**SJR**

**6**

# FISCAL NOTE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SJR 6  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
 Title Oppose Wilderness Designation for ANWR RDU \_\_\_\_\_  
 Component \_\_\_\_\_  
 Sponsor (S) Resources Committee Component No. \_\_\_\_\_  
 Requester (S) Resources Committee

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2007) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Will be absorbed within the current legislative budget.

Prepared by: SENATE RESOURCES COMMITTEE Phone 465-4907  
 Division \_\_\_\_\_ Date/Time \_\_\_\_\_  
 Approved by: /s/ Senator Huggins, Chair Date 4/30/2007  
 Agency \_\_\_\_\_

**SENATE COMMITTEE REPORT  
First Committee of Referral**

DATE: 4/25/07

FURTHER: Rules

Date of 5-Day Notice: 4/25/07  
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 5/1/07

Resources Committee considered SENATE JOINT RESOLUTION NO. 6

**SJR 6 OPPOSE WILDERNESS DESIGNATION FOR ANWR**

Urging the United States Congress to defeat House Resolution 39, titled "To preserve the Arctic coastal plain of the Arctic National Wildlife Refuge, Alaska, as wilderness in recognition of its extraordinary natural ecosystems and for the permanent good of present and future generations of Americans."

and recommends:

- be replaced with ~~SCS~~ <sup>collected</sup> or  CS SJR 6 (RES)
- adopt previous  SCS or  CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt \_\_\_\_\_ Letter of Intent
- further referral to \_\_\_\_\_ Committee

<b>SENATE BILL:</b>	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<hr/>	
<b>HOUSE BILL:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
S. RES	4/30			✓	1

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	STEPHEN McGuire	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Green	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Wielechowski	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Wagner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CHAIR:	Huggins	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

# Bill History/Action Display



**BILL:** SJR 6  
**BILL VERSION:**  
**CURRENT STATUS:** (S) RLS  
**SPONSOR(s):** RESOURCES

**SHORT TITLE:** OPPOSE WILDERNESS  
DESIGNATION FOR ANWR  
**STATUS DATE:** 05/02/07

**TITLE:** Urging the United States Congress to defeat House Resolution 39, titled "To preserve the Arctic coastal plain of the Arctic National Wildlife Refuge, Alaska, as wilderness in recognition of its extraordinary natural ecosystems and for the permanent good of present and future generations of Americans."

**Bill Root:**  [Display Bill Root](#) [Next Bill](#)

[Full Text](#) [Fiscal Notes](#)

[Bill History](#)

Jrn-Date	Jrn-Page	Action
04/25/07	0942	(S) READ THE FIRST TIME - REFERRALS
04/25/07	0942	(S) RES
04/30/07	Text	(S) RES AT 3:30 PM BUTROVICH 205
04/30/07	Text	(S) Moved CSSJR 6(RES) Out of Committee
05/02/07		(S) RES RPT 5DP 1NR
05/02/07		(S) DP: HUGGINS, STEVENS, MCGUIRE, GREEN, WAGONER
05/02/07		(S) NR: WIELECHOWSKI
05/02/07		(S) FN1: ZERO(S.RES)
05/02/07		(S) REFERRED TO RULES

Similar Subject Match or Exact Subject Match  
INTERGOVERNMENTAL RELATIONS  
OIL & GAS  
PARKS & RECREATION  
PUBLIC LAND  
RESOURCES

**Bill Root:**  [Display Bill Root](#) [Next Bill](#)

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[Live KTOO Streams](#) 

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# Bill History/Action Display



**BILL:** SJR 6

**SHORT TITLE:** OPPOSE WILDERNESS DESIGNATION FOR ANWR

**BILL VERSION:** HCS CSSJR 6(RES)

**CURRENT STATUS:** TRANSM TO GOVERNOR

**STATUS DATE:** 06/08/07

**SPONSOR(s):** RESOURCES

**TITLE:** Urging the United States Congress to defeat H.R. 39, titled "To preserve the Arctic coastal plain of the Arctic National Wildlife Refuge, Alaska, as wilderness in recognition of its extraordinary natural ecosystems and for the permanent good of present and future generations of Americans."

[Bill Root:](#)

Jrn-Date	Jrn-Page	Action
04/25/07	<a href="#">0942</a>	(S) READ THE FIRST TIME - REFERRALS
04/25/07	<a href="#">0942</a>	(S) RES
04/30/07	<a href="#">Text</a>	(S) RES AT 3:30 PM BUTROVICH 205
04/30/07	<a href="#">Text</a>	(S) Moved CSSJR 6(RES) Out of Committee
05/02/07	<a href="#">1023</a>	(S) RES RPT CS FORTHCOMING 5DP 1NR
05/02/07	<a href="#">1023</a>	(S) DP: HUGGINS, STEVENS, MCGUIRE, GREEN, WAGONER
05/02/07	<a href="#">1023</a>	(S) NR: WIELECHOWSKI
05/02/07	<a href="#">1023</a>	(S) FN1: ZERO(S.RES)
05/03/07	<a href="#">1043</a>	(S) RES CS RECEIVED NEW TITLE
05/07/07	<a href="#">1091</a>	(S) RULES TO CALENDAR 5/7/2007
05/07/07	<a href="#">1091</a>	(S) READ THE SECOND TIME
05/07/07	<a href="#">1091</a>	(S) RES CS ADOPTED UNAN CONSENT
05/07/07	<a href="#">1091</a>	(S) ADVANCED TO THIRD READING UNAN CONSENT
05/07/07	<a href="#">1091</a>	(S) READ THE THIRD TIME CSSJR 6(RES)
05/07/07	<a href="#">1091</a>	(S) PASSED Y19 N- E1
05/07/07	<a href="#">1097</a>	(S) TRANSMITTED TO (H)
05/07/07	<a href="#">1097</a>	(S) VERSION: CSSJR 6(RES)
05/08/07	<a href="#">1171</a>	(H) READ THE FIRST TIME - REFERRALS
05/08/07	<a href="#">1171</a>	(H) RES
05/09/07	<a href="#">Text</a>	(H) RES AT 1:00 PM BARNES 124
05/09/07	<a href="#">Text</a>	(H) Moved HCS CSSJR 6(RES) Out of Committee
05/10/07	<a href="#">1236</a>	(H) RES RPT HCS(RES) 7DP 1AM
05/10/07	<a href="#">1236</a>	(H) DP: GUTTENBERG, EDGMON, KOHRING, SEATON, ROSES, GATTO, JOHNSON
05/10/07	<a href="#">1236</a>	(H) AM: KAWASAKI
05/10/07	<a href="#">1236</a>	(H) FN1: ZERO(S.RES)

- 05/13/07 [1339](#) (H) RULES TO CALENDAR 5/13/2007
- 05/13/07 [1339](#) (H) READ THE SECOND TIME
- 05/13/07 [1339](#) (H) RES HCS ADOPTED UNAN CONSENT
- 05/13/07 [1339](#) (H) ADVANCED TO THIRD READING UNAN CONSENT
- 05/13/07 [1340](#) (H) READ THE THIRD TIME HCS CSSJR 6(RES)
- 05/13/07 [1340](#) (H) PASSED Y34 N4 A2
- 05/13/07 [1340](#) (H) CRAWFORD NOTICE OF RECONSIDERATION
- 05/14/07 [1358](#) (H) RECON TAKEN UP - IN THIRD READING
- 05/14/07 [1359](#) (H) PASSED ON RECONSIDERATION Y36 N3 A1
- 05/14/07 [1371](#) (H) TRANSMITTED TO (S) AS AMENDED
- 05/14/07 [1371](#) (H) VERSION: HCS CSSJR 6(RES)
- 05/14/07 [1293](#) (S) CONCUR MESSAGE READ
- 05/14/07 [1293](#) (S) CONCUR AM OF (H) Y20 N-
- 06/20/07 [1358](#) (S) 9:58 AM 6/8/07 TRANSMITTED TO GOVERNOR
- 06/20/07 [1358](#) (S) LEGIS RESOLVE 21


Similar Subject Match or Exact Subject Match  
INTERGOVERNMENTAL RELATIONS  
 OIL & GAS  
 PARKS & RECREATION  
 PUBLIC LAND  
 RESOURCES

Bill Root:

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**CS FOR SENATE JOINT RESOLUTION NO. 6(RES)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIFTH LEGISLATURE - FIRST SESSION**

**BY THE SENATE RESOURCES COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): SENATE RESOURCES COMMITTEE**

**A RESOLUTION**

1 **Urging the United States Congress to defeat H.R. 39, titled "To preserve the Arctic**  
2 **coastal plain of the Arctic National Wildlife Refuge, Alaska, as wilderness in recognition**  
3 **of its extraordinary natural ecosystems and for the permanent good of present and**  
4 **future generations of Americans."**

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

6 **WHEREAS** H.R. 39, titled "To preserve the Arctic coastal plain of the Arctic  
7 National Wildlife Refuge, Alaska, as wilderness in recognition of its extraordinary natural  
8 ecosystems and for the permanent good of present and future generations of Americans," has  
9 been introduced in the United States House of Representatives; and

10 **WHEREAS** the oil industry, the state, and the United States Department of the  
11 Interior consider the Arctic coastal plain to have the highest potential for discovery of very  
12 large oil and gas accumulations on the continent of North America, estimated to be as much  
13 as 10,000,000,000 barrels of recoverable oil; and

14 **WHEREAS** oil and gas exploration and development of the Arctic coastal plain of the  
15 refuge and adjacent land could result in major discoveries that would reduce our nation's

1 future need for imported oil, help balance the nation's trade deficit, and significantly increase  
2 the nation's security; and

3 **WHEREAS** in 16 U.S.C. 3142 (sec. 1002 of the Alaska National Interest Lands  
4 Conservation Act (ANILCA)), the United States Congress reserved the right to permit further  
5 oil and gas exploration, development, and production within the coastal plain; and

6 **WHEREAS** enhancements in technology can be used in a manner that minimizes the  
7 area within the refuge that is used for exploration and development, while providing the  
8 nation with a needed supply of oil and gas; and

9 **WHEREAS** the oil industry is using innovative technology and environmental  
10 practices that are directly applicable to operating on the Arctic coastal plain and that enhance  
11 environmental protection beyond traditionally high standards; and

12 **WHEREAS** the state will ensure the protection of the land, water, and wildlife  
13 resources during the exploration and development of the Arctic coastal plain; and

14 **WHEREAS** 8,900,000 of the 19,000,000 acres of the refuge have already been set  
15 aside as wilderness;

16 **BE IT RESOLVED** that the Twenty-Fifty Alaska State Legislature urges the United  
17 States Congress to defeat H.R. 39.

18 **COPIES** of this resolution shall be sent to the Honorable George W. Bush, President  
19 of the United States; the Honorable Richard B. Cheney, Vice-President of the United States  
20 and President of the U.S. Senate; the Honorable Dirk Kempthorne, United States Secretary of  
21 the Interior; the Honorable Nancy Pelosi, Speaker of the U.S. House of Representatives; the  
22 Honorable John Boehner, Minority Leader of the U.S. House of Representatives; the  
23 Honorable Harry Reid, Majority Leader of the U.S. Senate; the Honorable Mitch McConnell,  
24 Minority Leader of the U.S. Senate; the Honorable Jeff Bingaman, Chair of the Energy and  
25 Natural Resources Committee of the U.S. Senate; the Honorable Ted Stevens and the  
26 Honorable Lisa Murkowski, U.S. Senators, and the Honorable Don Young, U.S.  
27 Representative, members of the Alaska delegation in Congress; and all members of the 110th  
28 United States Congress by electronic transmission.

moved as amended (A.1)

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April 30, 2007

Senate Resources Bill Packet

1. **SJR 6 – OPPOSE WILDERNESS DESIGNATION FOR ANWR** ..... 1 page
2. **SJR 6** ..... 2 pages
3. Legal Services' Memorandum regarding amendment to SJR 6 ..... 2 pages
4. H.R No. 39 ..... 3 pages
5. Congressional Research Service's Memorandum on Possible Revenues from ANWR ..... 4 pages

# ALASKA STATE LEGISLATURE

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Juneau AK 99654  
907-376-4866  
907-373-4724 – Fax  
Senator\_Charlie\_Huggins@legis.state.ak.us



State Capitol, Room 119  
Juneau AK 99801-1182  
907-465-3878  
Fax: 907-465-3265  
800-862-3878  
[www.akRepublicans.org/huggins/](http://www.akRepublicans.org/huggins/)

## Charlie Huggins Senator

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### Sponsor Statement

***Urging the United States Congress to defeat H. R. 39, titled "To preserve the Arctic coastal plain of the Arctic National Wildlife Refuge, Alaska, as wilderness in recognition of its extraordinary natural ecosystems and for the permanent good of present and future generations of Americans."***

Oil and gas exploration and development of the Arctic coastal plain could result in major discoveries that would reduce our nation's future need on imported oil, help balance the nation's trade deficit, and significantly increase the nation's security.

Federal revenues would consist primarily of corporate income taxes on profits earned by producers from the production and sale of ANWR oil and gas. As landowner, the federal government would also collect royalties from such production on federal lands. At the circa-2006 price of \$75 per barrel, some have estimated the projected federal revenues from extracting 10.3 billion barrels in oil reserves to be as high as \$111 billion over the productive life span of the reserves, or \$76 billion in income taxes and \$35 billion in royalties. The development of ANWR properties would also generate federal revenues in the form of bonus bids from federal leases on federal lands, and income tax revenues from secondary feedback and multiplier effects from an expanding economy. Bonus bids have been estimated by the Congressional Budget Office to range from \$2 billion to \$10 billion or more, depending on crude oil prices.

At this time, 8,900,000 of the 19,000,000 acres of the refuge have already been set aside as wilderness. Enhancements in technology can be used in a manner that minimizes the area within the refuge that is used for exploration and development, while providing the nation with a needed supply of oil and gas.

**SENATE JOINT RESOLUTION NO. 6**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Introduced: 4/25/07

Referred: Resources

**A RESOLUTION**

1 **Urging the United States Congress to defeat House Resolution 39, titled "To preserve**  
2 **the Arctic coastal plain of the Arctic National Wildlife Refuge, Alaska, as wilderness in**  
3 **recognition of its extraordinary natural ecosystems and for the permanent good of**  
4 **present and future generations of Americans."**

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

6 **WHEREAS** House Resolution 39, titled "To preserve the Arctic coastal plain of the  
7 Arctic National Wildlife Refuge, Alaska, as wilderness in recognition of its extraordinary  
8 natural ecosystems and for the permanent good of present and future generations of  
9 Americans," has been introduced in the United States House of Representatives; and

10 **WHEREAS** the oil industry, the state, and the United States Department of the  
11 Interior consider the Arctic coastal plain to have the highest potential for discovery of very  
12 large oil and gas accumulations on the continent of North America, estimated to be as much  
13 as 10,000,000,000 barrels of recoverable oil; and

14 **WHEREAS** oil and gas exploration and development of the Arctic coastal plain of the  
15 refuge and adjacent land could result in major discoveries that would reduce our nation's

1 future need for imported oil, help balance the nation's trade deficit, and significantly increase  
2 the nation's security; and

3 **WHEREAS** in 16 U.S.C. 3142 (sec. 1002 of the Alaska National Interest Lands  
4 Conservation Act (ANCILA)), the United States Congress reserved the right to permit further  
5 oil and gas exploration, development, and production within the coastal plain; and

6 **WHEREAS** enhancements in technology can be used in a manner that minimizes the  
7 area within the refuge that is used for exploration and development, while providing the  
8 nation with a needed supply of oil and gas; and

9 **WHEREAS** the oil industry is using innovative technology and environmental  
10 practices that are directly applicable to operating on the Arctic coastal plain and that enhance  
11 environmental protection beyond traditionally high standards; and

12 **WHEREAS** the state will ensure the protection of the land, water, and wildlife  
13 resources during the exploration and development of the Arctic coastal plain; and

14 **WHEREAS** 8,900,000 of the 19,000,000 acres of the refuge have already been set  
15 aside as wilderness;

16 **BE IT RESOLVED** that the Twenty-Fifty Alaska State Legislature urges the United  
17 States Congress to defeat House Resolution 39.

18 **COPIES** of this resolution shall be sent to the Honorable George W. Bush, President  
19 of the United States; the Honorable Richard B. Cheney, Vice-President of the United States  
20 and President of the U.S. Senate; the Honorable Dirk Kempthorne, United States Secretary of  
21 the Interior; the Honorable Nancy Pelosi, Speaker of the U.S. House of Representatives; the  
22 Honorable John Boehner, Minority Leader of the U.S. House of Representatives; the  
23 Honorable Harry Reid, Majority Leader of the U.S. Senate; the Honorable Mitch McConnell,  
24 Minority Leader of the U.S. Senate; the Honorable Jeff Bingaman, Chair of the Energy and  
25 Natural Resources Committee of the U.S. Senate; the Honorable Ted Stevens and the  
26 Honorable Lisa Murkowski, U.S. Senators, and the Honorable Don Young, U.S.  
27 Representative, members of the Alaska delegation in Congress; and all members of the 110th  
28 United States Congress by electronic transmission.

# LEGAL SERVICES

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

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

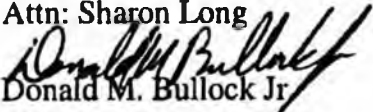
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 26, 2007

**SUBJECT:** Correcting a reference to H.R. 39 in HJR 6  
(Work Order No. 25-LS0869\A.1)

**TO:** Senator Charlie Huggins  
Chair of the Senate Resources Committee  
Attn: Sharon Long

**FROM:**   
Donald M. Bullock Jr.  
Legislative Counsel

Enclosed is an amendment to HJR 6 that was sponsored by the Senate Resources Committee.

The amendment corrects the reference to the House Bill in the United States Congress that is addressed in the resolution. The amendment deletes "House Resolution" and inserts "H.R." in each place where the bill is described.

I apologize for any inconvenience. Please call me if you have a question about this amendment.

DMB:lmb  
07-108.lmb

Enclosure

# LEGAL SERVICES

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

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

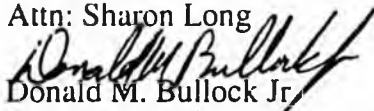
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

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07-108.lmb

Enclosure

*moved by Green*

AMENDMENT

OFFERED IN THE HOUSE

TO: SJR 6

1 Page 1, line 1:

2 Delete "House Resolution"

3 Insert "H.R."

4

5 Page 1, line 6:

6 Delete "House Resolution"

7 Insert "H.R."

8

9 Page 2, line 4:

10 Delete "ANCILA"

11 Insert "ANILCA"

12

13 Page 2, line 17:

14 Delete "House Resolution"

15 Insert "H.R."

*Clean up language*

HR 39 IH

110th CONGRESS

1st Session

**H. R. 39**

To preserve the Arctic coastal plain of the Arctic National Wildlife Refuge, Alaska, as wilderness in recognition of its extraordinary natural ecosystems and for the permanent good of present and future generations of Americans.

**IN THE HOUSE OF REPRESENTATIVES****January 4, 2007**

Mr. MARKEY (for himself and Mr. RAMSTAD) introduced the following bill; which was referred to the Committee on Natural Resources

**A BILL**

To preserve the Arctic coastal plain of the Arctic National Wildlife Refuge, Alaska, as wilderness in recognition of its extraordinary natural ecosystems and for the permanent good of present and future generations of Americans.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Udall-Eisenhower Arctic Wilderness Act'.

**SEC. 2. FINDINGS AND STATEMENT OF POLICY.**

(a) Findings- The Congress finds the following:

(1) Americans cherish the continued existence of expansive, unspoiled wilderness ecosystems and wildlife found on their public lands, and feel a strong moral responsibility to protect this wilderness heritage as an enduring resource to bequeath undisturbed to future generations of Americans.

(2) It is widely believed by ecologists, wildlife scientists, public land specialists, and other experts that the wilderness ecosystem centered around and dependent upon the Arctic coastal plain of the Arctic National

Wildlife Refuge, Alaska, represents the very epitome of a primeval wilderness ecosystem and constitutes the greatest wilderness area and diversity of wildlife habitats of its kind in the United States.

(3) President Dwight D. Eisenhower initiated protection of the wilderness values of the Arctic coastal plain in 1960 when he set aside 8,900,000 acres establishing the Arctic National Wildlife Refuge expressly 'for the purpose of preserving unique wildlife, wilderness and recreational values'.

(4) In 1980, when the Congress acted to strengthen the protective management of the Eisenhower-designated area with the enactment of the Alaska National Interest Lands Conservation Act (Public Law 96-487), Representative Morris K. Udall led the effort to more than double the size of the Arctic National Wildlife Refuge and extend statutory wilderness protection to most of the original area.

(5) Before the enactment of the Alaska National Interest Lands Conservation Act, the House of Representatives twice passed legislation that would have protected the entire Eisenhower-designated area as wilderness, including the Arctic coastal plain.

(6) A majority of Americans have supported and continue to support preserving and protecting the Arctic National Wildlife Refuge, including the Arctic coastal plain, from any industrial development and consider oil and gas exploration and development in particular to be incompatible with the purposes for which this incomparable wilderness ecosystem has been set aside.

(7) When the Arctic National Wildlife Refuge was established in 1980 by paragraph (2) of section 303 of the Alaska National Interest Lands Conservation Act (Public Law 96-487; 94 Stat. 2390; 16 U.S.C. 668dd note), subparagraph (B)(iii) of such paragraph specifically stated that one of the purposes for which the Arctic National Wildlife Refuge is established and managed would be to provide the opportunity for continued subsistence uses by local residents, and, therefore, the lands designated as wilderness within the Refuge, including the area designated by this Act, are and will continue to be managed consistent with such subparagraph.

(8) Canada has taken action to preserve those portions of the wilderness ecosystem of the Arctic that exist on its side of the international border and provides strong legal protection for the habitat of the Porcupine River caribou herd that migrates annually through both countries to calve on the Arctic coastal plain.

(9) The extension of full wilderness protection for the Arctic coastal plain within the Arctic National Wildlife Refuge will still leave most of the North

Slope of Alaska available for the development of energy resources, which will allow Alaska to continue to contribute significantly to meeting the energy needs of the United States without despoiling the unique Arctic coastal plain of the Arctic National Wildlife Refuge.

(b) Statement of Policy- The Congress hereby declares that it is the policy of the United States--

(1) to honor the decades of bipartisan efforts that have increasingly protected the great wilderness ecosystem of the Arctic coastal plain;

(2) to sustain this natural treasure for the current generation of Americans; and

(3) to do everything possible to protect and preserve this magnificent natural ecosystem so that it may be bequeathed in its unspoiled natural condition to future generations of Americans.

### **SEC. 3. DESIGNATION OF ADDITIONAL WILDERNESS, ARCTIC NATIONAL WILDLIFE REFUGE, ALASKA.**

(a) Inclusion of Arctic Coastal Plain- In furtherance of the Wilderness Act (16 U.S.C. 1131 et seq.), an area within the Arctic National Wildlife Refuge in the State of Alaska comprising approximately 1,559,538 acres, as generally depicted on a map entitled 'Arctic National Wildlife Refuge--1002 Area Alternative E--Wilderness Designation' and dated October 28, 1991, is hereby designated as wilderness and, therefore, as a component of the National Wilderness Preservation System. The map referred to in this subsection shall be available for inspection in the offices of the Secretary of the Interior.

(b) Administration- The Secretary of the Interior shall administer the area designated as wilderness by subsection (a) in accordance with the Wilderness Act as part of the wilderness area already in existence within the Arctic National Wildlife Refuge as of the date of the enactment of this Act.

END



**Memorandum**

May 8, 2006

**TO:** House Committee on Resources  
Attn: Daniel Kish

**FROM:** Salvatore Lazzari  
Specialist in Public Finance  
Resources, Science, and Industry Division

**SUBJECT:** Possible Federal Revenues from Oil Development at ANWR and Nearby Areas

This memorandum is in response to your request for an estimate of the potential revenues to the United States Treasury from oil development of the coastal plain study area of the Arctic National Wildlife Refuge (ANWR) should Congress approve such development.<sup>1</sup> In making these estimates it is assumed that: 1) commercial quantities of oil will be found, currently an unknown; 2) current revenue provisions would be applied, e.g., bonus bidding, ad-valorem royalty, and so forth (except that, per your request, we did not assume the 90% Alaska, 10% federal split of current law, but rather a 50-50 split, as found in many current bills); and 3) all of the coastal plain would be available for leasing.<sup>2</sup>

Federal revenues would consist primarily of corporate income taxes on profits earned by oil producers from the production and sale of ANWR oil. As landowner, the federal government would also collect royalties from such production on federal lands, which are included in the estimates. Revenues from bonus bids from federal leases, and rents on undeveloped leases, however, are not included. In addition, the federal government would collect income tax revenues resulting from the secondary feedback effects as a result of the stimulus to general economic activity, but these revenues are not included here. Estimates of technologically recoverable oil used in this memorandum include the resources from the federal lands, as well as Native lands in the Refuge and offshore state lands.

The revenue projections below are very long-term forecasts of what might happen, and not what will happen, given the methodology and the posited assumptions. All of the data used in this estimation are provided by the U.S. Energy Information Administration (EIA), as documented in the footnotes. Note that, according to the EIA and the U.S. Geological Survey

<sup>1</sup> For background and a discussion of ANWR legislation and surrounding issues, see CRS Issue Brief IB10136, *Arctic National Wildlife Refuge (ANWR): Controversies for the 109<sup>th</sup> Congress*.

<sup>2</sup> Some recent bills have restricted ANWR development footprints to 2,000 acres, which might not be sufficient to provide access to the entire coastal plain of the Refuge. This analysis assumes production from the whole of the Coastal Plain, Native lands, and nearby state waters.

(USGS), it would take between 7 and 12 years after congressional approval to commence production, if feasible, from ANWR properties. Further, production from the properties is projected to last at least 30 years.

Also, note other uncertainties, in addition to the production starting date and the lands that might be developed: 1) the size of the underlying resource base, 2) the underlying field structure, 3) the costs of development, 4) the market price of oil, 5) the average effective tax rate, and 6) the terms of the authorizing legislation. Thus, revenue projections are highly uncertain. Projections of federal revenue represent totals over the entire recovery period, until oil resources are no longer recoverable. Thus, they do not take into account any increased recovery based on changed economic conditions or the annual flow of production.

Finally, the projections below exclude also potentially large revenues from the development of natural gas, which according to probability analysis may exist in large quantities in the ANWR coastal plain (particularly the 1002 federal area). Revenue projections from natural gas development are excluded because there is currently no way to transport the gas to market (no pipeline or other means of transportation).

**Table 1** summarizes the results of our estimation procedure, which is described in the remaining sections of this memorandum. It shows the projected increase in corporate income tax revenues and cumulative estimated royalties projected over the life of the ANWR and other nearby properties — from the production and sale of the estimated technically recoverable reserves of oil.

**Table 1** presents sixteen projections (in real, 2006 dollars), each corresponding to an oil price and production scenario. For instance, if producers were able to recover 10.3 billion barrels of oil over the life of the properties — and there is a 50-50 chance that the ANWR coastal plain contains this amount of oil (or more)<sup>3</sup> — and if oil prices are \$30/barrel then the federal government is projected to collect nearly \$45 billion in revenues over the production period, estimated to be at least 30 years once production commences. This consists of over \$30 billion in federal corporate income taxes (**Table 2**), and a projected \$14.3 billion in federal royalties (**Table 3**). (Tables 2 and 3 are each presented below in the sections detailing the estimation procedure for corporate income taxes and royalties.) Note from **Table 1** that if real oil prices remain at their currently high levels of about \$75, projected federal revenues from extracting 10.3 billion barrels in oil reserves— could be as high as \$111 billion over the productive life span of the reserves — \$76 billion in income

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<sup>3</sup> U.S. Department of Interior. U.S. Geological Survey. *Economics of U.S. Geological Survey's 1002 Area Regional Assessment: An Economic Update*, Open file Report 2005-1359. U.S. Department of Energy. Energy Information Administration. *Potential Oil Production from the Coastal Plain of the Arctic National Wildlife Refuge: Updated Assessment*. May 2000, SR/O&G/200-02.

XPΣ-3

taxes and \$35 billion in royalties. Note that these estimates assume that all of the oil that is technically recoverable is also economically recoverable, which is not necessarily the case.<sup>4</sup>

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<sup>4</sup> The amount of economically recoverable oil depends on unknown variables such as market oil prices and oil finding costs. With regards to oil prices, the higher the price, the more the amount of economically recoverable reserves approaches the magnitude of technically recoverable reserves.

The development of ANWR properties would also generate federal revenues in the form of bonus bids from the leases on federal lands, and income tax revenues from secondary feedback and multiplier effects from an expanding economy. Bonus bids have been estimated by the Congressional Budget Office to range from \$2 to \$10 billion or more, depending on crude oil prices.<sup>5</sup> The additional federal income tax revenues (both individual and business) from the secondary economic effects are more difficult to estimate because they would depend on the annual expenditures generated by from oil development, the geographic dispersion of those expenditures, and the state of the general economy at the time. Neither bonus bids nor income tax revenues from secondary effects are included in Table 1.

**Table 1. Possible Cumulative Corporate Income Tax Revenue and Royalties from ANWR Oil (billions of 2006 \$)**

	Estimated Technically Recoverable Oil (billions of barrels)		
	At least 5.7 (prob. = .95)	10.3 (prob.= .5)	16.0 or more (prob. = .05)
Oil Price per Barrel (2006\$)	Revenues (billions of 2006 \$)		
\$75	\$61.7	\$111.5	\$173.2
\$60	\$49.4	\$89.3	\$138.7
\$30	\$24.7	\$44.7	\$69.4
\$10	\$8.2	\$14.9	\$23.1

Source: Author's estimates based on EIA data (see text).

## Projected Corporate Income Tax Revenues

Increases in federal corporate income taxes would most likely represent the single biggest source of revenue for the federal government if oil were found and produced in ANWR. The basic methodology to estimate potential corporate income taxes is to multiply estimated domestic, pre-tax profits from the assumed oil production at ANWR, projected over the lives of the properties, by the estimated effective federal corporate income tax rate for the major integrated companies that would be expected to have an interest in developing ANWR.

<sup>5</sup> Memorandum by Douglas Holtz-Eakin to Senator Ted Stevens, December 7, 2005.

Domestic, pre-tax profits are the difference between revenues (price times output) and production costs. Four hypothetical oil price scenarios are assumed (each in real 2006 dollars), reflecting the unpredictability (and volatility) of world crude prices. Per your request, a high oil price scenario (real crude prices of \$60/barrel); a median oil-price scenario (real crude prices at \$30/barrel) and a low crude price scenario (real oil prices at \$10/barrel). It is important to underscore that these are hypothetical price scenarios and do not constitute projections of what crude oil prices are likely to be. Given current prices, a \$75/barrel scenario is also considered.

Oil output is based on a report by the Energy Information Administration, which uses data provided by the U.S. Geological Survey.<sup>6</sup> This report estimates projected oil (and gas) output for the three areas of the geographic coastal plain (including areas outside the ANWR boundary) expected to be developed should congressional approval be forthcoming. Within the Refuge these are: 1) the section 1002 area of federal lands;<sup>7</sup> and 2) 92,000 acres belonging to Native Alaskan peoples.<sup>8</sup> In addition, prospects for development of Alaskan state lands (offshore lands outside the Refuge out to the 3-mile limit) are likely to be improved by onshore development and were included in this analysis. Under §1003 of the Alaska National Interest Lands Conservation Act (P.L. 96-487), all lands inside ANWR are closed to development unless Congress changes the law. Were oil and gas development authorized for the federal lands in the Refuge, development would also be allowed or become feasible on the nearly 100,000 acres of Native lands in the refuge,<sup>9</sup> possibly free of any acreage limitation applying to development on the federal lands, depending on how legislation is framed.

According to the USGS assessment of possible oil in the three areas described above, there is a 95% probability there are 5.7 billion barrels or more of technically recoverable crude oil and natural gas liquids in the three areas described above, and a 5% probability that

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<sup>6</sup> Energy Information Administration. *Potential Oil Production from the Coastal Plain of the Arctic National Wildlife Refuge: Updated Assessment*. May 2000, SR/O&G/200-02; U.S. Geological Survey. *The Oil and Gas Resource Potential of the Arctic National Wildlife Refuge 1002 Area, Alaska*. Survey Open File Report 98-34, 1999, Chapter EA (Economic Analysis).

<sup>7</sup> This area of federal lands is referred to as the "section 1002 area" because of a study required in §1002 of Alaska National Interest Lands Conservation Act (ANILCA, P.L. 96-487) of 1980. The current prohibition on oil and gas development in ANWR is in §1003 of ANILCA.

<sup>8</sup> The 92,000 acres belong to the Kaktovik Inupiat Corporation and the Arctic Slope Regional Corporation. In addition, several thousand acres are held in individual native allotments. The May 2000 EIA report considered only the 92,000 acres. See *Potential Oil Production from the Coastal Plain of the Arctic National Wildlife Refuge: Updated Assessment*. May 2000, SR/O&G/200-02, op. cit., p. vii.

<sup>9</sup> The Native lands inside ANWR fall into three categories: approximately three townships of Native lands within the *geographic* coastal plain of the Refuge but outside the administratively defined 1002 area; one township of Native land also within the *geographic* coastal plain of the Refuge, but administratively part of the 1002 area; and a number of Native allotments scattered through the *geographic* coastal plain, with some concentrations along the coast and in the foothills. Offshore state lands are largely open to development, although the state and the federal governments have disputed precise boundaries. For legal background, see CRS Report RL31115, *Legal Issues Related to Proposed Drilling for Oil and Gas in the Arctic National Wildlife Refuge (ANWR)*, by Pamela Baldwin.

are 16.0 billion barrels or more. USGS's mean estimate — 50% probability — is 10.3 billion barrels. About three fourths of the possible oil and natural gas liquids<sup>10</sup> are estimated to be under federal lands, and one fourth under Native Corporation lands and the adjacent offshore state lands.<sup>11</sup>

For each recoverable oil quantity and price combination scenario, federal corporate income tax revenue was arrived at by (1) multiplying the quantity times the price, (2) subtracting production costs (operating costs plus depreciation, depletion, amortization, and administration), and (3) multiplying the result by the average effective federal corporate tax rate on major U.S. energy producers.

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<sup>10</sup> For production calculations, natural gas liquids are considered to be equivalent to oil.

<sup>11</sup> U.S. Geological Survey. *Frontier Areas and Resource Assessment: the Case of the 1002 Area of the Alaska North Slope*. USGS Open File Report 02-119. Hereafter referred to as "*Frontier Areas*."

Projections of production costs were based upon annual financial data on oil and gas industry operations published by the EIA in its *Performance Profiles* reports covering the major U.S.-based energy producing companies.<sup>12</sup> A ten-year average (for 1995-2004) was used to remove the volatility of profits over business cycles and fluctuations in volatile market oil prices to accurately reflect the long-term nature of oil development in the ANWR coastal plain, which, if successful, would be expected to produce oil for at least 30 years. Based upon the *Performance Profiles* data, production costs of domestic oil and gas producers averaged 69.3% of revenues over the 1995-2004 period and, consequently, net pre-tax profits for those companies averaged 30.7% of revenue.<sup>13</sup> That percentage was used to project net pre-tax profits from ANWR output over the life of the wells. The production cost percentage was based upon cost data for all domestic U.S. operations rather than just for Alaska, which are not available. Also, the costs reflect the consolidated operations of largely major integrated producers, rather than just production operations.

The effective federal corporate income tax rate also was estimated using EIA's *Performance Profiles*. Based upon data in those reports, the average effective tax rate for the years 1998-2004 was 32%. This was derived by subtracting from the U.S. federal tax any foreign tax credit (which would not be claimed on income from ANWR operations), and dividing by U.S. pre-tax income.<sup>14</sup> This effective tax rate probably is an upper bound; and the actual effective tax rate over the production horizon might end up being lower due to substantial industry investments in ANWR oil and gas development. Also, the estimation of the effective tax rate assumes that current legislation remains unchanged. Any future amendments to current tax laws could, of course, have the effect of either lowering or raising effective tax rates.

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<sup>12</sup> Energy Information Administration. *Performance Profiles of Major Energy Producers (Issues 2004, 2002, 2000, 1998, and 1996)*. Data used are in the table that reports Income Components and Financial Ratios in Oil and Natural Gas Production for FRS Companies.

<sup>13</sup> Ibid.

<sup>14</sup> The effective tax rates were based upon both non-vertically integrated companies and vertically integrated companies. The EIA data are not disaggregated.

**Table 2. Possible Corporate Income Tax Revenues from Successful ANWR Oil Development (billions of 2006 \$)**

	Estimated Technically Recoverable Oil Output (billions of barrels)		
	At least 5.7 (prob. = .95)	10.3 (prob. = .5)	16.0 or more (prob. = .05)
Oil Price per Barrel (2006\$)	Revenues (billions of 2006 \$)		
\$75	\$42.0	\$75.9	\$117.9
\$60	\$33.6	\$60.7	\$94.3
\$30	\$16.8	\$30.4	\$47.2
\$10	\$5.6	\$10.1	\$15.7

Source: Author's estimates based on EIA data (see text).

## Federal Royalties

Landowners typically collect royalties on minerals extracted from their lands by mineral operators and producers. Likewise the federal government earns royalties from production of oil and gas on federal lands. The federal lands in ANWR have been estimated by the U.S. Geological Survey to contain 74% of the total estimated technically recoverable reserves in ANWR. (The remaining 26% of total recoverable oil resides in state and Alaska Native Corporation lands.)<sup>15</sup>

<sup>15</sup> *Frontier Areas*, op. cit..

Current federal laws effectively allocate 90% of the royalties from oil and gas production on federal lands to the states; the federal government retains the remaining 10%.<sup>16</sup>

However, in our revenue projections you have asked us to assume a 50-50 split of all royalties, although this is not settled.<sup>17</sup> Table 3 shows the projected total royalties collected over the expected productive lifetime of the federal ANWR properties.

**Table 3. Projected Federal Royalties from Possible ANWR Oil (billions of 2006 \$)**

	Estimated Technically Recoverable Oil from Federal Lands (billions of barrels)		
	At least 4.2 (prob. = .95)	7.6 (prob. = .5)	11.8 or more (prob. = .05)
Oil Price per Barrel (2006\$)	Revenues (billions of 2006 \$)		
\$75	\$19.7	\$35.6	\$55.3
\$60	\$15.8	\$28.6	\$44.4
\$30	\$7.9	\$14.3	\$22.2
\$10	\$2.6	\$4.8	\$7.4

Source: Author's estimates based on EIA data (see text).

<sup>16</sup> However, the manner in which royalties are split between states and the federal government differs. For all states except Alaska, direct royalties under the Mineral Leasing Act (MLA) are divided equally (50-50) between the state in which the deposits are located and the federal government. The MLA also provides that all states except Alaska get back 40% from the Reclamation Fund (established by the Reclamation Act of 1902), in effect giving each state 90% of the royalties and the federal government 10%. Alaska does not receive allocations from the Reclamation Fund, so to equalize royalty treatment among the states, the Alaska Statehood Act and the Federal Land Policy and Management Act provide that Alaska's royalty share is 90% of the direct royalties (rather than 50%).

<sup>17</sup> Many but not all bills that would approve development of ANWR provide for a 50-50 division of the royalties. Some bills (e.g., H.R. 39 in the 109<sup>th</sup> Congress) have been silent on revenue distribution, and it is not certain how courts would rule on certain revenue provisions. For more information see: U.S. Library of Congress. Congressional Research Service. *Arctic National Wildlife Refuge (ANWR): Controversies for the 109<sup>th</sup> Congress*. Issue Brief IB10136, (regularly updated).

**SJR**

**13**

**Call to Order:**

**I CALL THE SENATE RESOURCES COMMITTEE TO ORDER.  
LET THE RECORD REFLECT THAT IT IS \_\_\_\_\_ P.M.**

**Wednesday, January 30, 2008**

**Present Are:**

**Vice Chair Senator Bert Stedman  
Senator Gary Stevens  
Senator Lyda Green  
Senator Lesil McGuire  
Senator Bill Wielechowski  
Senator Tom Wagoner Participating telephonically  
& myself, Senator Charlie Huggins**

**On the Agenda Today:**

- **SCR - 13 Individual Right to Keep and Bear Arms**  
Sponsor: Senator Green  
Presented by her staff: Eddie Grasser &  
Portia Babcock
  
- **Presentation: Gasline Update**  
Pat Galvin, Commissioner, Department of Revenue  
Tom Irwin, Commissioner, Department of Natural  
Resources

Testimony: By Invitation

**Welcome to those Alaskans listening around the state on Gavel to  
Gavel or on our teleconference network.**

**Reminder: We'll be back here on Friday, with Backbone II of Alaska, and  
on Saturday @ 11:00 AM with BG Group**

**Meeting adjourned: \_\_\_\_\_**

*sgl final ordered  
1-31-08*

WORK DRAFT

WORK DRAFT

WORK DRAFT

25-LS1327AE  
Luckhaupt  
1/24/08

**CS FOR SENATE CONCURRENT RESOLUTION NO. 13( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FIFTH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): SE. ATOR GREEN**

**A RESOLUTION**

1 **Urging the governor to direct the attorney general to file an amicus curiae brief with the**  
2 **United States Supreme Court in the case of District of Columbia v. Heller, supporting**  
3 **the individual right to keep and bear arms under the Second Amendment to the United**  
4 **States Constitution.**

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

6 **WHEREAS** the United States Supreme Court has agreed to rule in the case of District  
7 of Columbia v. Heller, which challenges the enforcement of local laws tha' restrict the  
8 possession of firearms by private individuals; and

9 **WHEREAS** the decision of the United States Supreme Court will have a significant  
10 effect on the right to keep and bear arms, a fundamental right of American citizens; and

11 **WHEREAS** the decision of the United States Supreme Court should determine that  
12 the right to keep and bear arms is an individual right, and not a collective right that can be  
13 regulated or restricted by state and local governments; and

14 **WHEREAS** the right to keep and bear arms is so dear to the people of Alaska that the  
15 Constitution of the State of Alaska was amended at the general election in 1994 to specify that

1 it is an individual right, and not a collective one; and

2       **WHEREAS** the rights protected in the Bill of Rights of the United States Constitution  
3 are the God-given rights of individual citizens, and their descriptions were derived from the  
4 English Bill of Rights of 1689 and the Virginia Declaration of Rights; and

5       **WHEREAS** historical analysis of social structure at the time of the enactment and  
6 ratification of the Bill of Rights of the United States Constitution clearly shows that our nation  
7 was a frontier, where firearms were an important part of nearly every household and the use  
8 of firearms were a part of everyday life, and the colonists who fought the Revolutionary War  
9 did so with their own guns; and

10       **WHEREAS** the right of individuals in the United States to keep and bear arms is  
11 fundamental to the protection and enjoyment of the remainder of the rights enumerated in the  
12 Bill of Rights; and

13       **WHEREAS** history has shown that in nations where individuals were forced to give  
14 up their firearms to government, such as in Nazi Germany and Soviet Russia, the result has  
15 been repression, tyranny, and genocide; and

16       **WHEREAS** statistics have shown that in local jurisdictions, such as Washington,  
17 D.C., where gun ownership has been restricted or prohibited, in violation of the Second  
18 Amendment, the goal of reducing violent crimes such as murder has had the opposite effect,  
19 and violent crime rates are higher than when private individuals could protect themselves with  
20 personal firearms; and

21       **WHEREAS** the safeguard of the Second Amendment to the United States  
22 Constitution as an individual right to keep and bear arms is fundamental to the people of  
23 Alaska;

24       **BE IT RESOLVED** that the Alaska State Legislature urges Governor Sarah Palin to  
25 instruct the attorney general to timely file, on behalf of the State of Alaska and its citizens, an  
26 amicus curiae or friend of the court brief supporting the plaintiffs in District of Columbia v.  
27 Heller, or to join with other states' attorneys general in such a brief.

28       **COPIES** of this resolution shall be sent to the Honorable Sarah Palin, Governor of  
29 Alaska and the Honorable Talis J. Colberg, Alaska Attorney General.

# ALASKA STATE LEGISLATURE



*Interim:*

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Wasilla, Alaska 99654  
(907) 376-3370  
(907) 376-3157 Fax

*Session:*

State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-6600  
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Senator\_Lyda\_Green@legis.state.ak.us

**SENATOR LYDA GREEN**  
PRESIDENT OF THE SENATE

Toll Free: 1-877-465-6601

## SCR 13

### Sponsor Statement

**SCR 13** - *"Urging the governor to direct the attorney general to file an amicus curiae brief with the United States Supreme Court in the case of Parker v. District of Columbia, supporting the individual right to keep and bear arms under the Second Amendment to the United States Constitution."*

It is in the best interest of the citizens of Alaska to have the state's attorney general file a "friend of the court" brief in support of the plaintiff in Parker v. District of Columbia, or, alternatively, to join with a number of states that will file a brief jointly.

The US Supreme Court agreed last November to hear the case, and expects to issue a ruling in June, following oral arguments in March. The question to be settled is whether the right to keep and bear arms, as laid out in the 2<sup>nd</sup> Amendment to the US Constitution, is an individual right of all Americans, or a collective right that can be restricted by state and local governments.

In my view, the vast majority of Alaskans would agree that the nation's founding fathers intended it to be the right of individuals. That is why it is included within the Bill of Rights, which was enacted to protect the inherent rights of individual citizens.

Alaskans clarified this question in 1994, when the voters, by a substantial margin, amended Article I, Section 19 of the state constitution to add language specifying that the individual right could not be denied or infringed by either the state or local government.

In light of the short timeframe in which to submit a friend of the court brief in this vitally important case, the Legislature should take expeditious action to pass SCR13.

# ALASKA STATE LEGISLATURE



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**SENATOR LYDA GREEN**  
PRESIDENT OF THE SENATE

## MEMORANDUM

To: Senator Charlie Huggins, Chairman  
Senate Resources Committee

From: Senator Lyda Green  
President of the Senate *Lyda Green*

Date: January 25, 2008

Re: Explanation of changes in blank draft CS for SCR 13

The first change in the proposed CS is to replace the name of the case, "Parker v. District of Columbia" with "District of Columbia v. Heller" in three occurrences (title, first "WHEREAS" clause, and "RESOLVED" clause). This change in the name of the case was made at the federal level because Heller was the only one of the plaintiffs whose issue went forward to the United States Supreme Court.

The second change is to delete the "WHEREAS" clause on page 2, lines 21-24, pertaining to the crime rate in Alaska's largest metropolitan area and a position taken by its mayor relative to gun dealers. It became apparent after the resolution was drafted and introduced that the mayor had reversed his position supporting the mayor of New York, so that statement within the "WHEREAS" clause is no longer true.

**CS FOR SENATE CONCURRENT RESOLUTION NO. 13( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FIFTH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): SENATOR GREEN**

**A RESOLUTION**

1 **Urging the governor to direct the attorney general to file an amicus curiae brief with the**  
2 **United States Supreme Court in the case of Parker v. District of Columbia, supporting**  
3 **the individual right to keep and bear arms under the Second Amendment to the United**  
4 **States Constitution.**

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

6 **WHEREAS** the United States Supreme Court has agreed to rule in the case of Parker  
7 **v. District of Columbia, which challenges the enforcement of local laws that restrict the**  
8 **possession of firearms by private individuals; and**

9 **WHEREAS** the decision of the United States Supreme Court will have a significant  
10 **effect on the right to keep and bear arms, a fundamental right of American citizens, and**

11 **WHEREAS** the decision of the United States Supreme Court should determine that  
12 **the right to keep and bear arms is an individual right, and not a collective right that can be**  
13 **regulated or restricted by state and local governments; and**

14 **WHEREAS** the right to keep and bear arms is so dear to the people of Alaska that the  
15 **Constitution of the State of Alaska was amended at the general election in 1994 to specify that**

1 it is an individual right, and not a collective one; and

2 **WHEREAS** the rights protected in the Bill of Rights of the United States Constitution  
3 are the God-given rights of individual citizens, and their descriptions were derived from the  
4 English Bill of Rights of 1689 and the Virginia Declaration of Rights; and

5 **WHEREAS** historical analysis of social structure at the time of the enactment and  
6 ratification of the Bill of Rights of the United States Constitution clearly shows that our nation  
7 was a frontier, where firearms were an important part of nearly every household and the use  
8 of firearms were a part of everyday life, and the colonists who fought the Revolutionary War  
9 did so with their own guns; and

10 **WHEREAS** the right of individuals in the United States to keep and bear arms is  
11 fundamental to the protection and enjoyment of the remainder of the rights enumerated in the  
12 Bill of Rights; and

13 **WHEREAS** history has shown that in nations where individuals were forced to give  
14 up their firearms to government, such as in Nazi Germany and Soviet Russia, the result has  
15 been repression, tyranny, and genocide; and

16 **WHEREAS** statistics have shown that in local jurisdictions, such as Washington,  
17 D.C., where gun ownership has been restricted or prohibited, in violation of the Second  
18 Amendment, the goal of reducing violent crimes such as murder has had the opposite effect,  
19 and violent crime rates are higher than when private individuals could protect themselves with  
20 personal firearms; and

21 **WHEREAS** the safeguard of the Second Amendment to the United States  
22 Constitution as an individual right to keep and bear arms is fundamental to the people of  
23 Alaska;

24 **BE IT RESOLVED** that the Alaska State Legislature urges Governor Sarah Palin to  
25 instruct the attorney general to timely file, on behalf of the State of Alaska and its citizens, an  
26 amicus curiae or friend of the court brief supporting the plaintiffs in Parker v. District of  
27 Columbia, or to join with other states' attorneys general in such a brief.

28 **COPIES** of this resolution shall be sent to the Honorable Sarah Palin, Governor of Alaska  
29 and the Honorable Talis J. Colberg, Alaska Attorney General.

**CS FOR SENATE CONCURRENT RESOLUTION NO. 13(RES)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIFTH LEGISLATURE - SECOND SESSION**

**BY THE SENATE RESOURCES COMMITTEE**

**Offered:**

**Referred:**

**Sponsor(s): SENATOR GREEN**

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**SENATE CONCURRENT RESOLUTION NO. 13**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FIFTH LEGISLATURE - SECOND SESSION**

**BY SENATOR GREEN**

**Introduced: 1/16/08**  
**Referred: Secretary's Desk**

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20 personal firearms; and

21 **WHEREAS** in Alaska's largest metropolitan community, where the violent crime rate  
22 continues to rise and the mayor has joined with the mayor of New York City in harassing gun  
23 dealers, law-abiding residents and visitors who choose to rely on the personal protection of a  
24 firearm should not be denied access to such protection; and

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27 Alaska;

28 **BE IT RESOLVED** that the Alaska State Legislature urges Governor Sarah Palin to  
29 instruct the attorney general to timely file, on behalf of the State of Alaska and its citizens, an  
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- 1 **COPIES** of this resolution shall be sent to the Honorable Sarah Palin, Governor of Alaska
- 2 and the Honorable Talis J. Colberg, Alaska Attorney General.

# FISCAL NOTE

STATE OF ALASKA  
2008 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CSSCR 13(RES)  
 ( ) Publish Date: \_\_\_\_\_

Identifier (file name): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
 Title: SCR 13 AMICUS BRIEF - RIGHT TO BEAR ARMS RDU \_\_\_\_\_  
 Component \_\_\_\_\_  
 Sponsor: Senator Green Component Number \_\_\_\_\_  
 Requester: (S) Resources Committee

**Expenditures/Revenues** (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
<b>TOTAL</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2008) cost: \_\_\_\_\_

**POSITIONS**

Full-time								
Part-time								
Temporary								

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

Prepared by: SENATE RESOURCES COMMITTEE Phone: 465-4907  
 Division: \_\_\_\_\_ Date/Time: 1/30/08 - 4:00 P.M.  
 Approved by: /s/ Senator Huggins, Chair Date: 1/30/2008

# WebMemo



Published by The Heritage Foundation

No. 1775  
January 18, 2008

## The Federal Government's Brief in the D.C. Gun Ban Case: A Glass That Is More Than Half Full

*Todd Gaziano and Andrew M. Grossman*

Although some thoughtful lovers of liberty have lamented the half-empty aspects of the U.S. Solicitor General's recently-filed brief in the D.C. gun ban case (*District of Columbia v. Heller*), the portion that is full is legally far more significant in securing Second Amendment rights in the arena that counts most: the Supreme Court. On careful analysis, the brief's departures from sound principle are internally inconsistent and otherwise not particularly effective. Americans should recognize the importance of the government's concessions to individual liberty and ignore its predictable, bureaucratic attempt to defend existing federal laws. That is what the High Court is most likely to do.

**Reason to Rejoice.** It is no minor event when the national government clearly and forcefully admits to the highest court in the land that Americans enjoy a constitutional right that has been hotly debated for years, especially when that constitutional right is a limit on the government's own power. That is what the Department of Justice's chief litigator did in a brief filed last week in the Supreme Court case testing the constitutionality of the Washington, D.C., gun ban.

D.C.'s gun ban may be the strictest in the country. The city has banned the registration, and thus the possession, of handguns by private citizens and forbidden its citizens from maintaining any long gun (ordinary rifles or shotguns) in a state of readiness for self-defense in their homes. As the D.C. Circuit Court put it, under the ban, not even a law-abiding citizen may own a weapon "that could be

readily accessible to be used effectively when necessary for self-defense in the home."<sup>1</sup>

The original plaintiffs in the case sought only to enforce the right to possess and maintain such working guns in their homes. Among them were an anti-drug activist who had received threats from drug gangs and a security guard who could lawfully use a gun at work protecting the federal judiciary but not at home. In response, D.C. government officials tried to assert their power to prosecute anyone who dared keep a gun in his or her home for self-defense.

If the Second Amendment gives individual Americans a right "to keep and bear arms" that "shall not be infringed," D.C.'s gun ban surely violates that right. Last March, the D.C. Circuit Court held that the Second Amendment does confer that *individual* right, and it then logically concluded that a near-complete ban like the District's was unconstitutional.<sup>2</sup>

**The Federal Government's Conflict.** No one knew exactly how the federal government would respond when the case was accepted by the Supreme Court. Though one influential office of the Bush Justice Department had earlier opined that the Second Amendment protects an individual right (rather than a mere militia power),<sup>3</sup> the govern-

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This paper, in its entirety, can be found at:  
[www.heritage.org/Research/LegalIssues/wm1775.cfm](http://www.heritage.org/Research/LegalIssues/wm1775.cfm)

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ment, no matter what political party controls it, faces very strong incentives to protect its own power. In addition, the U.S. Justice Department has a traditional obligation to try to defend existing federal laws whenever a reasonable argument can be made to support them, and there are a number of federal gun laws that the department would feel duty-bound to preserve.

Those who understood the department's dual obligations—to defend the Constitution and also to preserve federal power and federal statutes where possible—knew that some attempt at baby-splitting was likely. Serious originalists are correct that the government's brief erred in the line it tried to draw and went unreasonably far in its attempt to preserve government power, but what the government concedes is far more important. And like the original solution proposed by King Solomon, the Solicitor General's solution so threatens the viability of the individual right that it will be quickly rejected by anyone who cherishes such rights.

**What the Solicitor General Concedes.** The Solicitor General's brief states the government's position in no uncertain terms. The Second Amendment, it says, "protects an individual right to possess firearms unrelated to militia operations."<sup>4</sup> As the brief explains, this right is apparent in the amendment's plain text, its location in the Bill of Rights, and historical practices at the time of its drafting.

Americans of all stripes know that this has been the central issue underlying the Second Amendment for decades. The competing school of thought was that the Second Amendment only protected "militia rights," which in turn were wholly subject to government regulation. The U.S. government sided with the decisive weight of recent scholarly research and the more recent court cases that have seriously examined the constitutional question. That trifecta (government, scholarly, and court

opinion) is going to be hard for the Supreme Court to ignore.

In the law and in everyday experience, statements by any party that are against that party's interests are treated as especially reliable and, in most instances, particularly powerful. Thus, the federal government's "admission against interest" that the Second Amendment protects an individual right is likely to have a striking impact in the Supreme Court chambers.

**Splitting the Baby.** Given the government's obligation to try to save as many federal gun statutes as possible, it is not surprising that the brief also urges the Supreme Court to limit the same individual right it asks the court to recognize. Because other liberties in the Bill of Rights, such as the right to speak freely, are subjected to "well-recognized exceptions"—shouting "fire" in a theater, for example—the brief reasons that the Second Amendment right to bear arms does not apply at all to certain individuals, broad classes of arms, and a wide variety of situations.<sup>5</sup> Under the Solicitor General's theory, the government would have broad discretion to carve out exceptions, with a very deferential judicial review.

In contrast to "statements against interest," positions that promote a party's interests in court are treated as mere "litigation positions" that are only as persuasive as the logic behind them. There are many reasons why the Solicitor General's baby splitting will be seen for what it is and rejected.

First, the Solicitor General's arguments about how much deference the courts should pay to the government's attempts to regulate or limit Second Amendment rights is out of line with established law and precedent. The executive branch is entitled to deference by the courts in its interpretations of the scope of federal statutes and regulations, partic-

1. *Parker v. District of Columbia*, 487 F.3d 370, 374 (D.C. Circuit 2007).
2. *Id.* at 395.
3. Memorandum from Office of Legal Counsel, U.S. Department of Justice, to the Attorney General on Whether the Second Amendment Secures an Individual Right, available at <http://www.usdoj.gov/olc/secondamendment2.pdf>.
4. Brief of the United States as amicus curiae in *District of Columbia v. Heller* 7, No. 07-290 (submitted January 2008), available at <http://www.scotusblog.com/wp/wp-content/uploads/2008/01/us-heller-brief-1-11-08.pdf>.
5. *Id.* at 20-21.

ularly when the statutes and regulations are authorized by some admitted power granted to the government.<sup>6</sup> But the government is entitled to no particular deference (and, in some cases, particular suspicion) when it interprets the contours of individuals' fundamental rights against the government. For obvious reasons, the government should not get much deference when it claims the power to limit our individual rights.

Indeed, any lawyer and any non-activist judge knows that once an individual right analogous to the right to free speech or the right to vote is recognized, an enormous body of settled law is applied to its protection. As the Supreme Court has held again and again, the government needs to have exceedingly good reasons to infringe on an individual right, and it may only do so in the most circumscribed ways. Laws that abridge analogous fundamental rights must stand up to "strict scrutiny," among courts' most challenging levels of review, and are upheld only when the government has compelling interests and acts solely to further those interests. This is very different from the kind of review that the government proposes.

In practice, the courts approve very few regulations under this exacting review. The exceptions to analogous individual liberties, such as the right of free speech protected by the First Amendment or the right to vote protected by the Fourteenth and Fifteenth Amendments, are exceedingly rare. Convicted felons may forfeit their right to vote, and under a similar analysis, convicted felons may forfeit their right to possess firearms. A reasonable voter registration law protects the law-abiding voter, and reasonable criminal background checks may be lawful to prevent felons from obtaining guns. But large classes of law-abiding citizens cannot be denied their right to vote, to speak freely, or to exercise their religious freedom based on some flimsy government "interest." Literacy tests and grandfather clauses are seen for what they are and are struck down if they unreasonably interfere with the right to vote.

In sum, the very narrow exceptions to the freedom of speech, the vote, and the practice of one's religion prove the opposite of what the Solicitor General cites them for.

Second, the substantive arguments the Solicitor General advances are terribly flimsy. One argument is that not all hand-held guns are "arms" subject to Second Amendment protection. The brief offers no support, in the constitutional text or elsewhere, for this proposition. Tanks are indeed not arms; cannons are not arms. But all guns are "arms" within the original meaning of the Second Amendment. Any reasonable judge understands that if the government can come up with an artificial definition for "arms," it can do likewise for "speech," "vote," "religion," etc. That there may be a few hard questions about what is a protected arm (and there likely will be) does not undermine the conclusion that common handguns, rifles, and shotguns are "arms" protected by the Second Amendment.

The Solicitor General's next argument is that the amendment refers to a "well regulated militia" and that early laws on militias (which were more like today's army than any present militia group) described the weapons that soldiers should wield.<sup>7</sup> Because Congress could regulate the weapons used by what was essentially the national army in 1792, argues the government, Congress today should be able to prescribe what guns American citizens are able to own. This is a non-sequitur. That the government can regulate the guns used by the military (or the militia when it is in government service) has nothing to do with the individual right to own personal weapons. The government can make rules for military conduct, but it does not follow that it can dictate religious codes that soldiers and civilians alike must follow.

Moreover, this strained argument regarding a "well regulated militia" flatly contradicts the Solicitor General's earlier and more straightforward contention that the "militia" clause "does not limit the substantive right that the [Second] Amendment secures."<sup>8</sup> If one of these contradictory positions is to be rejected, this is the one that will be jettisoned.

6 See, e.g., *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

7 Brief of the United States as amicus curiae in *District of Columbia*, *supra* n. 4, at 22-23.

8 *Id.* at 14-19.

This part of the Solicitor General's brief probably will not receive much attention for another important reason: The federal statutes it is trying to preserve and the hypotheticals it raises just aren't at issue in the case before the Court. D.C.'s gun ban violates any reasonable conception of a right "to keep and bear arms." The High Court has no reason to decide the exact contours of the right in order to uphold the lower court decision. The lower court simply decided that the denial of a right to possess virtually any gun in a citizen's home is unconstitutional. Going beyond that narrow holding would be dicta, and responsible judges know they are not supposed to issue advisory opinions.

**Conclusion.** For constitutionalists and gun-rights advocates, the Solicitor General's brief is a big victory. It got the big question, the one that matters, right: Americans do have a right to keep and bear arms. Though the details of how the Solicitor General would like to apply that right are disappointing, the Supreme Court will likely accord that part of the brief the weight it is due: none.

—Todd Gaziano is Director of, and Andrew M. Grossman is Senior Legal Policy Analyst in, the Center for Legal and Judicial Studies at The Heritage Foundation.

## Hawaii Reporter

Freedom to Report Real News

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### **U.S. Supreme Court Set To Decide Pure Gun Right Case**

By Dave Workman, 12/28/2007 9:12:12 AM

Within minutes of the announcement by the Supreme Court on Nov. 20 that it will hear the appeal in the case of District of Columbia v. Heller -- the case that could provide a landmark ruling that defines the Second Amendment as an individual right -- the Brady Campaign to Prevent Gun Violence sent out an urgent appeal for \$50,000 in contributions.

The money, said the Brady Campaign, would go directly to the Brady Gun Law Defense Fund, "to protect America's gun laws."

"If the Supreme Court does not reverse the federal appeals court decision," the appeal lamented, "gun laws everywhere could be at risk."

The collective ho-hum reaction from the firearms civil rights community to the alarmist appeal was pretty much, "So, what's your point?"

Gun rights leaders at the National Rifle Association (NRA) and Second Amendment Foundation (SAF) are encouraged that the Heller case -- renamed from Parker v. District of Columbia when only one of the original plaintiffs, Dick Heller, was given standing by the court -- will provide a watershed decision in the middle of the 2008 presidential and congressional campaign season. It will put gun rights at center stage and make the right to keep and bear arms perhaps the critical issue as the nation elects a new president and new Congress.

Both sides are nervous, but NRA Executive Vice President Wayne LaPierre and SAF founder Alan Gottlieb are, perhaps, considerably more confident of a favorable outcome than the gun control lobby.

LaPierre told Gun Week that he believes the high court ruling, due out next June after a scheduled March hearing and oral arguments, "will put the entire ruling political class in this country on the spot."

"The American public will not be denied this freedom," he stated. "Forty-four states have an individual right written into their state constitutions. If the Supreme Court, by some torturous measure, delivers some government right interpretation, we would immediately look to the states to call a constitutional convention.

"The Second Amendment is self-evident," LaPierre continued. "The American public knows it's about human worth, self-destiny and freedom."

He acknowledged that an affirmative ruling that upholds the individual right to keep and bear arms will not put the gun control lobby out of business, but added, "They certainly won't be able to argue that it's not an individual right under constitution anymore."

Gottlieb was equally confident of the eventual outcome.

"We are confident that the high court will rule that the Second Amendment affirms and protects an individual civil right to keep and bear arms," Gottlieb said. "Previous Supreme Court rulings dating back more than a century have consistently referred to the Second Amendment as protective of an individual right, but the case of *District of Columbia v. Heller* focuses on that issue, and we expect the court to settle the issue once and for all."

Gottlieb suggested that the *Heller* ruling might be very narrow in its scope, only holding that the Washington, DC, gun ban is unconstitutional because it does not allow someone to have a working handgun in their home. Still, he said, such a ruling would be a "building block" upon which other gun rights cases can be mounted.

"An affirmative ruling by the Supreme Court will probably not be the death knell for the extremist citizen disarmament movement," Gottlieb said, "but it will properly cripple their campaign to destroy an important civil right, the one that protects all of our other rights. The insidious effort to strip American citizens of their firearms rights, while at the same time permanently harming public safety must end."

"The Washington, DC, gun ban has been a monumental failure and the crime statistics prove that," he observed. "For almost 70 years, gun banners have deliberately misinterpreted and misrepresented the high court's language in the *U.S. v. Miller* ruling in 1939. It is long past the time that this important issue be put to rest, and the *Heller* case will provide the court with that opportunity."

Attorney Alan Gura, one of the trio of lawyers representing the plaintiff, confirmed to *Gun Week* that he will present the arguments before the high court. It will be his first appearance before the nine-member panel, and he is looking forward to presenting his case.

"We're going to establish once and for all that the Second Amendment means what it says," Gura stated. "It is the beginning of the end for the collectivist nonsense."

He was alluding to the argument that the Second Amendment only protects a so-called "collectivist right" of the states to form militias. This interpretation has become popular with gun control activists who base their beliefs on the 1939 Supreme Court ruling in *U.S. v. Miller*.

Gottlieb's prediction about a narrow ruling could be well-founded, considering the narrow scope of the question the court agreed to consider. In announcing that it would accept the appeal, the court said:

"The petition for a writ of certiorari is granted limited to the following question: Whether the following provisions, D.C. Code §§ 7-2502.02(a)(4), 22-4504(a), and 7-2507.02, violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes?"

However, experts and armchair analysts immediately began trying to determine whether the court already sent a signal of sorts how it will decide this case because this carefully-worded question appears to suggest that the court already considers the Second Amendment protective of an individual right. The question the justices will consider suggests further that they will only look at whether the District's handgun ban violates this individual right if someone is not part of a militia.

The March federal appeals court ruling that led to this constitutional confrontation was written

by District of Columbia Appeals Court Senior Judge Laurence Silberman. In his ruling, which holds that the Amendment protects an individual right beyond service in a militia, Silberman noted that the right to keep and bear arms is subject to "reasonable" regulation. That might include licensing and/or registration, but could not include a ban.

But upholding an individual right interpretation is really what the gun rights community is looking for, as it would provide a launching pad for striking down similar bans in Chicago, IL, and several surrounding communities.

Gura has previously suggested to Gun Week that this would be the likely scenario if the District gun ban is struck down. It marks the first case in history in which a gun law has been declared unconstitutional on Second Amendment grounds by a federal court. The Silverman ruling sent a shock wave through the gun control lobby, causing something of a crisis for gun control activists who, while having long contended that they support private gun ownership, suddenly began loudly arguing that Silberman's ruling tried to undo the historic precedent established by the Miller ruling.

Gottlieb, LaPierre and others have consistently contended that the anti-gun lobby has deliberately misrepresented the 1939 Miller ruling for many years.

Perhaps the best summation on that subject came from Lawrence G. Keane, senior vice president and general counsel for the National Shooting Sports Foundation.

"The firearms industry looks forward to the Supreme Court putting to rest the specious argument that the Second Amendment is not an individual right," said Keane. "This intellectually bankrupt and feeble argument has been used by gun control advocates to justify laws and regulations that deny Americans their civil right to own and lawfully use firearms for protection, hunting, sports shooting and other lawful purposes."

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## COMMENTARY

### Second-Amendment Showdown

By MIKE COX

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The Supreme Court has agreed to take up a case that will affect millions of Americans and could also have an impact on the 2008 elections. That case, *Parker v. D.C.*, should settle the decades-old argument whether the right "to keep and bear arms" of the Constitution's Second Amendment is an individual right -- that all Americans enjoy -- or only a collective right that states may regulate freely. Legal, historical and even empirical reasons all command a decision that recognizes the Second Amendment guarantee as an individual right.

The amendment reads: "A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed." If "the right of the people" to keep and bear arms was merely an incident of, or subordinate to, a governmental (i.e., a collective) purpose -- that of ensuring an efficient or "well regulated" militia -- it would be logical to conclude, as does the District of Columbia -- that government can outlaw the individual ownership of guns. But this collective interpretation is incorrect.

To analyze what "the right of the people" means, look elsewhere within the Bill of Rights for guidance. The First Amendment speaks of "the right of the people peaceably to assemble . . ." No one seriously argues that the right to assemble or associate with your fellow citizens is predicated on the number of citizens or the assent of a government. It is an individual right.

The Fourth Amendment says, "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . ." The "people" here does not refer to a collectivity, either.

The rights guaranteed in the Bill of Rights are individual. The Third and Fifth Amendments protect individual property owners; the Fourth, Fifth, Sixth and Eighth Amendments protect potential individual criminal defendants from unreasonable searches, involuntary incrimination, appearing in court without an attorney, excessive bail, and cruel and unusual punishments.

The Ninth Amendment protects individual rights not otherwise enumerated in the Bill of Rights. The 10th Amendment states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." Here, "the people" are separate from "the states"; thus, the Second Amendment must be about more than simply a "state" militia when it uses the term "the people."