

A NEW ANSWER FOR AN OLD QUESTION: SHOULD ALASKA ONCE AGAIN CONSIDER A UNICAMERAL LEGISLATURE?

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ABSTRACT

A half-century after the creation of the Alaska legislature, is it still in the state's interests to have a two-house legislative system? At Alaska's Constitutional Convention, the framers gave great consideration to creating a unicameral legislature, however declined to do so, partially out of fear that an unusual governmental structure might stymie statehood efforts. However, unicameralism has long played a role in American democracy, and is currently a celebrated part of the government of Nebraska. Early proponents of such systems proclaimed that it would reduce redundancy in governing, would cut overall governmental costs, and would make government more transparent. Critics of one-house legislative systems argue that it can lead to hasty and ill-conceived legislation. Alaska might explore a unicameral system largely because of its size – a single legislature with smaller districts for each legislator would allow for better constituent services, particularly in large rural districts.

I. INTRODUCTION

On the evening of November 30, 1955, the fifty-five delegates to Alaska's Constitutional Convention returned to work in the meeting hall at the University of Alaska in the town of College, just west of Fairbanks. It was the Convention's twenty-third day, and up to that point, most of the delegates' time had been spent meeting in small committees, completing first drafts of what would become the forty-ninth state's governing document. General sessions had been brief and filled primarily with procedural matters—just that morning, the delegates had a meeting that was consumed predominantly by debate over an appropriation to pay the Convention's stenographer. But the evening of the thirtieth was to be different. The delegates returned that night to make a decision that would determine the very character of the

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new state government that they had been charged with creating—should Alaska have one legislative chamber or two?

The ensuing debate would be both a seminar in state governmental theory and a deep look at the nature of the territory that would become the state of Alaska. It would pitch delegates who saw Alaska as a blank slate upon which they could create the ideal state government against delegates who saw the completion of an acceptable constitution as another step down the arduous road to statehood.

The delegates settled upon a two-house legislature, and this system has persisted for Alaska's fifty-one years of statehood. The Convention's minutes indicate that the decision was a cautious one. First, a two-house legislature would look ordinary and palatable to Congress, which was very suspicious of the peculiar Alaskans. Second, it would allow the state to have one chamber where the seats were apportioned based upon geography, allowing the voters in Alaska's most remote corners to have just as loud a voice as those in Anchorage and Fairbanks.

Five decades later, these reasons for adopting Alaska's bicameral system are obsolete—Alaska is no longer a remote territory clamoring for statehood, and the Supreme Court has dictated that all state legislative seats must be apportioned based on population. Is it now time to reconsider the choice made at the Convention?

While adopting a two-house system made sense for Alaskans of the 1950s, who placed the greatest priority on becoming a state, there are unique elements of modern Alaska that suggest changing to a one-house system might be beneficial for Alaska today. Unicameralism is particularly well-suited to Alaska because: (1) it would allow some legislators to have smaller, more easily traveled districts, thereby simplifying the task of representing constituents widely diffused across the largest state in the union; (2) it would allow for more efficient passage of legislation; and (3) it would make the legislative process more open by eliminating the secretive dealings of the conference committee, thereby restoring confidence in a legislature that has been under scrutiny in recent years.

Should Alaska switch to a unicameral? This Note raises the question and then seeks to provide the information necessary to begin to answer it. It does so by first looking at the consideration of unicameralism at the state's Constitutional Convention. It then examines the history of some cameral choices in the United States and the competing arguments in favor of and against unicameralism. Third, it takes a close look at the experience of Nebraska, the only state presently with a unicameral legislature. Fourth, it examines the contemporary critiques of unicameralism. Finally, it applies these arguments for and against unicameralism to contemporary Alaska and analyzes the factors

that point toward making the switch to unicameralism and those that point toward retaining the current legislative structure.¹

II. THE CREATION OF ALASKA'S BICAMERAL LEGISLATURE

A. The Territorial Legislature

Unicameralism was not an altogether unfamiliar concept to Alaskans when it was first introduced at the Convention. Between December of 1911 and August of 1912, the Sixty-second Congress considered and ultimately passed what would become the Home Rule Act of 1912,² granting the Territory of Alaska a legislature and substantial local autonomy.³ This Act, coming on the heels of Congress's passage of territorial civil and criminal codes in 1889 and 1900, was a significant step towards statehood.⁴

James Wickersham, Alaska's non-voting congressional delegate who was said to be the most powerful political figure in the territory at the time, spearheaded the movement for territorial autonomy.⁵ The ensuing debate, however, was driven largely by interests outside the state of Alaska.⁶ A variety of interest groups focused their attention on it. Some groups sought to ensure that a territorial government would not upset their existing interests in Alaska,⁷ while other reformers saw

1. This Note does not discuss the process of proposing and implementing a unicameral system, nor does it spend much time considering the politics involved in abolishing a legislative house. Such factors would be very important should Alaskans decide to push for the creation of a single-house system. However, they are beyond the scope of this Note. Should this Note convince some that a unicameral system would be a positive change in Alaska's governing apparatus, a second study might be necessary detailing how to go about making that change.

2. Pub. L. No. 62-334, 37 Stat. 512 (1912).

3. *Id.* at 512-13.

4. JEANETTE PADDOCK NICHOLS, ALASKA: A HISTORY OF ITS ADMINISTRATION, EXPLOITATION, AND INDUSTRIAL DEVELOPMENT DURING ITS FIRST HALF CENTURY UNDER THE RULE OF THE UNITED STATES 406-07 (1923).

5. *Id.* at 407.

6. *See id.* at 399 (noting Congress was concerned about coal land and railroad ownership).

7. *Id.* at 401. For example, wealthy New York game hunters sought to limit the ability of the territorial legislature to enact bills relating to the conservation of wildlife, and the fishing industry sought to limit the legislature's ability to tax their industry. *Id.*

Alaska as a blank slate upon which they could impose their visions for society.⁸

The Senate Committee on Territories proposed a one-house legislature for the new territory.⁹ Writing in 1923, early Alaska historian Jeanette Paddock Nichols stated, “[The committee] was of a mind to make the law-making body unicameral, to the great dismay of Wickersham, who feared that such action would kill his measure.”¹⁰ She reported that the proposal died when the House refused to pass the bill without a bicameral structure.¹¹ Ultimately, the Home Rule Act created an eight-member senate and a sixteen-member house of representatives, with each of the four judicial districts electing four representatives and two senators at-large.¹²

Nichols’s history, written when Alaska was still in the early days of territorial government and more than three decades before the great debates of Alaska’s Constitutional Convention, expresses great frustration with Congress’s refusal to allow Alaska to experiment with a one-house system. She wrote:

Congress thereby demonstrated once more that it was bound by tradition and prefers to stick to it rather than to advance along the lines of experimental democracy. In this case it set up a legislature to be composed of two bodies of men who had duplicate qualifications, duplicate constituents, and duplicate work.¹³

Nichols’s frustration seems to have stemmed from her belief that Alaska had been forced to forego becoming an innovator in state government because Washington officials feared too much experimentation in this peculiar, distant land. Since Alaska’s elected representatives were focused primarily on appeasing the federal government in order to attain autonomy, Nichols felt as though Alaska was being unnecessarily constrained. This scenario would soon repeat itself.

Ernest Gruening, Alaska’s territorial governor from 1939 until 1953, and a United States senator from 1959 until 1969, wrote in 1954 of the

8. *Id.* at 399–405. For example, certain groups sought to require stringent divorce laws, prohibit the sale of alcohol, and give the legislature the power to enact women’s suffrage. *Id.*

9. *Id.* at 403.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

need “to reform the deficient system of representation in the territorial legislature which Congress had lazily imposed on Alaska.”¹⁴

In the following years, Alaska’s representatives repeatedly attempted to reform the territorial legislature—most attempts were ignored by a Congress bogged down with world wars and the Great Depression.¹⁵ Several of the efforts, led by the residents of the area around Anchorage who were frustrated by the strict geographic-representative system imposed by Congress, sought to create a system of proportional representation for the legislature.¹⁶ In the 1930 Census, the First Division, the quadrant of the state that included Anchorage, had a population of 25,241, with the Second, Third, and Fourth Divisions having populations of 11,877, 19,312, and 16,094, respectively.¹⁷ However, each division had been granted equal representation in both houses, meaning that four senators who frequently represented less than half of the territory’s population could effectively veto any bill, since passage through both houses was necessary.¹⁸ In 1942, Congress granted Alaska proportional representation in the Alaska House of Representatives only, despite Alaska’s non-voting delegate having sought proportional representation in both houses.¹⁹ While this was intended to appease the Alaskan delegate, it did little to solve the tyranny of the minority that governed the territory. By 1950, effective veto-power in the Alaska Senate was wielded by four senators who represented less than one third of Alaska’s total population.²⁰ Of Congress’s refusal to grant proportional representation for both houses, Gruening wrote:

Here was a bill which concerned Alaska only. It clashed with no stateside interests (except those of lobbyists who found the original setup easier to manipulate). It embodied a reform which a great majority of the people of Alaska wanted, and as such was presented to the committee by its one member who had knowledge—profound knowledge—of Alaska. Yet it was denied Alaskans by the opposition of two members who at that time had no first-hand acquaintance with Alaska, but, having votes, were able to prevail.²¹

14. ERNEST GRUENING, *THE STATE OF ALASKA* 460 (1954).

15. *See id.*

16. *Id.*

17. *Id.* at 461.

18. *Id.*

19. *Id.* at 463.

20. *Id.*

21. *Id.*

This dispute over legislative structure, according to the territory's last governor, was decisive in alerting Alaskans to the need for statehood.²² From this episode, it became clear that Alaska, a region with condensed population centers and wide swaths of empty land, did not need a legislative system that adhered faithfully to the congressional model nearly as badly as it needed one that best voiced Alaskan interests.

B. The Politics of Statehood

Alaska's quest for statehood formally began in 1946, when a referendum of 16,452 Alaskans²³ found that sixty percent of voters supported becoming a state.²⁴ This poll was taken on the heels of World War II, which had brought a large military presence to Alaska and provided the economic and population base that many felt was necessary to support statehood.²⁵ Those in support of statehood argued two major points: (1) statehood would lead to economic development; and (2) statehood would lead to increased autonomy through self-government and freedom from federal regulation.²⁶

Despite popular support for statehood, the movement had influential detractors. The local salmon industry publicly argued that there was not a sufficient economic base to support a state; however, salmon fishermen were in fact afraid that they would be adversely affected by new state regulation and taxation.²⁷ The military also opposed statehood.²⁸ Alaska's close proximity to Russia and the Korean Peninsula gave it strategic significance in the early days of the Cold War, and commanders feared a new state government would interfere in military operations.²⁹ Finally, by 1953, the new Republican majorities in both houses of Congress and the new Republican president opposed statehood for Alaska.³⁰ They feared that the traditionally Democratic territory's admission to the union would offset the congressional gains that the Republicans were expecting from the admission of the

22. *Id.* at 463–64.

23. *Id.* at 464. Alaska had a population close to 118,000 in 1946 when this referendum occurred.

24. STEPHEN HAYCOX, *ALASKA: AN AMERICAN COLONY* 268 (2002).

25. Michael Schwaiger, *Understanding the Unoriginal: Indeterminant Originalism and Independent Interpretation of the Alaska Constitution*, 22 *ALASKA L. REV.* 293, 302–03 (2005).

26. HAYCOX, *supra* note 24, at 268–69.

27. *Id.* at 269.

28. *Id.*

29. *See id.*

30. *See id.*

conservative-leaning Hawaii.³¹ Hawaiian statehood would fail that year as well, however, due to opposition by a powerful member of the Senate.³²

By the early 1950s, these politically powerful opposition groups had begun to mobilize to defeat an Alaska statehood measure.³³ Various alternatives to admitting the full territory as a state were considered.³⁴ This process consumed the congressional discussion of Alaska from 1953 through 1955,³⁵ with the Republican government refusing to consider the admission of the full territory as a state.³⁶

In the fall of 1954, Democrats regained congressional majorities and won majorities in the territorial legislature.³⁷ Alaska's Democratic territorial legislators, frustrated by congressional inertia, called the Constitutional Convention, believing that having a governing document already prepared would advance the statehood effort.³⁸ Professor Stephen Haycox of the University of Alaska wrote that the members of the legislature believed that "[a] successful convention and progressive state constitution would demonstrate Alaskans' self-governing capabilities."³⁹ They were buoyed by the words of Governor Gruening, who had written, "Alaskans had stood too much, too long, to be discouraged or other than determined to fight on to validate the most

31. CLAUS-M. NASKE, AN INTERPRETIVE HISTORY OF ALASKA STATEHOOD 112-13 (1973). In his 1953 State of the Union address, President Eisenhower called for the immediate admission of Hawaii to the union but did not mention Alaska. *Id.* Only after the House of Representatives passed a bill granting Hawaii admission did the chair of the Interior and Insular Affairs Committee announce a date to begin hearings on Alaska statehood. *Id.*

32. GRUENING, *supra* note 14, at 471.

33. See HAYCOX, *supra* note 24, at 268-69.

34. NASKE, *supra* note 31, at 121-25. These alternatives included: (1) granting Alaska commonwealth status, as had been done for Puerto Rico, which would include all of the rights, privileges, and obligations of statehood except for national representation and the duty of paying federal taxes; (2) partitioning the territory and admitting only the populated areas as a new state, leaving the least populated areas, which had the most natural resources, as a territory. *Id.*

35. *Id.*

36. See *id.* at 126, 133.

37. *Id.*

38. *Id.* at 133. As Alaska prepared for its own Constitutional Convention, the new Democratic majorities in Congress were proving as resistant to Alaska statehood as their Republican predecessors. In 1955, the House Rules Committee effectively killed a measure that would have provided statehood for both Alaska and Hawaii. *Id.* at 138. Throughout most of that year, momentum seemed to be gaining for a compromise that would grant Alaska an elected governor but not statehood. *Id.*

39. HAYCOX, *supra* note 24, at 270.

basic of American principles—government by consent of the governed.”⁴⁰

C. The Constitutional Convention and Alaska’s Flirtation with Unicameralism

The Convention began on November 8, 1955, but it was not until the twenty-third day that the first pivotal floor debate occurred.⁴¹ The delegates had spent the first weeks listening to testimony from citizens who had been given open access to the Convention,⁴² meeting in committees,⁴³ and discussing issues such as which musician to have record an official version of the state song and whether the new constitution should be written in the present tense or the future perfect, as was customary for such documents.⁴⁴

By the twenty-third day, however, the Convention was prepared to make perhaps the key structural decision about the new government it was creating. The day before the debate on how many houses to include in the new legislature, the *Daily Alaska Empire* of Juneau published an article proclaiming that “[d]elegates to the Alaska Constitutional Convention are ready to tackle what could be the most controversial issue of the historic get-together.”⁴⁵ The article noted that although the concept of unicameralism was not on the minds of many delegates when the Convention had begun three weeks earlier, it had swiftly gained momentum over the course of the Convention.⁴⁶ A *Fairbanks Daily News-Miner* article echoed these sentiments, stating “[t]he issue was apparently no issue at all when the Convention began but a one-house setup has been gaining momentum and weight and is now the pivotal question of the Convention, on which so much committee work

40. GRUENING, *supra* note 14, at 492.

41. *Minutes of the 23rd Day of the Alaska Constitutional Convention* (Nov. 30, 1955), <http://www.law.state.ak.us/doclibrary/conconv/23.html> [hereinafter *23rd Minutes*].

42. *See Record, Grammar Occupy Delegates in Fourth Week*, FAIRBANKS DAILY NEWS-MINER, Nov. 28, 1955, at A1.

43. *Target Dates Set by Nine Committees of Convention*, FAIRBANKS DAILY NEWS-MINER, Nov. 30, 1955, at A7. Issues the committees had been wrestling with included: (1) whether to reapportion the legislative districts at the Convention or task the new legislature with that work; (2) what form local governments should take; and (3) what rights to include in a bill of rights. *Id.*

44. *Record, Grammar Occupy Delegates in Fourth Week*, *supra* note 42, at A1.

45. *Delegates to Consider Type of Legislature at Hearing Tonight*, DAILY ALASKA EMPIRE, Nov. 30, 1955, at A1.

46. *Issue Splits Delegates to Convention*, FAIRBANKS DAILY NEWS-MINER, Nov. 29, 1955, at A1.

depends.”⁴⁷ The Juneau reporter noted of the unicameral proposal, “Supporters say they believe it is most suited to Alaska’s needs. . . . [and] it would eliminate the so-called log rolling between the two houses.”⁴⁸

Unicameralism had last been considered for Alaska some four decades earlier when the territorial legislature was being designed. In the meantime it had become a celebrated cause of populist reformers but had been implemented in only one state, Nebraska.⁴⁹ In advance of the Convention, a report by the Public Administration Service, Inc., a Chicago-based consulting firm hired by the territorial government to assist in the drafting of the constitution,⁵⁰ had stated, with little elaboration, that Alaska’s small population and economy potentially suggested creating a unicameral legislature.⁵¹

The issue of how many houses to include had not even been aired in committee prior to its coming to the Convention’s floor.⁵² Convention leaders had deemed it too controversial to be taken up in the early weeks, so discussion of unicameralism had been limited to side conversations among delegates outside the formal proceedings.⁵³ This political “hot potato,” as it was described in the *Fairbanks Daily News-Miner*,⁵⁴ finally came to the forefront of the Convention on November 28, 1955, when Delegate Steve McCutcheon moved that the convention reconvene in two days in a Committee of the Whole session to take up the matter.⁵⁵ There was some resistance to this suggestion, with Delegate Victor Fischer,⁵⁶ who would go on to write the authoritative history of the Convention, requesting that the committee on the legislature first consider the issue so as to avoid a “free for all” on the Convention

47. *Id.*

48. *Delegates to Consider Type of Legislature at Hearing Tonight, supra* note 45, at A1.

49. *See infra* Part III.B.

50. *See Consultants for Convention Committees Are Due Here*, FAIRBANKS DAILY NEWS-MINER, Nov. 30, 1955, at A8.

51. VICTOR FISCHER, ALASKA’S CONSTITUTIONAL CONVENTION 85 (1975). The report also placed a caveat on this assertion, saying that because of popular satisfaction with the territorial legislature’s two-house scheme, it might prove arduous to implement a unicameral system. *Id.*

52. *See Issue Splits Delegates to Convention, supra* note 46, at A1.

53. *See id.*

54. *Id.*

55. *Minutes of the 21st Day of the Alaska Constitutional Convention* (Nov. 28, 1955), <http://www.law.state.ak.us/doclibrary/conconv/21.html> [hereinafter *21st Minutes*].

56. EVANGELINE ATWOOD & ROBERT N. DEARMOND, WHO’S WHO IN ALASKAN POLITICS 29 (1977).

floor.⁵⁷ In response to this, McCutcheon stated that a “free for all” was what he wanted to see.⁵⁸ In support of McCutcheon’s motion, Delegate Mildred Hermann⁵⁹ stated:

I feel this meeting should be held during the regular session of the Convention and it won’t do any harm if the work of the committees is interrupted for such a meeting, because after we have this Committee of the Whole consideration of this measure I think all the committees are going back to their own work probably a little better able to reach and formulate decisions than they were before they heard it. To me it seems apparent that much of the business of this meeting that is ultimately going to be finalized depends upon the approach to the question of whether we are going to have a unicameral or a bicameral legislature.⁶⁰

The body agreed to hold the debate and take a non-binding vote at the conclusion of the discussion in order to guide the work of the committees in the weeks ahead.⁶¹

When the debate began on November 30, it appeared that the majority of delegates favored bicameralism. John McNees of Nome, however, a meteorologist and operator of a private transportation business with no prior background in government,⁶² proceeded to make elaborate arguments in favor of unicameralism hoping to sway the body.⁶³

First, McNees described bicameralism as antiquated and unnecessary.⁶⁴ He borrowed heavily from the writing of former Nebraska Senator George W. Norris,⁶⁵ arguing that: (1) bicameralism was unnecessary in a homogenous state that had no clear divisions within the citizenry;⁶⁶ and (2) the conference committee inherent in

57. See *21st Minutes*, *supra* note 55.

58. *Id.*

59. Ms. Hermann was an attorney from Juneau and protégé of James Wick-ersham, the congressional delegate who had opposed unicameralism for Alaska a generation earlier. *ATWOOD & DEARMOUND*, *supra* note 56, at 43–44.

60. *21st Minutes*, *supra* note 55.

61. See *Issue Splits Delegates to Convention*, *supra* note 46, at A1.

62. *ATWOOD & DEARMOUND*, *supra* note 56, at 65.

63. See *FISCHER*, *supra* note 51, at 85–87.

64. See *23rd Minutes*, *supra* note 41 (noting the original reason for two branches was so that one could be a check on the power of royalty and the other could represent the people).

65. See *infra* Part III.B.

66. *23rd Minutes*, *supra* note 41 (“There is no need to give the two branches the same authority to do the same thing. . . . [W]here the work of the two bodies is identical, requiring that the work be done twice . . . [is] illogical.”).

bicameralism led to corruption by putting a decisive emphasis on backroom deals between members in the conference committee rather than open debate on the legislative floor.⁶⁷

McNees then listed seven merits of the unicameral system: (1) a unicameral legislature operates more efficiently, ensuring that all introduced bills are swiftly considered by committee and given an up or down vote; (2) a single body eliminates animosity and friction between members of two houses; (3) a single chamber centralizes legislative responsibility and creates clearly identifiable leadership; (4) the unicameral system leads to cost-savings; (5) membership in one body generates greater social prestige and stature, thereby encouraging public service among qualified individuals; (6) the one-house system reduces the off-stage sway of special interest groups⁶⁸ and facilitates the ability of citizens to openly petition government; and (7) it is easier for an executive to work with one house than two.⁶⁹ While McNees's list was extensive, his reasons were primarily the virtues that reformers before him across the country had cited in advocating for unicameralism.⁷⁰ McNees failed to incorporate Alaska's peculiar needs (stemming from the state's small population, large territory, and developing economy) into his argument for unicameralism.

One delegate, Barrie M. White, an Anchorage businessman who had served as the president of the Operation Statehood organization,⁷¹ proclaimed that he was "on the fence" on the issue, yet he rose to say that he had "a feeling that a much better case can be made by more people for unicameralism than has been made tonight."⁷² White argued that one of the territory's leading problems was sectionalism.⁷³ He also argued that a unicameral legislature might reduce that problem because each member would be "more conscious of the fact that he represents all

67. *Id.*

68. FISCHER, *supra* note 51, at 86–87. McNees stated that a bicameral system allowed more opportunities for lobbyists to gain control of the legislative process. *23rd Minutes*, *supra* note 41. For example, they could seek to control an entire house, or they could seek to control just the leadership of the houses, which would influence who was appointed to conference committees and subsequently affect the outcome of the legislative process. *Id.* Delegate Maynard D. Londborg refuted this point, arguing that a unicameral legislature would make it easier for lobbyists to gain a foothold, as they would "have all their eggs in one basket and only the one house to worry about." *Id.*

69. FISCHER, *supra* note 51, at 87.

70. See George W. Norris, *A Model State Legislature*, reprinted in *One Branch Legislature for States Would Improve Results*, N.Y. TIMES, Jan. 28, 1923, at 12; discussion *infra* Part III.

71. ATWOOD & DEARMOUND, *supra* note 56, at 105.

72. *23rd Minutes*, *supra* note 41.

73. *Id.*

of the Territory.”⁷⁴ While nothing in the unicameral proposal implied that each member would represent all Alaskans despite being elected by distinct districts, this point was significant because it was based on Alaska’s unique needs. Unlike McNees, White recognized that a relatively low population scattered across a huge territory would best be served by smaller districts apportioned based on population.

Delegate Jack Hinckel of Kodiak, a city experiencing a boom as a result of the construction of military installations near the town in the wake of World War II, stated that he thought opponents’ claims that a unicameral legislature would lead to rushed consideration of legislation were overblown.⁷⁵ He argued, “I think if we only have one house that the people in that house will give more deliberation to the subject that they are discussing, and I think they will vote the way they feel they should and the way the people they represent expect them to”⁷⁶

Another delegate, B.D. Stewart, a former mayor of Juneau now representing Sitka,⁷⁷ stated that he had attended almost all of the sessions of the territorial legislature and from these sessions, he had come to the conclusion that unicameralism might be an appropriate remedy for the ills of the old legislature. He stated:

Session after session I have seen measures that were for the benefit of the people as a whole pass through the House with a heavy majority, come up to the Senate, which in the earlier days had eight members, two of those members were employees of one large mining company, one of them their chief attorney. If those two men alone with one other could persuade a fourth person to join them, they would kill any beneficial legislation for the benefit of the whole people by producing a tie.⁷⁸

He argued that having one chamber meet frequently, which proportionately represented citizens in such a way that each citizen had a roughly equal vote, would potentially “eliminate the painful effects of lobbying.”⁷⁹

Proponents of bicameralism relied upon familiar arguments—that bicameralism provided for better checks and balances and a more deliberative process, which would presumably produce more

74. *Id.*

75. *Id.*

76. *Id.*

77. ATWOOD & DEARMOUND, *supra* note 56, at 95–96.

78. 23rd Minutes, *supra* note 41.

79. *Id.*

thoughtful legislation.⁸⁰ Reasons for bicameralism based on the needs and interests of Alaskans and Alaska's quest for statehood were also presented.⁸¹

Delegate Ralph J. Rivers of Fairbanks, an attorney well-versed in government after serving as the territory's United States Attorney and as a territorial senator,⁸² recognized that Alaska's population was small and diffused across a huge territory. Having one single system that relied upon proportional representation could lead to very large districts in the remote areas, inhibiting the ability of rural Alaskans to influence the legislative process.⁸³ He felt that an upper chamber needed to be one of geographical representation to ensure that the southern areas with the highest population density would not "wag the whole dog around."⁸⁴

Another delegate, Dora M. Sweeney of Juneau, pointed out that twice in the preceding two decades, the territorial legislature had considered and rejected efforts to create a unicameral legislature.⁸⁵ Sweeney argued that these past failures to switch to a unicameral raised doubts about Alaskans' willingness to accept a one-house system.⁸⁶ She argued that Congress might reject the Convention's proposed constitution if it did not have popular support.⁸⁷ Similarly, Delegate Seaborn J. Buckalew, Jr., of Anchorage, argued that adopting a unicameral house would "be taking the voters of Alaska by surprise."⁸⁸ He speculated that it would take a great public relations campaign to get the people to buy into such a system.⁸⁹ Buckalew felt that this burden would hinder the quest for statehood.⁹⁰

80. FISCHER, *supra* note 51, at 87.

81. *Id.*

82. ATWOOD & DEARMOUND, *supra* note 56, at 85.

83. 23rd Minutes, *supra* note 41.

84. *Id.* As discussed below, Rivers's argument would become moot within a decade with the Supreme Court's decision in *Reynolds v. Sims*, 377 U.S. 533 (1963), which held that the Court's previously stated "one man, one vote" requirement applied to legislative districting. This argument is strange coming from Rivers, a representative of Anchorage, a city that had been subject to the will of the minority in the territorial senate which had often overruled the will of the majority due to the upper house's system of geographic representation.

85. 23rd Minutes, *supra* note 41.

86. *Id.*

87. *Id.* ("I think that if we do not go to Congress with some assurance that the unicameral legislature is going to work in Alaska, then we will find ourselves waiting, not to be the 49th state but the 50th state.").

88. *Id.*

89. *Id.*

90. *Id.*

Delegate William A. Egan of Valdez, who would go on to become Alaska's first state governor in 1959,⁹¹ argued that a unicameral system would be unwise when Alaska's people had barely had a chance to experience the traditional bicameral system. Egan said:

We have had a running wild system . . . both in the makeup of the Territorial Senate and the makeup of the Territorial House. Our citizens here have not had the opportunity to view . . . a bicameral system of legislative bodies in action We know that our United States has become the freest, the fairest and the greatest nation on earth under the bicameral system, and I hope that this Convention will continue that form of legislative government.⁹²

After three and a half hours, the debate concluded with four concerned citizens speaking, two in favor of bicameralism and two in favor of unicameralism.⁹³ The *Fairbanks Daily News-Miner* reported that one of those citizens, Niilo Koponen of Chena Ridge, himself a defeated candidate for delegate, "brought a howl of laughter when he drily stated, 'I never could see much sense in hiring two bunches of politicians who went off to two sides of the hall and argued twice on the same question.'"⁹⁴

Though no formal vote was taken on the measure, thirty of the fifty-five delegates spoke on the matter, with only four expressing a preference for unicameralism and only two reporting being undecided.⁹⁵ The committee drafting the section of the constitution on the legislature appears to have taken this discussion as a charge to craft a two-house system. Weeks later, the committee produced a final document that included a two-house system and put it to the citizens without further discussion of unicameralism.⁹⁶

While proponents of the two-house legislature often cited the grand tradition of checks and balances inherent in bicameralism, the record suggests that the delegates were more persuaded by the ways that having two houses would suit Alaska's interests and needs of the time. Having two houses meant that Alaska would have a legislature with seats in one chamber apportioned based on geography—ensuring that the interests of rural voters would not be ignored. Having two houses

91. ATWOOD & DEARMOUND, *supra* note 56, at 26.

92. *23rd Minutes*, *supra* note 41.

93. *Id.*

94. *Delegates Show Preference for Two House Legislature*, FAIRBANKS DAILY NEWS-MINER, Dec. 1, 1955, at A1.

95. *Id.*

96. ALASKA CONST. art. II, § 1.

ensured that congressmen voting on statehood would not pause at a novel scheme put forth by a territory already considered eccentric.⁹⁷ Having two houses provided some guarantee that the people of Alaska would not reject the constitution produced by the Convention, stymieing statehood efforts. Those in favor of unicameralism relied largely on political theory. The body was quick to elevate achieving statehood and providing a workable government for a young state above governmental theory – bicameralism was the clear choice.

In the midst of the discussion of checks and balances and repetitive political practices, however, the fact that a bicameral system had not worked extremely well up to that point in Alaska was somewhat overlooked. The delegates that spoke in favor of unicameralism came primarily from urban centers and probably recognized the risks of a new state senate allowing representatives of a minority of the population to control the government, as had occurred in the territorial legislature. The debate accentuated the tension in the state between rural and urban voters – a unique feature of Alaska that persists today.

After seventy-five days of work, the Convention produced the Alaska Constitution in early 1956.⁹⁸ On April 24, 1956, the people of Alaska formally ratified the document.⁹⁹ That year, momentum increased for Alaska statehood with the appointment of a new Interior Secretary who supported the cause; in 1958, President Eisenhower came out in support of the effort.¹⁰⁰ In July of that year, he signed a bill granting Alaska statehood.¹⁰¹ In January of 1959, Alaska was formally admitted to the union by presidential proclamation, with the work of the Constitutional Convention serving as its governing document.¹⁰²

III. UNICAMERALISM IN AMERICAN HISTORY

Alaska's Constitutional Convention was not the first to discuss unicameralism – by the time the drafters of the Convention gathered, the debate over cameral choice in the United States had been raging for over a half century.

97. CLaus-M. NASKE AND HERMAN E. SLOTNICK, *ALASKA: A HISTORY OF THE 49TH STATE* 155 (2d ed. 1987).

98. *Id.*

99. *Id.*

100. *Id.* at 155–56.

101. *Id.* at 157.

102. *Id.*

A. Unicameralism in Early American Governments

After the American Revolution, ten of the thirteen original states had bicameral systems.¹⁰³ The three unicameral states quickly added second houses following the ratification of the Constitution.¹⁰⁴

The drafters of the Vermont Constitution borrowed heavily from Pennsylvania's system and included a unicameral legislature.¹⁰⁵ The State operated relatively harmoniously under the unicameral system from 1777 until 1835,¹⁰⁶ during which period leading newspapers repeatedly published editorials against the addition of a second house.¹⁰⁷ However, a bicameral system was eventually instituted amidst allegations that the one-house legislature had grown corrupt.¹⁰⁸

B. Unicameralism and the Twentieth Century Progressives

After Vermont's switch, unicameralism was primarily considered only by political theorists throughout the nineteenth century.¹⁰⁹ The concept was resuscitated in the early twentieth century by the Progressive reformers of state governments.¹¹⁰ Between 1912 and 1920,

103. James A.C. Grant, *The Bicameral Principle in the California Legislature*, in UNICAMERALISM IN PRACTICE: THE NEBRASKA LEGISLATIVE SYSTEM 182, 183-87 (Harrison Boyd Summers ed., 1937). Pennsylvania, Delaware, and Georgia were the three states with unicameral systems. *Id.*

104. *Id.*

105. Daniel B. Carroll, *The Unicameral Legislature of Vermont*, in UNICAMERALISM IN PRACTICE: THE NEBRASKA LEGISLATIVE SYSTEM, *supra* note 103, at 189-90.

106. *Id.* at 194.

107. *Id.* at 192-93. Newspaper editorials of the day also argued that bicameralism would, among other things: (1) eliminate conflict between the executive and legislative branches of government; (2) reduce the tendency of the unicameral legislature towards hasty, imprudent decisions; and (3) eliminate the inherently combative nature of the unicameral system. *Id.*

108. *Id.* at 194-95. The allegations of corruption arose out of the gubernatorial election of 1835, in which no candidate received a majority of the vote. *Id.* at 194. As a result, the legislature was left to decide a governor. *Id.* After twenty-four days, the session was unable to resolve the dispute and the lieutenant governor was allowed to serve out the term. *Id.* This episode led to claims that the legislature was bogged down in "bargaining for office," and within three years, a second house was added. *Id.*

109. James R. Rogers, *Judicial Review Standards in Unicameral Legislative Systems: A Positive Theoretic and Historical Analysis*, 33 CREIGHTON L. REV. 65, 69 (1999).

110. *Id.*

over one-third of all states considered, but ultimately rejected, some form of a unicameral system.¹¹¹

Those who advocated for unicameral systems cited various reasons, many of which would become familiar to Alaska's Constitutional Convention delegates. Senator George W. Norris of Nebraska, a leading Progressive, denounced the evils of the conference committee used in bicameral systems when two houses have passed different versions of the same bill.¹¹² Writing in 1935, Norris objected to the way that bills reported out of conference committees, without the possibility for subsequent amendment, which left legislators with few alternatives. "[Legislators] must accept the evil to get the good. If they want to reject the evil, they likewise must reject the good," Norris wrote.¹¹³ He also objected to the way that conference committees met in secret without a public record being kept.¹¹⁴ In response to those who claimed that this problem could be remedied by opening committee meetings to the public, Norris responded that no such opening had ever occurred in the history of state legislatures and that he doubted one would occur "because it would at once show to the public that the conference committee is in reality a third house, and that it is the most powerful one of the three."¹¹⁵ Finally, Norris asserted that a bicameral system was more likely to engender corruption and allow special interest groups to influence the political process.¹¹⁶ This was because the conference committee's pivotal role as the final hurdle in the legislative process meant "[a]ll that is necessary to prevent action is to be able to control two of the senate conferees, or two of the house conferees."¹¹⁷

Norris also argued that bicameralism was ill-suited for the purposes of state legislatures and resulted in an unnecessary duplication of functions. He pointed out that in Great Britain, Parliament had become bicameral because of a desire to represent the distinct interests

111. John P. Senning, *The One-House Legislature*, in UNICAMERALISM IN PRACTICE: THE NEBRASKA LEGISLATIVE SYSTEM, *supra* note 103, at 197–200. Oklahoma came the closest to adopting a unicameral system during this period, with voters supporting a 1914 ballot initiative creating one by a margin of 58% to 42%; however, state law required that the initiative pass with a majority of all ballots cast, and because 75,000 voters had expressed no preference, the measure was defeated. Rogers, *supra* note 109, at 70.

112. George W. Norris, *The One-House Legislature*, in UNICAMERALISM IN PRACTICE: THE NEBRASKA LEGISLATIVE SYSTEM, *supra* note 103, at 205–07.

113. *Id.* at 206.

114. *Id.*

115. *Id.* at 208.

116. *Id.* at 208–09.

117. *Id.* at 209.

of the nobility and the commoners.¹¹⁸ He argued that the drafters of the American Constitution had borrowed this model with the goal of the House of Representatives representing the general public and the Senate “elected from the wealthy, aristocratic class, to represent the aristocracy.”¹¹⁹ In the context of state legislatures, though, there were no clear divisions within the electorate that would necessitate two separate houses.¹²⁰ “There is no reason to give the two branches . . . the same authority to do the same thing, where they possess the same qualifications for office and where the work of the two bodies is identical.”¹²¹ Norris deemed it “illogical” that both houses had the same jurisdiction and performed the same functions.¹²²

Despite a strong Progressive influence in many states during the early part of the century, Norris was able to persuade only his home state to adopt the unicameral system. In a 1934 referendum, the voters of Nebraska overwhelmingly adopted a nonpartisan unicameral legislature at Norris’s behest.¹²³ In the aftermath of Nebraska’s change, a new flurry of interest was stoked in unicameralism, with twelve state legislatures considering unicameral proposals in 1935 and twenty-one state legislatures considering such proposals in 1937; none of the states chose to adopt such a system.¹²⁴

C. *Reynolds v. Sims* and Its Implications on the Debate

The unicameral movement got new momentum in 1964, when the Supreme Court announced its opinion in *Reynolds v. Sims*.¹²⁵ A year after announcing the “one person, one vote” doctrine in *Gray v. Sanders*,¹²⁶ the Court held that the Equal Protection Clause of the Fourteenth Amendment required that all state legislative districts be apportioned on a population basis.¹²⁷ Recognizing that its decision would make one

118. Norris, *supra* note 103, at 213.

119. *Id.* at 214.

120. *Id.* at 215.

121. *Id.*

122. *Id.*

123. Kim Robak, *The Nebraska Unicameral and Its Lasting Benefits*, 76 NEB. L. REV. 791, 799 (1997). The ballot initiative creating the unicameral won majority votes in eighty-four of Nebraska’s ninety-three counties and 1,956 of the state’s 2,029 precincts. *Id.*

124. Rogers, *supra* note 109, at 72.

125. 377 U.S. 533 (1964).

126. 372 U.S. 368, 381 (1963).

127. 377 U.S. at 576-77. The Court held that states could not merely follow the federal bicameral model when apportioning legislative seats because the federal model had grown out of a compromise between “separate and distinct

of the key justifications for having two houses in state legislatures obsolete, the Court offered some assurance of the continued vitality of bicameralism at the state level, explaining:

We do not believe that the concept of bicameralism is rendered anachronistic and meaningless when the predominant basis of representation in the two state legislative bodies is required to be the same—population. A prime reason for bicameralism, modernly considered, is to insure mature and deliberate consideration of, and to prevent precipitate action on, proposed legislative measures. Simply because the controlling criterion for apportioning representation is required to be the same in both houses does not mean that there will be no differences in the composition and complexion of the two bodies.¹²⁸

The Court then went on to list various measures the states could take to ensure “differing complexions and collective attitudes in the two bodies of a state legislature, although both are apportioned substantially on a population basis.”¹²⁹

Despite the Court’s assurances, *Reynolds* has been used to support consideration of unicameralism during the past four decades,¹³⁰ with proponents arguing that bicameral systems are unnecessary and redundant if they cannot provide an increased voice to voters living in sparsely populated areas.¹³¹

IV. THE LONE AMERICAN UNICAMERAL TODAY

Nebraska retains the only state legislature in the country operating with just one house. As such, it is useful to examine the legislature’s

governmental entities,” whereas, “[p]olitical subdivisions of States . . . never were and never have been considered as sovereign entities.” *Id.* at 574–75.

128. *Id.* at 576.

129. *Id.* at 577. The methods the Court cited included: (1) having one body composed of single-member districts and another composed of multi-member districts; (2) using different term lengths in the two houses; (3) making the size of the two chambers significantly different; (4) making the district sizes of one chamber much larger than that of the other chamber; and (5) apportioning one house “so as to balance off minor inequities in the representation of certain areas in the other house.” *Id.*

130. Professor Rogers reports that since *Reynolds*, the following states that considered unicameralism, either formally or informally, include: Florida, North Dakota, California, Montana, Minnesota, Mississippi, Hawaii, New York, Alaska, Connecticut, Iowa, South Dakota, Wisconsin, Maine, Massachusetts, Pennsylvania, and Vermont. Rogers, *supra* note 109, at 73–74.

131. See Robak, *supra* note 123, at 807 (“Bicameralism lost its main purpose after *Reynolds v. Sims* . . .”).

structure and the state's experience with unicameralism when considering a one-house system for Alaska.

A. The Structure and Procedure of the Nebraska Unicameral

The Nebraska legislature consists of one house with forty-nine members,¹³² all elected on nonpartisan ballots.¹³³ All legislators serve four-year terms, with half of the members up for election every two years.¹³⁴ Legislative committee assignments are made by the Committee on Committees, a twelve-member panel made up of three members from each of Nebraska's four congressional districts that existed in 1937.¹³⁵ Former Nebraska Lieutenant Governor Kim Robak notes that this committee safeguards the interests of rural voters in a legislature without a chamber with seats apportioned based on geography.¹³⁶

Legislation moves through Nebraska's unicameral in much the same way as it does in individual chambers of bicameral legislatures, but with two unique measures that ensure the legislature will not act excessively hastily: (1) after a piece of legislation's referral to committee, the committee considering it must hold a public hearing on the bill,¹³⁷

132. The previous system in Nebraska consisted of a 100-member House of Representatives and a 33-member Senate. Michael S. Dulaney, *History of the Nebraska Legislature*, NEBRASKA COUNCIL OF SCHOOL ADMINISTRATORS (Sept. 26, 2010, 11:35 PM), <http://legislative.ncsa.org/2010/09/history-of-the-nebraska-legislature/>.

133. NEB. CONST. art. III, § 1, 7. Norris believed making the unicameral nonpartisan would further ensure that the influence of lobbyists and special interest groups would be reduced and would more closely link legislators with their constituents, as each legislator would be required to campaign as an individual rather than as a member of a party. Robak, *supra* note 123, at 797-98. Another common objection to partisan state legislatures was that national political platforms had no place in the mundane issues of state governance. See Hugo F. Srb, *The Unicameral Legislature – A Successful Innovation*, 40 NEB. L. REV. 626, 632 (1961) (“How should partisan politics enter the picture when the consideration of building a good highway system is being considered, or the providing of a good educational system, or adequate care of unfortunates . . . ?”). While Nebraska simultaneously abolished a legislative house and made its legislature nonpartisan, these are distinct reforms that carry with them distinct costs and benefits. This Note's lone focus is on the potential effects of Alaska adopting a one-house system—the results of Nebraska's legislature becoming nonpartisan are beyond its scope. A separate study might be helpful should Alaska wish to consider making its legislature nonpartisan.

134. NEB. CONST. art. III, § 7.

135. NEB. UNICAM. R. 3 § 2(b) (2008).

136. Robak, *supra* note 123, at 801. To date, there has been no challenge to this form of geographic representation in a state legislature, despite the Court's holding in *Reynolds*.

137. NEB. UNICAM. R. 3 § 13 (2008).

and (2) each bill must receive four readings on the floor of the legislature, providing opportunities for debate and amendment.¹³⁸

B. Results of Nebraska's Switch to the Unicameral

1. *Cost savings*

In 1952, a study reported that the unicameral had led to reduced spending on the legislature.¹³⁹ Whereas in the last bicameral two-year session, ending in 1936, the total expenditure on legislative salaries was \$106,400; in 1952, the total expenditure for the two-year session was just \$75,000.¹⁴⁰ The same study also reported that the unicameral had led to savings between \$8,000 and \$10,000 per session stemming from the lower total number of legislators.¹⁴¹

Currently, Nebraska spends \$588,000 annually on legislative salaries,¹⁴² which is slightly greater than one-third of the 1936 figure, when the 1936 amount is adjusted for inflation.¹⁴³ With one of the lowest base annual salaries for legislators (\$12,000),¹⁴⁴ and the smallest number of seats of any American state legislature,¹⁴⁵ Nebraska's spending on salaries for legislators is among the country's lowest.¹⁴⁶

2. *No increase in legislative speed*

The unicameral has not proven to be more efficient than the old bicameral. The final five sessions of the bicameral legislature, which met only once every other year, lasted an average of ninety-three days.¹⁴⁷

138. NEB. CONST. art. III, § 14; NEB. UNICAM. R. 6 (2008).

139. Roger V. Shumate, *The Nebraska Unicameral Legislature*, 5 W. POL. Q. 504, 506 (1952).

140. *Id.*

141. *Id.* at 507.

142. NATIONAL CONFERENCE OF STATE LEGISLATURES, LEGISLATOR COMPENSATION 2009, <http://www.ncsl.org/Default.aspx?TabId=14785> (last visited Sept. 12, 2010).

143. When Nebraska's 1936 expenditure of \$106,400 is adjusted for inflation using the Bureau of Labor Statistics' Consumer Price Index, it comes to \$1,655,936.12. See BUREAU OF LABOR STATISTICS, INFLATION CALCULATOR, <http://data.bls.gov/cgi-bin/cpicalc.pl> (last visited Sept. 12, 2010).

144. NATIONAL CONFERENCE OF STATE LEGISLATURES, *supra* note 142.

145. NATIONAL CONFERENCE OF STATE LEGISLATURES, CONSTITUENT PER STATE LEGISLATIVE DISTRICT, <http://www.ncsl.org/LegislaturesElections/Redistricting/ConstituentsperStateLegislativeDistrict/tabid/16643/Default.aspx> (last visited Sept. 12, 2010).

146. In a normal year, Nebraska spends less on legislative salaries than any state except for New Hampshire, which pays its 424 legislators only \$200 per two-year session. NATIONAL CONFERENCE OF STATE LEGISLATURES, *supra* note 142.

147. Shumate, *supra* note 139, at 507.

The 1952 study reported that, from the change in 1937 to 1952, the biannual legislative session had lasted an average of 104.5 days.¹⁴⁸ In 1970, the number of legislative days was increased, as the unicameral began to meet annually, meeting for 90 days in odd numbered years and 60 days in even numbered years.¹⁴⁹

“In all probability . . . the increased length of regular sessions should be attributed to the more deliberate procedure adopted by the unicameral legislature,” the writer of the 1952 study speculated.¹⁵⁰ This hypothesis was based on the fact that, while the number of legislative days had increased since 1937, the average number of bills introduced during a session of the Unicameral from 1937 to 1952 was just 517, compared to an average of 908 bills introduced during the last five sessions of the Bicameral.¹⁵¹ Such evidence suggests that concerns over a unicameral legislature running slipshod over deliberative procedure and passing weak legislation without proper deliberation were unfounded. Instead, it appears as though the Unicameral has encouraged increased deliberation. This is probably the result of the extensive legislative procedure required by the Unicameral’s founders, most notably the public hearing requirement.¹⁵²

3. *Passage of Effective Legislation*

While it is difficult to measure the quality of work of any legislature, the 1952 study suggested that, in comparison to the pre-1937 bicameral legislature, the Unicameral had produced “fewer laws . . . declared unconstitutional . . . and fewer statutes . . . found to have ‘bugs’ or ‘jokers’ in them as a result of faulty draftsmanship or as a result of bills being shunted back and forth between two houses”¹⁵³ While it appears that no one has completed a similar review of the quality of the legislature’s work since 1952, the Nebraska Supreme Court has, in recent years, gained a reputation for judicial restraint.¹⁵⁴ Without a reliable, rational legislature to defer to, it is unlikely the Court could have developed this reputation.

148. *Id.*

149. NEB. CONST. art. III, § 10 (amended 1970, Laws 1969, ch. 415, § 1, p. 1424).

150. Shumate, *supra* note 139, at 507.

151. *Id.* at 508.

152. *Id.* at 509.

153. *Id.* at 508.

154. See, e.g., Richard F. Duncan, *Umpires Not Activists: The Recent Jurisprudence of the Nebraska Supreme Court* (FEDERALIST SOCIETY White Paper 2009), available at http://www.fed-soc.org/doclib/20090319_NebraskaWPMarch2009.pdf; Michelle L. Sitorius, Note, *The Political Question Doctrine: A Thin Black Line Between Judicial Deference and Judicial Review*, 87 NEB. L. REV. 793, 812 (2009).

Nebraska Supreme Court Justice John Garrard, a fifteen-year veteran of the state's highest court, stated that it was his belief that the Nebraska judiciary was not called upon to interpret statutory ambiguities or strike down unconstitutional statutes any more frequently than other states' courts of last resort, and that generally speaking, the legislature did not act too quickly.¹⁵⁵ Garrard suggested that this was due in large part to the legislature's veteran members serving as almost an upper-house, moderating the body when it tried to move too quickly.¹⁵⁶

4. *Public Satisfaction*

Finally, evidence suggests that there is general satisfaction among the electorate with the Unicameral. A 1996 study of the legislature reported that the majority of Nebraskans polled throughout the 1980s were satisfied with the legislature's work.¹⁵⁷ Pride in Nebraska's unique place as the only state with a unicameral legislature can be seen in a variety of places: (1) the fact that one of the final designs considered for Nebraska's state quarter in 2005 included the phrase "home of the unicameral;"¹⁵⁸ (2) the statements of Nebraska's politicians on the unicameral, like those of Robak, who wrote, "[O]ur system is far superior to partisan two-house systems;"¹⁵⁹ and (3) the lengthy internet materials that the legislature has published extolling the virtues of its unique system of governance.¹⁶⁰

V. CRITICISM OF UNICAMERAL SYSTEMS

Despite the popularity of the unicameral system within Nebraska, the bicameral system persists in all other states. While bicameralism's perseverance is probably at least partially attributable to tradition, there are theoretical objections to state legislatures being unicameral. The

155. Telephone Interview with Justice John Garrard, Nebraska Supreme Court (Apr. 21, 2010).

156. *Id.* Justice Garrard suggested that Nebraska's term limits on legislatures have, in recent years, had the unfortunate effect of diminishing the institutional memory necessary for the functional operation of a unicameral. He advised that any state considering such a system would not want to also borrow Nebraska's term limit model. *Id.*

157. Patrick J. O'Donnell, *A Unicameral Legislature*, 1996 J. AM. SOC. LEGIS. CLERKS AND SECRETARIES 8.

158. Scott Bauer, *Heineman To Receive Final State Quarter Designs Next Week*, LINCOLN JOURNAL-STAR, Apr. 26, 2005, at 1.

159. Robak, *supra* note 123, at 818.

160. See NEBRASKA LEGISLATURE, ABOUT THE LEGISLATURE, <http://nebraskalegislature.gov/about/about.php> (last visited Sept. 12, 2010).

three most important of these objections are: (1) that bicameral systems raise the costs of legislative action, ensuring that hasty decisions are not made; (2) that the bicameral legislative process better ensures factional legislation is not passed; and (3) in the absence of a bicameral system, ill-conceived policy will prevail absent some other check, like an active judiciary.

A. Bicameral Legislatures Ensure that Legislation Is More Carefully Considered Prior to Enactment

The first critique of the unicameral focuses on the value of the bicameral in ensuring that legislation is properly considered prior to its enactment. "There will almost surely be less government intervention, less hasty legislation, and more preservation of the status quo if proposals must pass two hurdles rather than one," writes Professor Saul Levmore.¹⁶¹

Levmore also argues that the conference committee actually functions to produce better legislation because it leads to more efficient logrolling.¹⁶² While in a unicameral system, final bargaining on the legislation must include all members of the body, the conference committee system allows for an entire legislative body to resolve most of the important issues associated with a piece of legislation and then bargain over the final outstanding differences between chambers by delegating bargaining power to a small group of members.¹⁶³ Levmore writes of conference committees, "interest groups may in the long run trade votes most efficiently in a single arena with relatively few players."¹⁶⁴

B. Bicameral Legislatures Better Ensure that Factional Legislation Is Not Enacted

Levmore notes that the bicameral ensures legislation is not enacted to serve only select, minority interests.¹⁶⁵ According to this theory, in a unicameral system, one-quarter of all voters can control the outcome of legislation (one-half of all voters in one-half of all legislative districts); a

161. Saul Levmore, *Bicameralism: When Are Two Decisions Better than One?*, 1992 INT'L REV. L. & ECON. 145, 151.

162. *Id.* at 150.

163. *Id.*

164. *Id.*

165. *Id.* at 151-52 (citing J. Buchanan, *Social Choice, Democracy, and Free Markets*, 62 J. POL. ECON. 114, 121-23 (1954)).

second chamber ensures that more than one-quarter of all voters are needed to dictate electoral results.¹⁶⁶

Professor James Rogers echoes this reason for having two houses. He argues, based on a theoretical model, that unicameral legislatures will always produce more factional legislation¹⁶⁷ than bicameral legislatures.¹⁶⁸ He then states that the increased cost of legislating in bicameral systems leads to an “incentive system that induces legislators to propose more equitable policies relative to unicameralism.”¹⁶⁹

There are two problems with this explanation for bicameralism’s persistence. First, Levmore points out that the presence of the executive veto also functions to ensure that legislation is enacted for the benefit of all, since the executive is elected to be the representative of the entire population.¹⁷⁰ Second, Rogers’s assumption that there are indifferent legislators who will vote in favor of a bill does not appear to be rooted in reality. In the routine rigors of politics, it is highly unlikely that any legislator will have nothing at stake in a vote—seldom if ever will a legislator be truly indifferent to a bill and vote blindly in support of it.

C. Unicameralism Can Only Succeed With Some External Check in the Legislative Process, Namely Heightened Judicial Scrutiny of Legislative Acts

Assuming, *arguendo*, that unicameral legislatures do produce legislation that is either imprudent or factional, scholars have reasoned that some extra-legislative safeguard must exist in the lawmaking process to ensure that the state is not plagued by bad laws.

166. Levmore, *supra* note 161, at 152.

167. Rogers, *supra* note 109, at 94–95. Factional legislation is considered legislation that benefits select citizens rather than the greater population. *Id.*

168. *Id.* Rogers’ model imagines a unicameral legislature consisting of three factions. He argues that a proposal introduced in a legislature in which one faction will receive all of the benefit of the proposal, and another district will bear the entire cost, will always pass because the third faction, receiving neither benefit nor cost, will vote with the benefitted faction, and the legislation would be supported by a 2:1 ratio. *Id.* However, in a bicameral system, if the same measure passed by one house is introduced in the second house by a legislator bearing the burden of the legislation, then the indifferent legislators will vote with the burdened legislators, thereby defeating the factional bill. *Id.*

169. *Id.* at 96.

170. Levmore, *supra* note 161, at 155. *See also* Robak, *supra* note 123, at 815–16 (“It is the Governor’s duty to ensure the popular view is taken and parochial interests do not control. As a statewide officeholder, the Governor is the true check and balance.”).

Levmore notes that the most immediate external check, which all legislation is already subjected to in every state, is the executive veto.¹⁷¹ This check relies upon only one actor, however, who is often subject to corruption, political whims, factionalism, or simply an unwise policy view. If the premise that unicameral legislatures produce weaker legislation is accurate, then this is an unsatisfactory remedy to this problem.

Rogers points to a second check which he argues is necessary for unicameralism to be successful, one which he argues Norris and his Progressive cohorts anticipated would exist—heightened judicial scrutiny of legislative actions.¹⁷² He points out that the rise of the early twentieth century Progressives advocating unicameralism coincided with the Supreme Court's endorsement of substantive due process.¹⁷³ Rogers writes, "It is precisely because courts were exercising a heightened review prerogative that Barnett (a Progressive writer of the era) concluded that the checks and balances provided by the second chamber were no longer necessary."¹⁷⁴ He argues that unicameral advocates expected that courts reviewing the actions of the new one-house chambers would frequently impose a rigorous means-ends analysis, demanding an empirical basis for the enactment of a particular piece of legislation.¹⁷⁵

However, *Lochner* was repudiated by the Supreme Court in 1937 and replaced by a rational basis standard of review for most legislative

171. Levmore, *supra* note 161, at 155.

172. Rogers, *supra* note 109, at 79–81.

173. *Id.* at 81–83. See *Lochner v. New York*, 198 U.S. 45 (1905) (holding that a New York statute regulating the working hours of bakers was void because it interfered with the "freedom to contract," implicit in the Due Process Clause of the Fourteenth Amendment).

174. Rogers, *supra* note 109, at 81 n.80 (quoting John P. Senning, *THE ONE-HOUSE LEGISLATURE*, 75–77 (1937) ("As judicial review became a rationalization of the sovereign will as expressed in the states' fundamental law, the people placed chief reliance upon the courts for protection against infringement of their rights by the legislature.")).

175. Rogers, *supra* note 109, at 84. Rogers writes,

Unicameral proponents lived in the *Lochner* world in which an activist judiciary reviewed the empirical basis for the ends and means of legislation. While the proponents objected to the specific results which they believed wrongly struck down Progressive legislation, the existence of an active judiciary played a critical role in the systems of checks and balances they outlined in unicameral constitutional systems

Id.

actions.¹⁷⁶ Rogers argues that in order to achieve the vision of the unicameral advocates—a single-house legislature with adequate external checks—state courts must be more active and demanding in their review of the legislature’s work.¹⁷⁷

While there is some logic to the notion that when one check in the legislative process is removed, a new check should be introduced to account for that loss, the above argument is not entirely convincing. Arguing that the judiciary should be quick to stand in and play an increased role in the policymaking process when a chamber is eliminated makes an erroneous assumption about the role of the courts. Judicial review is exercised based on constitutional provisions and should operate similarly regardless of the structure of the legislature. Without altering any of these provisions, such as a guarantee of due process, equal protection, or free speech, a court probably would have no basis for upsetting established precedent regarding the level of scrutiny it gives to legislative enactments.

VI. A UNICAMERAL FOR ALASKA?

As mentioned above, Alaskans did not completely dismiss the notion of the unicameral system after the defeat of the proposal in 1955. In recent years, several prominent Alaskans, as well as average citizens, have called for the creation of a unicameral system.

In 2002, former Alaska attorney general John Havelock wrote that a unicameral was an obvious choice in Alaska because it would abolish

176. See *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937) (holding that the State was free to establish a minimum wage law, despite its infringement on the previously identified freedom to contract).

177. Rogers, *supra* note 109, at 103 (suggesting that state courts review all legislative acts to determine if they have a “substantial relation” to an actual, legitimate governmental purpose, or a legitimate governmental purpose that could have been reasonably presumed to have motivated an impartial legislature”). This proposed scrutiny level closely resembles the Supreme Court’s intermediate level scrutiny of its Equal Protection Clause jurisprudence, which is applied to state actions that classify based on gender. See *United States v. Virginia*, 518 U.S. 515 (1996) (holding that a state’s policy of denying females admission to a military college was an unconstitutional violation of the Equal Protection Clause because the state failed to demonstrate that the state’s important governmental objectives in denying admission to women were substantially related to the discriminatory policy). The only distinction between Rogers’s proposed standard and the Court’s intermediate level of review is that the Court looks only to what actually motivated the legislature, *id.* at 532–33, while Rogers allows for reviewing courts to look to either: (1) what actually motivated the legislature; or (2) what could be presumed to have motivated the legislature, Rogers, *supra* note 109, at 103. As a result, Rogers’s proposal would create a default level slightly less rigorous than intermediate scrutiny.

the anachronistic senate, which was beholden to special interests.¹⁷⁸ Of the smaller districts that would result from a one-house system, Havelock wrote that it would lead to “substituting shoe leather for greenbacks as campaign energy. Smaller places would enjoy undivided representation.”¹⁷⁹

Former Alaska governor and United States Interior Secretary Wally Hickel was a fierce advocate for Alaska’s adoption of the unicameral. In 2007, he wrote a column stating that the current legislature was “in shambles” due to its being beholden to lobbyists and an entrenched political machine.¹⁸⁰ He suggested that Alaska adopt a unicameral system as a means of opening up the legislative process and restoring trust in Alaska’s government.¹⁸¹ In 2009, Hickel wrote that a unicameral legislature would better allow for the formation of coalitions between urban and rural representatives and Democrats and Republicans.¹⁸² He stated that modern issues demanded the type of teamwork that a unicameral would engender.¹⁸³ Of the Nebraska model, Hickel stated, “[It] has worked well and would fit independent-minded Alaskans whose shared values and aspirations rarely show up in national party platforms.”¹⁸⁴

The following imagines what an effective unicameral legislature might look like in Alaska—a chamber of sixty members elected to four year terms with increased procedure designed to ensure the body’s deliberativeness. It then considers the reasons why Alaskans should adopt such a system and why they should be hesitant to adopt a unicameral.

A. The Look of an Alaskan Unicameral

Since 1993, four bills have been introduced in the House of Representatives that would have amended the Alaska Constitution to create a unicameral legislature.¹⁸⁵ None has survived its House

178. John Havelock, *Anachronistic Senate Should Go*, ANCHORAGE DAILY NEWS, July 1, 2002, at B4.

179. *Id.*

180. Wally Hickel, *It’s Time to Overhaul Our Legislature*, ANCHORAGE DAILY NEWS, Sept. 30, 2007, at H2.

181. *Id.*

182. Wally Hickel, *Bold Action Is Needed In Trying Times*, ANCHORAGE DAILY NEWS, Mar. 1, 2009, at B4.

183. *Id.*

184. *Id.*

185. See H.R.J. Res. 36, 25th Leg., 2d Sess. (Alaska 2008); H.R.J. Res. 11, 20th Leg., 1st Sess. (Alaska 1997); H.R.J. Res. 2, 19th Leg., 1st Sess. (Alaska 1995); H.R.J. Res. 2, 18th Leg., 1st Sess. (Alaska 1993).

committee assignment.¹⁸⁶ Nonetheless, the failed legislation provides the beginning of a model for an Alaska unicameral. From this model, one can assess the merits and problems associated with implementing such a system in Alaska.

The most recent unicameral proposal, H.R.J. 36 of 2008, proposed that the unicameral legislature consist of sixty senators elected to four-year terms (with half of the body subject to election every two years)¹⁸⁷ from districts drawn by the Redistricting Board.¹⁸⁸ This model would maintain the total current number of legislative seats.¹⁸⁹ While some, including Havelock, have suggested that seats might be added to the legislature should it become just one house,¹⁹⁰ doing so may make the body potentially too large for manageable debate. Furthermore, it might add significant expense in the form of additional legislative staff, salaries, and travel expenses. Therefore, this Note analyzes the possibility of a sixty-member unicameral legislature for Alaska.

This most recent proposal kept the actual legislative process within the new unicameral substantively identical to the process that currently exists within each single chamber.¹⁹¹ However, in order to assuage the fears of those who think a unicameral legislature will act too quickly, a future proposal should include the two legislative pace-slowng mechanisms found in Nebraska's Constitution: requiring four floor readings of a bill before passage and public hearings for all bills before they are reported out of committee.¹⁹²

B. Why Alaska Should Adopt a Unicameral

1. *One of the Constitutional Convention's primary reasons for adopting the present bicameral system is now obsolete*

As described above, Alaska's Constitutional Convention delegates were very concerned with ensuring that Alaskans living in rural areas had an equal voice in the government.¹⁹³ To do this, they adopted a bicameral system with seats in the upper house apportioned based on

186. *Id.*

187. This term length has worked satisfactorily in the Alaska Senate, and it would presumably work effectively in a unicameral legislature.

188. Alaska H.R.J. Res. 36.

189. Currently, Alaska's Senate has twenty members, and the House of Representatives has forty members. ALASKA CONST. art. II, § 1.

190. Havelock, *supra* note 178.

191. Alaska H.R.J. Res. 36.

192. See Robak, *supra* note 123, at 802.

193. See NASKE, *supra* note 31, at 264-71.

geography.¹⁹⁴ However, in the wake of *Reynolds*,¹⁹⁵ Alaska was left with two houses that were both apportioned based on population.¹⁹⁶ This decision resulted in no safeguard in the apportionment stage for protecting the interests of rural voters.

There are other means of allotting legislative authority based on geography that Alaska could adopt that would not violate the rule from *Reynolds*. For example, Alaska could require that each region of the State be represented on the legislature's most influential committee by at least one senator, as Nebraska does.¹⁹⁷ However, such a proposal could be implemented in either a bicameral or unicameral system—a unicameral legislative system does not provide unique ways for states to circumvent *Reynolds* and engage in geographic representation. Therefore, the Court's rule from *Reynolds* does not add a new reason to adopt a unicameral legislature. Rather, it negates one of the primary reasons that delegates cited for adopting a bicameral system, thereby bolstering the case for the unicameral.

2. *Under a unicameral legislature, legislators would have smaller districts enabling them to be more responsive to constituent needs*

Alaska currently has sixty legislative districts—twenty Senate Districts and forty House Districts¹⁹⁸—spread across 663,268 square miles,¹⁹⁹ making the average Senate District 33,163 square miles and the average House District 16,581 square miles. In comparison, the average Senate District in the next largest state, Texas, is only 8,671 square miles²⁰⁰—almost half the size of the average district in Alaska's larger chamber.²⁰¹

194. *Id.*

195. 377 U.S. 533 (1964).

196. ALASKA CONST. art. II, § 1; ALASKA CONST. art. VI, §§ 1-3, amended by H.R.J. Res. 44, 20th Leg., 2d Sess. (Alaska 1998). The State had been operating under population-based apportionment since 1972, when the state supreme court ruled that both houses of the legislature must be apportioned based on population. *Egan v. Hammond*, 502 P.2d 856 (Alaska 1972).

197. Robak, *supra* note 123.

198. ALASKA CONST. art. II, § 1.

199. OXFORD ATLAS OF NORTH AMERICA, 121 (H. J. de Blij ed. 2005).

200. The Texas Senate consists of 31 members, TEXAS CONST. art. III, § 2, representing a total of 268,820 square miles, OXFORD ATLAS OF NORTH AMERICA, *supra* note 199, at 161.

201. Examples of large districts include: (1) Senate District R, stretching almost the entire width of the State, from the border with Canada to about 150 miles inland from the Bering Sea—some 700 miles, and also reaching 530 miles from north to south; (2) House District 40, reaching almost the entire length of the Alaska Peninsula and the Aleutian Islands—with 1,000 miles approximately separating the district's westernmost and easternmost points; (3) Senate District S, stretching almost 900 miles across the northern and western parts of the State,

These exceedingly large districts, along with Alaska's varying terrain, harsh climate, low population density, and diverse local interests, pose particular challenges for legislators representing these large rural districts. In interviews with legislators, it appeared that the most daunting of these challenges lies in traveling across the districts, which is necessary to engage constituents. Senate Minority Leader Con Bunde reported that representatives from these large districts often are unable to reach many of the communities within their districts in conventional vehicles—they must rely upon small airplanes, boats, ferries, or even all-terrain vehicles.²⁰² Such travel can be time consuming and costly. With each member allotted the same expense budget intended to cover travel regardless of district size,²⁰³ members representing larger districts have much greater difficulty providing quality representation through constituent contact than those representing more compact, urban areas. As a result, many Alaskans in rural districts are forced to accept less person-to-person contact with their legislators. Representative Paul Seaton stated that the two villages and one town in his district that are inaccessible by roads are “mostly contacted via phone, email, or when their contact folks (municipal leaders) visit Homer (the largest town in his district).”²⁰⁴ While legislators describe making extra efforts to provide non-in-person communication with rural voters,²⁰⁵ it is inarguable that a vital part of the democratic process—personal communication with voters—is sacrificed to some extent in these large districts.

In addition to causing travel difficulties, large districts with diverse interest groups pose problems for legislators trying to represent the

and covering more square miles than the entire State of Texas. See ALASKA REDISTRICTING BOARD, AMENDED FINAL REDISTRICTING PLAN 1 (2002), available at <http://www.juneauempire.com/legislature/stories/statewide.pdf>.

202. E-mail from Sen. Con Bunde, Minority Leader, Alaska Senate, to author (Dec. 10, 2009, 21:33:00 EST) (on file with author).

203. ALASKA STAT. § 24.10.110 (2009). Legislators can also seek state funding for travel expenses within their districts provided that it is for state business. Telephone Interview with Sen. Johnny Ellis, Alaska Senate (Dec. 10, 2009). However, Rep. Bill Thomas described this funding as subject to some variability depending upon the political climate. Telephone Interview with Rep. Bill Thomas, Alaska House of Representatives (Dec. 17, 2009).

204. E-mail from Rep. Paul Seaton, Alaska House of Representatives, to author (Dec. 19, 2009, 17:03:00 AKST) (on file with author).

205. Rep. Seaton reported that he sends out a weekly e-mail newsletter to interested constituents (approximately 600) and prints copies of the newsletter to send to the district's libraries and senior citizens' centers. *Id.* Rep. Thomas said that he relies primarily on the telephone and email to communicate with his most rural constituents. Rep. Thomas, *supra* note 203.

needs of their constituents. This challenge is seen in two aspects of the representative process.

First, legislators in large districts are more likely to have constituent groups with vastly different opinions on key issues because their communities are separated by considerable distances. Describing this diversity of interests as the greatest challenge in representing his large district, Representative Seaton writes:

For example, my largest community, Homer, likes economic development in small business and small project size and is extremely environmentally sensitive—[it is] the only nuclear free zone in Alaska, [it] already has a climate change task force and [it has] officially adopted a sustainability plan. My second largest community, Seward, likes large projects and any economic development, including the only maximum security prison in the State and an export coal port, and was hoping for a huge storage terminal for gas and diesel coming to Alaska by tanker.²⁰⁶

Second, in a large district with hundreds of communities, it becomes very difficult for a legislator to secure an appropriation that will serve a large swath of her district. Senate Majority Leader Johnny Ellis stated that he can hypothetically secure an appropriation for a public park that will provide benefit for his entire Anchorage district. Ellis then noted that if a rural legislator were to bargain for an appropriation for a new sewer system for one of his villages, he would have hundreds of other villages upset that he did not provide new sewer systems for them as well.²⁰⁷ Because rural legislators cannot possibly secure unique appropriations for each of the villages within their districts during each budgeting process,²⁰⁸ they are forced to place the needs of one set of constituents ahead of another. Urban legislators, on the other hand, are able to provide for all constituents with each appropriation.

While the problem of very large districts in Alaska will persist so long as *Reynolds* remains, a unicameral system would lead to somewhat more manageable, smaller districts. Under the current bicameral system, rural Alaskans have two representatives in the legislature. However, these legislators, a senator and a representative, both have large districts

206. Rep. Seaton, *supra* note 204.

207. Sen. Ellis, *supra* note 203.

208. Rep. Seaton stated that he requires each community to prioritize its needs in advance of the budget process and that he attempts to spread appropriations across his district as best as he can, based on this local prioritization. Rep. Seaton, *supra* note 204.

that cover the same area, with the senator's district being slightly larger. Under a unicameral system, a voter would have only one representative, but his representative would represent a unique part of Alaska and serve a smaller district. With sixty legislative districts spread across the State, the average district would be only 11,054 square miles. In addition to having smaller districts geographically, each legislator would have fewer constituents to represent. Whereas currently each senator represents an average of 31,347 Alaskans and each House member represents an average of 15,673 Alaskans,²⁰⁹ each district would have an average population of just 11,491 in a sixty-member unicameral.

With geographically smaller and less populous districts, legislators: (1) could devote more time to traveling to communities difficult to reach; (2) could give individual constituent needs greater attention; (3) might serve more homogenous interests within these communities; and (4) might be able to better attain appropriations that would serve larger portions of their districts.²¹⁰

3. *A unicameral legislature would be more publicly accountable and might reduce corruption within the legislature*

Proponents of the unicameral argue that a unicameral system would reduce legislative corruption in two ways.²¹¹ First, it would require that important legislative actions take place on the chamber's floor, rather than in conference committee.²¹² Second, it would make it more difficult for a special interest group to influence the outcome of legislation.²¹³ Whereas currently an interest would only need to influence eleven senators to kill a bill (or just two conferees), under a sixty-member unicameral system a group would need to change the votes of thirty-one legislators. In advocating for a unicameral system, *Anchorage Daily News* editor Michael Carey wrote, "A unicameral legislature also would be more accountable. Without a senate, lawmakers could no longer point their fingers down the hall to blame the other guy for increasing the budget, delaying the session, killing

209. NATIONAL CONFERENCE OF STATE LEGISLATURES, CONSTITUENTS PER STATE LEGISLATIVE DISTRICT 1 (2009), <http://www.ncsl.org/LegislaturesElections/Redistricting/ConstituentsperStateLegislativeDistrict/tabid/16643/Default.asp>.

210. The problem of large districts could also be addressed by simply adding members to the existing House and Senate. However, doing so would also mean added expense. The unicameral proposal allows for Alaskans to receive more personal representation in a smaller district, while simultaneously reducing the total number of legislators, leading to financial savings for the State.

211. *See supra* Part III.B.

212. *Id.*

213. *Id.*

important legislation. Lawmakers would lose a major excuse for their failures.”²¹⁴ Carey further argued that abolishing the Senate would also rid the state of the backroom deal making nature of the upper chamber. He wrote of the Senate, “The body’s important business is done through private arrangements. Senators can sit on a bill for months then suddenly there’s a deal and it’s off to the floor where it passes with minimal discussion.”²¹⁵

In recent years, Alaska has been the subject of a federal investigation into corruption that has led to the convictions of four former state legislators.²¹⁶ The adoption of a unicameral legislature might be a useful tool in restoring public confidence in the integrity of government. A unicameral legislature would raise the cost of future bribery attempts and ensure that legislative activity is done in an open setting.

4. *Alaska’s judiciary will strike down unconstitutional legislation*

The Alaska Supreme Court’s interpretation of the Alaska Constitution’s Equal Protection Clause²¹⁷ has led to much more rigorous review of statutes than has the United States Supreme Court’s interpretation of the substantially similar Federal Equal Protection Clause.²¹⁸ The United States Supreme Court has adopted a three-tiered approach for reviewing laws that classify individuals. It reserves its most rigorous scrutiny for statutes which make “suspect classifications”²¹⁹ or those which infringe upon “fundamental rights,”²²⁰

214. Michael Carey, *Alaska Needs a Unicameral Legislature*, ANCHORAGE DAILY NEWS, May 11, 1993, at E6.

215. *Id.* While there is nothing structural about a unicameral that would make it any less prone to deal making outside of the legislative chamber, abolishing the culture of the Senate could be an important step towards creating a more transparent government for the State.

216. *See generally* FBI Investigations into Alaska Politics, ANCHORAGE DAILY NEWS, <http://www.adn.com/news/politics/fbi/>. The federal investigation related to the official actions of several Alaska state legislators in matters pertaining to the oil industry, private fishing industry, and private corrections industry. Investigators believed that legislators had corrupt ties with executives of an oilfield services company. The probe led to the indictments of five current and former Alaska legislators.

217. ALASKA CONST. art. I, § 1 (“[A]ll persons are equal and entitled to equal rights, opportunities, and protection under the law . . .”).

218. U.S. CONST. amend. XIV, § 1 (“No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.”).

219. *E.g.*, *Loving v. Virginia*, 388 U.S. 1 (1967) (holding that race is a suspect classification warranting strict scrutiny).

220. *E.g.*, *Skinner v. Oklahoma*, 316 U.S. 535 (1942) (holding that the right to marriage is fundamental, warranting strict scrutiny).

and subjects most other statutes to rational basis review.²²¹ However, the Alaska Supreme Court has developed a sliding scale approach that determines the level of scrutiny that it will apply to a statute. The Court considers the importance of the individual rights asserted by the statute's challenger and reviews the suspicious nature of the classification scheme.²²² Based on this formula, the Alaska Supreme Court has struck down statutes after finding that they unnecessarily denied an important right to an individual. This is true even when the statute did not make a suspect classification or infringe upon a fundamental right under federal jurisprudence.²²³

The court has also tended to strike down statutes under the Due Process Clause of the Alaska Constitution.²²⁴ The state judiciary has followed the Supreme Court and stated that the default level of review for a statute said to interfere with due process is the deferential rational basis review, reserving strict scrutiny for statutes that interfere with a fundamental right.²²⁵ The court, however, has been willing to find

221. *E.g.*, *Ry Express Agency, Inc. v. New York*, 336 U.S. 106 (1949).

222. *E.g.*, *State v. Ostrosky*, 667 P.2d 1184, 1192-93 (Alaska 1983) ("In contrast to the rigid tiers of federal equal protection analysis, we have postulated a single sliding scale of review ranging from relaxed scrutiny to strict scrutiny. The applicable standard of review for a given case is to be determined by the importance of the individual rights asserted and by the degree of suspicion with which we view the resulting classification scheme.").

223. *E.g.*, *Turner Constr. Co. v. Scales*, 752 P.2d 467, 471-72 (Alaska 1988) (holding that a six-year statute of repose for bringing tort actions against architectural design professionals violated the equal protection clause because it interfered with the right to be protected from negligent construction and the State had failed to show why imposing a six-year limitation would accomplish the goal of encouraging construction); *City of Valdez v. 18.99 Acres*, 686 P.2d 682, 691-92 (Alaska 1984) (holding that a statute fixing pre- and post-judgment interest rates in "quick-take" condemnation proceedings at a low six percent was unconstitutional because there was no empirical basis for charging the State the lower rate when it used that proceeding); *Alaska Pac. Assurance Co. v. Brown*, 687 P.2d 264, 273-74 (Alaska 1984) (holding that a Worker's Compensation Insurance statute, which allowed an insurer to adjust benefit payments when the payee relocates to a state with a presumed lower cost of living was an unconstitutional violation of equal protection because it infringed upon: (1) the right for qualifying individuals to receive insurance benefits, and (2) the right to travel. The court held that the State's asserted interest in encouraging people to return to work and remain in the state and to continue receiving insurance benefits did not justify the measure because the State had not shown that the reduction in benefits allowed actually reflected lower costs of living in other states); For a discussion of these cases, see Paul E. McGreal, *Alaska Equal Protection: Constitutional Law or Common Law?*, 15 ALASKA L. REV. 209 (1998).

224. ALASKA CONST. art I. § 7.

225. *See Concerned Citizens v. Kenai Peninsula Borough*, 527 P.2d 447, 452 (Alaska 1974) (holding that the legislature's creation of a hospital service zone

additional fundamental rights that are not explicit in the Alaska Constitution. In *Baker v. City of Fairbanks*,²²⁶ the court extended the constitutional right to a jury trial:

We are under a duty, to develop additional constitutional rights and privileges under our Alaska Constitution if we find such fundamental rights and privileges to be within the intention and spirit of our local constitutional language and to be necessary for the kind of civilized life and ordered liberty which is at the core of our constitutional heritage.²²⁷

Citing *Baker*, the court has found unconstitutional: (1) a statute that required individuals who had had sex offenses set aside to still enter their names in a registry;²²⁸ (2) the policy of a state-funded hospital to refuse to perform elective abortions;²²⁹ and (3) a statute automatically revoking the driver's license of those found guilty of underage consumption of alcohol.²³⁰

While some have argued that the Alaska judiciary has unnecessarily and unpredictably thrust itself into the policymaking role,²³¹ such judicial activity would be beneficial should Alaska change to a unicameral system. As noted above, there is no merit to the argument that a judiciary should alter its jurisprudence based on a change in the structure of a coordinate branch. However, should a unicameral legislature begin to produce statutes that infringe upon the rights of any Alaska citizens or prove to be harmful to the State's overall health, it seems quite likely that Alaska's courts would strike down such statutes within existing review frameworks.

was not an arbitrary act and survived rational basis scrutiny, despite the objections of local taxpayers).

226. 471 P.2d 386 (Alaska 1970).

227. *Id.* at 402.

228. *Doe v. Dep't of Pub. Safety*, 92 P.3d 398, 404 (Alaska 2004).

229. *Valley Hosp. Ass'n v. Mat-Su Coal. for Choice*, 948 P.2d 963, 969 (Alaska 1997) ("[R]eproductive rights are fundamental . . .").

230. *State v. Niedermeyer*, 14 P.3d 264 (Alaska 2000) (holding that the State had not met its burden of showing that there was an empirical link between the evil sought to be prohibited and the sanction imposed, and therefore criminal process was required before the State could impose such a punishment).

231. *See McGreal, supra* note 223, at 274 ("The court appears to use a pure means-end analysis that is unguided by any constitutional principle related to equality [T]he court has not developed a principled approach to means-end analysis, and instead registered its agreement or disagreement with particular statutes.").

C. Reasons Alaska Should Be Hesitant to Adopt a Unicameral System

1. *Due to Alaska's population distribution, large legislative districts would not be altogether eliminated*

While a unicameral system would reduce the size of legislative districts on the whole, legislators representing urban areas would still have much smaller districts because the federal constitution mandates proportionality. Legislators representing rural districts would, on the whole, still have much more territory to represent. If Alaska's rural voters are to live in a smaller district with a representative more accountable to their needs, new district lines will have to be drawn so large rural territories are not attached to urban districts. Such an arrangement would increase the power of urban voters at the expense of rural Alaskans. Instead, the state would need to draw urban districts in as compressed a manner as possible and then equitably distribute the rural districts in a way that attempts to minimize the size and diversity of interests of each one.

The Alaska Constitution envisions a system that does not include the type of gerrymandering by the state legislature that occurs in other state's redistricting battles. Instead, it allows for reapportionment by a non-partisan, five-member Redistricting Board, consisting of two members appointed by the governor, one by the presiding officer of the Senate, one by the presiding officer of the House, and one by the State's Chief Justice.²³² While such a system might be more likely to craft a plan that would maximize smaller districts for rural voters than would a system where the legislature is entrusted with drawing its own lines, the significant risk of the board being dominated by urban Alaskans creates a good chance that the lines would not be drawn in a way to reduce the size of the rural districts.

2. *The conference committee structure is not currently subject to great abuse*

Currently, the legislature's Uniform Rules provide for a three-part process of convening conference committees in the event that the two chambers pass different versions of a bill and one chamber refuses to recede from its version.²³³ First, a conference committee must be convened with three members from each chamber (appointed by the chamber's presiding officer), gathering only to agree to include

232. ALASKA CONST. art. VI, § 8.

233. UNIF. R. ALASKA STATE LEGIS. 42.

previously adopted amendments in one of the chamber's bills.²³⁴ If the committee is unable to reach agreement, or if a chamber rejects the bill reported out of conference, then the committee is given "limited powers of free conference" to introduce new amendments only on specific points of contention.²³⁵ If the committee still cannot produce a satisfactory bill, a new, free conference committee, convened in the same manner, is authorized to "suggest in its report any new amendments clearly germane to the question" in order to produce an acceptable piece of legislation.²³⁶

This exhaustive procedure ensures that legislators appointed to conference committees will not be able to hijack legislation by including provisions in bills that were not adequately considered in open debate. It ensures that Alaska's conference committees do not become de facto unicameral legislatures, as Norris warned against.

Further, not many bills other than the annual budget make it to conference committees.²³⁷ During the last five completed legislative sessions from 1999 to 2008, just fifty-six, or four percent of 1,256 passed bills went to conference committee, with over half of those being appropriations bills.²³⁸ The overwhelming majority of substantive legislation passed in Alaska is done through the open process of floor debate, without convening a conference committee.

In the infrequent cases where conference committees are convened, they are open to the public. The conference process was described by interviewed legislators as being fairly responsive to the needs of the general legislative bodies. Senate Minority Leader Bunde stated, "In general, I believe that on a state level, the conference committee process represents the majority of legislators, much better than perhaps at the federal level."²³⁹

234. *Id.*

235. *Id.*

236. *Id.*

237. Given the intricacies involved in the crafting of a state's budget, it seems logical that the final negotiations would take place not on a legislative floor, but rather in a small committee setting, which is better suited for collaborative negotiation. Even if a unicameral system were adopted, some sort of small committee likely would still have to be convened to resolve disputes in the budgeting process. Therefore, the analysis of the use of conference committees is limited to their use in non-budgetary matters.

238. See THE ALASKA STATE LEGISLATURE, BILLS & LAWS 1 (2010), <http://www.legis.state.ak.us/basis/start.asp>. The legislature's website provides a tab for each session since 1993, each of which includes lists of all bills sent to conference committees during those sessions.

239. Sen. Bunde, *supra* note 202.

Two legislators did state that on occasion, the actions of conference committees are preordained by legislative leadership, making the conference committee's deliberations perfunctory. Representative Seaton stated that he had served on two conference committees, one of which included a fully public negotiation, while the other consisted entirely of reaching predetermined agreements.²⁴⁰ He said that he felt that the type of conference committee generally depends upon legislative philosophies of the chambers' presiding officers.²⁴¹ Senate Majority Leader Ellis reported that there are occasional complaints about orchestration that occurs prior to conference committees by legislative leadership, but when the matter is of great public policy importance, all legislators go to great efforts to keep the process as transparent and open as possible.²⁴²

Though the conference committee can potentially turn the open legislative process into an exercise in behind-closed-doors horse-trading, this appears to occur highly infrequently in Alaska, if at all. Therefore, concern over the power of conference committees cannot justify revamping Alaska's legislative system.

3. *The gubernatorial veto would probably not be an adequate check on an unwise legislature*

The governor is the most immediate check upon the legislature because the Alaska Constitution gives him the power to veto bills produced by the legislature, either entirely or in part.²⁴³ The veto power, however, has been used infrequently. During the last five legislative sessions, a period which has coincided with the terms of three different governors, one Democrat and two Republicans, only twenty bills have been partially vetoed and eighteen bills have been entirely vetoed.²⁴⁴ Only three percent of all bills passed by the legislature during this period failed to receive the governor's approval—an even lower number than the percentage of bills referred to conference.²⁴⁵ These numbers indicate that Alaska's governors traditionally defer to the wisdom of the legislature when considering passed bills. Given such a tradition of deference, it is unlikely that the executive could be relied upon to impose a significant check in the lawmaking process.

240. Rep. Seaton, *supra* note 204.

241. *Id.*

242. Sen. Ellis, *supra* note 203.

243. ALASKA CONST. art. II, § 15.

244. THE ALASKA STATE LEGISLATURE, *supra* note 238.

245. *Id.*

4. *Alaskans are familiar with the two-house structure that has been in place since the constitution's drafting*

Abolishing an entire house of a state's legislature is a radical move that could provoke a fierce public outcry. Despite the reasons in favor of adopting the unicameral, they will be moot should the citizens of Alaska decide that there is no need to alter the existing system. There are several potential reasons that individuals might be hesitant to make such a change, including: (1) close and effective relationships between representatives and senators representing the same constituents; (2) satisfaction of constituents having two voices and two representatives to provide them with government-related services, rather than just one; and (3) deference to the work of the drafters of the constitution and to their wisdom in setting up what has for the most part proven to be an effective governing framework.

VII. CONCLUSION

There are more reasons described for Alaska to switch to a unicameral system than there are reasons for retaining the existing bicameral legislature. However, this Note merely seeks to generate thought about the most practical and effective way for Alaskans to govern themselves as they face the second half-century of statehood.

During Alaska's five decades of statehood, it has proven to be a free-thinking state that places little value on blindly emulating the other forty-nine states. Some will argue that a system in use in forty-nine of the fifty states surely must be the most effective. Yet Alaska—in the decisions of its courts, the actions of its legislature, the very progressive clauses in its constitution, and the general attitude of its people—has demonstrated a great capability to be a model for the rest of the country. It has lived into Justice Brandeis's famous exhortation that each state should "serve as a laboratory [of democracy]."²⁴⁶ What greater experiment in state government could Alaska take on than this one? Should Alaskans decide to engage in this experiment, they would have Nebraska as their model and would, at the same time, be a model for other states—demonstrating that even amidst the political gridlock and economic turmoil of the early twenty-first century, innovation for more effective government can still be implemented.

246. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1962) (Brandeis, J., dissenting).