

ALASKA STATE LEGISLATURE
LEGISLATIVE COUNCIL
March 10, 2020
9:00 AM

MEMBERS PRESENT

Senator Gary Stevens, Chair
Representative Louise Stutes, Vice Chair
Senator Tom Begich
Senator John Coghill
Senator Cathy Giessel
Senator Lyman Hoffman
Senator Bert Stedman
Senator Natasha von Imhof
Representative Bryce Edgmon
Representative Neal Foster
Representative DeLena Johnson
Representative Jennifer Johnston
Representative Chuck Kopp
Representative Steve Thompson

MEMBERS ABSENT

OTHER MEMBERS PRESENT

Representative Drummond

AGENDA

Call to Order
Ranked-Choice Voting Initiative Hearing per AS 24.05.186
Adjourn

SPEAKER REGISTER

Cori Mills, Attorney, Department of Law
Megan Wallace, Director, Legal Services, Legislative Affairs Agency
Noah Klein, Counsel, Legal Services, Legislative Affairs Agency
Gail Fenumiai, Director, Division of Elections

9:01:01 AM

I. CALL TO ORDER

CHAIR STEVENS: called the Legislative Council meeting to order at 9:01am in the State Capitol's Senate Finance Committee Room and requested a roll call vote. Present at the call were: Senators Begich, Coghill, Giessel, Hoffman, Stedman, Stevens, von Imhof; Representatives Edgmon, Foster, Johnson, Johnston, Thompson, Stutes. Representative Kopp joined the meeting at 9:24am. 13 members present.

II. Ranked-Choice Voting Initiative Hearing

CHAIR STEVENS: Today we're going to comply with Statute 24.05.186 in the course of the Legislature to hold a hearing on any proposal, any initiative proposed, and the purpose of this meeting is to comply and satisfy that requirement.

Several individuals have been called to testify to us, to speak to us, present at the meeting from the Department of Law, Division of Elections, and Legislative Legal. Cori Mills from the Department of Law is here with us. We also have Megan Wallace, Noah Klein from the Legislative Legal, and then Gail Fenumiai.

Just before we begin, if you'd look at your packet, on the fourth page from the end there's this chart from the very end, and it's to show the cost of this issue, but this is the wrong chart. So ignore that one, and Ms. Fenumiai and I will give us the right figure. So let's begin with the Department of Law. Cori Mills, if you would come forward. Thank you for being with us. State your name for the record, please.

MS. MILLS: Good morning. Cori Mills, Assistant

Attorney General, Department of Law. Glad to be with you again this morning. So I was going to start by just, again, going briefly over the process.

I know we covered it last time, but for anyone that's listening that may have not heard last time and how it applies to this initiative, otherwise known as the Better Elections Initiative or identified by the Division of Elections as 19AKBE, so, again, talking about petition certification, the lieutenant governor, with the Division of Elections, has 60 days to review signatures.

In this case, the signatures I believe were put in on January 9th. Yesterday the lieutenant governor sent notification that the signatures were properly filed, so they did meet the 10 percent requirement, as well as the 7 percent among three-quarters of the districts.

So at this point, the Division of Elections has been directed to put this on the, most likely, general election ballot, but it's whatever election -- statewide election occurs 120 days after adjournment of the Legislature. So it doesn't have to do with when certification of the petition happened or when it was filed, it has everything to do with when the Legislature adjourns this current session. And if you adjourn by April 19th, it would be on the primary. Anything after that would be on the general unless there is an intervening statewide election between the primary and the general. So that's kind of how the process goes.

The only other piece that I covered last time that I'll mention is if the Legislature and then the governor signs or lets it become law without signature, enacts a law that is substantially the same as the initiative, then the initiative is considered void, and it would not go on the ballot.

And just briefly, again, that test is really a scope, purpose, means test that the Alaska Supreme Court has applied

to determine whether something is substantially similar. And that means you look at the scope of the subject matter, and the Legislature is afforded greater authority or lesser latitude, depending on whether the subject matter is broad or narrow.

And then you look at the purpose. The court must consider whether the general purpose of the legislation is the same as the general purpose of the initiative.

And then the means, whether the means by which that purpose is effectuated are the same in both the legislation and initiative, but the means only need to be fairly comparable. Again, they don't have to be exact.

And so then if the measure goes on the primary or the general election ballot and if a majority of the voters say they want this initiative enacted, then it would be effective. The effective date would be 90 days after enactment, and enactment for a ballot measure occurs upon certification of the election results.

So you're looking -- just for an example -- and I gave this last time -- the marijuana initiative in 2014 went on the general election ballot. Results were certified near the end of November, and it was effective near the end of February 2015. So that's kind of the time frame you'd be looking at. So unless there are other questions on process, I will move on to the sectional.

CHAIR STEVENS: Well, before you do that, I think what most folks have spoken to me about their concerns about is the ranked-choice issue. And if we're considering the "substantially the same," to be substantially the same, would it have to include a ranked-choice?

MS. MILLS: So, Chair Stevens, I can't predetermine what a result would be in terms --

CHAIR STEVENS: Oh, sure you can. Go ahead.

MS. MILLS: -- of what the Department of Law would look at, because we would be very much involved in that. The attorney general actually has to concur in the decision that it's substantially similar. But I would say that you need to look at the major elements of the policy that's encompassed within the initiative.

In this initiative there are really three major policies. And the first is an open primary, an open nonpartisan primary; the second is ranked-choice voting in the general election; and the third is additional disclosure and disclaimer requirements in our campaign finance laws.

And so you would need to look at does whatever, you know, we're looking to pass, as a Legislature, adhere to or encompass those major policy goals in at least fairly comparable means to what is occurring in the initiative?

Now, the example we have on substantially similar, we have two examples: One where the court upheld it and said it was substantially similar and the other where they did not. And in *Warren vs. Boucher*, it was actually kind of the initial passage or enactment of our campaign finance laws as a state, and there was an initiative, and there were quite a few differences.

There were differences in the numbers, the amount that could be donated, contributed to a candidate, there were differences in how media was addressed and whether media certain disclosures were necessary, and yet the court still found that the scope was broad, so the Legislature had more latitude, that the general purpose was to create these limits on campaign finance and have disclosures so that the public knew who was contributing to campaigns, and then that the means were fairly comparable. So you have an example of a broader law.

Whereas in the case of -- I think it's *State vs. Trust*

the People, you had an initiative that was very narrow and dealt with just the subject basically wanting to eliminate the governor's power to appoint a Senate vacancy at the congressional level.

And the Legislature passed a bill that still allowed a temporary appointment in between a special election, and the court found that that went too far, that the means were not comparable, that this was narrow legislation, therefore, the Legislature had lesser latitude. So I just give that as all of the considerations that would need to be taken into account if you're looking at passing something substantially similar.

The only other note I do want to make, and I think you may all be aware of this, but we are in litigation over 19AKBE. So when I say it's going to go on the ballot, it will go on the ballot unless the Alaska Supreme Court tells us it's not supposed to go on the ballot. We're still waiting for that decision. It was argued February 19th before the Alaska Supreme Court.

The issue was the attorney general recommended that the lieutenant governor not certify the initiative application because it violated the single subject rule. The attorney general, you'll see in our opinion, determined that there were really three subjects involved in the bill: again, open primary, ranked-choice voting, and campaign finance disclosures and that, therefore, under the Croft vs. Parnell case -- that was decided I think back in 2014 -- that this should not be certified. The superior court disagreed. That's why the signatures were gathered. That's -- then the state appealed. That appeal is now pending.

We have told the Supreme Court that if this were to go on the primary ballot, we would need a decision I think by June in order to make sure the Division of Elections had

enough time to prepare the ballot and not waste resources putting something on the ballot that the court determines should not go on the ballot.

So we expect the court to rule within that time frame to make sure that the Division of Elections can adequately do their job. But I did just want to put that out there that that is still a pending issue. Aside from what I've told you, I'm not going to talk a whole lot about it. It's before the Supreme Court, and we'll find out what they say.

CHAIR STEVENS: Thank you, Ms. Mills. Senator Begich.

SENATOR BEGICH: Thank you, Mr. Chairman. Cori, you mentioned three issues here as the three major policies: nonpartisan primary, ranked-choice, and campaign finance law. But isn't there a fourth relating to federal elections in here, a substantial fourth that changes existing law, and could you comment on that?

MS. MILLS: So through the Chair, Senator Begich, we have viewed that as part of the changes to an open primary and part of the changes to ranked-choice voting, because basically what it's doing is applying the open primary, both a special open primary to fill a vacancy, as well as just the normal open primary to all federal offices that the state, the Senate, and Representatives, as well as the ranked-choice voting to the general election for the presidential election. So those are the ones I'm aware of.

CHAIR STEVENS: Senator Begich.

SENATOR BEGICH: Just to follow up, doesn't it also address the issue of special elections in terms of a vacancy? And what -- for the rest of the members to know exactly what it says, would you mind talking about that?

MS. MILLS: Oh, yes, through the Chair, Senator Begich. So, and I'll go through this in the sectional as well. But effectively right now in certain circumstances we have what's

called a special runoff election, but parties are able to petition and put forward names of their -- the candidate that they would like in that election.

And now what it's doing is basically making all elections the same so that you'd have a special primary election, where, just like the open primary, anyone could get in. The party petition process would be repealed and anyone could get in on a special primary to fill a vacancy. And then you'd have a special election after that.

SENATOR BEGICH: If I may interrupt, just fill a vacancy for a United States Senate seat? I just want to be clear about that for the folks to know that that's a very specific thing that this does.

MS. MILLS: Yes, Senator Begich. So basically it's for any vacancy that would have otherwise had any sort of special election. It reverts to this process. So it's the federal Senate seat, it's the governor. If for some reason the lieutenant governor that succeeds is then no longer able to hold office and you have the successor to the lieutenant governor, it's that circumstance, and then it's a special election for a state Senate seat as well under the specific parameters where you have a special election for a state Senate seat.

CHAIR STEVENS: Thank you. Representative Drummond is in the audience with us. Thank you for being here. Any further questions? If not, would you please go on to the sectional, Ms. Mills?

MS. MILLS: Yes. And for the sectional, we actually did one in our attorney general opinion. You should find that in your packet. I believe it's after the initiative bill, and then you have one other document, and then you'll have a letter dated August 29th.

Starting on page 2 is our general overview summary, and

then I think around page 3 or the bottom of page 2 it starts on the sectional, if you want to follow along.

So as I said, there's three major changes here. And so you'll find that pretty much every section of this bill relates to one of those three changes or a combination of two of those changes. So open nonpartisan primary, ranked-choice voting in the general, and disclaimer and disclosure requirements.

So starting with section -- so Sections 1 through 3 really have to do with the open primary -- I mean, Sections 2 and 3. Section 1 is just a findings and intent, basically repeats what the major policies are, as well as includes a statement that Alaska supports a constitutional amendment allowing citizens to regulate the raising and spending of money in elections, basically a statement that we would like to see Citizens United overturned. That's in the intent and findings section.

Then you go to Sections 2 and 3, which, again, mostly have to do with the open primary. Section 2, you end up having election boards. And right now you base it on the political party that receives the most votes or the largest number of registered voters at the time of the preceding gubernatorial election, and now it's adding political groups.

So basically it's saying maybe we'll have more political groups in the scheme of things, and so we want to allow, whether it's a political party or a political group, whoever has the most number of registered voters, that's who's going to be able to get a seat. And then the second largest number of registered voters' political party or political group, they also get to be appointed to this election board. And there's a few other spots where they do that. They basically add in political groups on the same level as political party. You'll find that in a few places.

Section 3, again, you can appoint one or more poll watchers regardless of party affiliation or party nomination. So right now the political parties have an ability to have a poll watcher. This would allow basically any candidate to appoint one or more poll watchers.

Then we move on to the changes to the campaign finance laws, but I do want to note that some of these changes are actually because of the change to the open primary and not the disclosure and disclaimer requirements, and I'll note those as I go along.

So Section 4, for example, is another one that changes -- is a change because of the open primary. And, again, it's allowing on APOC, as you may know. Right now you -- the governor's appointments partly ensue because of the political party and who retained the most number of votes, who won the gubernatorial election. And then the second largest number -- well, again, it's adding political groups now, not just political parties. And political parties have kind of a higher threshold to reach, and now it's kind of putting them on the same plane as political groups.

Section 5 is a conforming change. Section 6 would add disclosure requirements relating to -- and I quote this -- the true source of contributions. There's a definition for what a "true source" is. You know, and if this was enacted, then the Alaska Public Office's Commission would use that definition and determine what that is.

SENATOR COGHILL: Mr. Chairman.

CHAIR STEVENS: Please, Senator Coghill.

SENATOR COGHILL: That's a new concept in law, if I understand correctly?

MS. MILLS: Through the Chair, correct.

SENATOR COGHILL: All right. Thank you, Mr. Chairman.

CHAIR STEVENS: Yes. Senator von Imhof.

SENATOR VON IMHOF: When you say "new concept," is that defined statewide, or is that defined nationally, true source? What is true -- where is true source defined?

MS. MILLS: Through the Chair, Senator von Imhof, there's a definitions -- a new definition section put into this bill. So it would be in state law, true source dark money, and I think it's like out-of-state or outside groups, something like that. Those are the three new terms that would added to the law and defined in this bill.

CHAIR STEVENS: Senator von Imhof.

SENATOR VON IMHOF: In your research, do you know of any other state that has recently defined "true source, dark money," et cetera?

MS. MILLS: Through the Chair, Senator von Imhof, I'm not aware of any. I do have to say I did not do a whole lot of looking at other states. I was really just concerned with this initiative bill and what it's got.

CHAIR STEVENS: And maybe definition of "dark money" would be helpful for the public.

MS. MILLS: Yeah. So it's Section 17 through 19 are those definitions. And I'll go over those really quick because I think it will help as I go through.

So Section 17, it would amend AS 15.13.400. That's where the general definitions in the campaign finance laws are located. Dark money means a contribution whose source or sources, whether from wages, investment income, inheritance, or revenue generated from selling goods or services, is not disclosed to the public, notwithstanding the foregoing to the extent a membership, organization receives dues or contributions of less than \$2,000 per person per year, the organization itself shall be considered the true source. So, then, again, dark money refers to true

source.

So true source, which is Section 18, means the person or legal entity whose contribution is funded from wages, investment income, inheritance, or revenue generated from selling goods or services. A person or legal entity who derived funds via contributions, donations, dues, or gifts is not the true source but rather an intermediary for the true source. And, again, there's a notwithstanding the foregoing membership organization kind of exception.

CHAIR STEVENS: Senator von Imhof has a question.

SENATOR VON IMHOF: Thank you. So this means that anybody who's donated more than 2,000 annually would be listed on the APOC, Alaska Public Office Commission report, but we still have the top three donors on any advertising. Does this bill affect those -- the top three donors listed on any advertising materials?

MS. MILLS: Senator von Imhof, through the Chair, that law is not impacted by this initiative bill.

CHAIR STEVENS: Thank you. Please, continue, Ms. Mills.

MS. MILLS: So I'll just go over Section 19, because that's the other new term, "outside funded entity." And that means an entity that makes one or more independent expenditures. So you're only talking about independent expenditure groups in one or more candidate elections and that during the previous 12-month period received more than 50 percent of its aggregate contributions from true sources -- again, using that term -- who, at the time of contribution, resided or had their principal place of business outside of Alaska. So you're looking at 50 percent or more of the contributors -- of the contributions resided or had their principal place of business outside of Alaska.

CHAIR STEVENS: Senator Coghill.

SENATOR COGHILL: Since you looked at this, do you

think -- is it clear to you that the people who put this initiative out complied with those definitions?

CHAIR STEVENS: I'm sorry. I could not hear your question. Could you try it again, Senator Coghill?

SENATOR COGHILL: My question is, do the people who put this initiative forward comply with the spending reporting requirements that they're putting in here, just as a point?

CHAIR STEVENS: Thank you.

MS. MILLS: So through the Chair, Senator Coghill, I have to say I didn't look at any of their advertising or where their sources came from. You know, that would be a question for the Alaska Public Offices Commission.

CHAIR STEVENS: Thank you. Representative Kopp, thank you for being here. Please continue, Ms. Mills.

MS. MILLS: Yeah. So I think then I will go back to Section 7. So Section 6, again, was adding the true source in excess of 2,000, and that's the theme you will see, that it's an excess of 2,000 is really where a lot of these disclosure and disclaimer requirements start kicking in. And so if -- you know, it requires disclosures from every individual person, non-group entity, or group that contributes more than \$2,000 annually to an independent expenditure group.

And then Section 8 goes back to really a change because of the open primary. So under the open primary system, you would actually have a governor and lieutenant governor run jointly from the very beginning, because the primary would be more about narrowing down the field for the general, not about political party nominations.

And so it would change the joint campaign limit to \$1,000 for governor and lieutenant governor. Instead of each of them having their own campaigns, it would be a joint campaign, and they doubled the limit basically to account

for that. So that's more an open primary change.

And then we go to Section 9, and you're back to kind of the new disclosure requirements. And this is about the dark money and basically that the disclosure requirements for contributions, again, to independent expenditure groups may not annually total 2,000 or more of the dark money where the true source isn't identified.

CHAIR STEVENS: Senator von Imhof.

SENATOR VON IMHOF: Just going back to Section 8, I just find it interesting that trying to be more of an open primary, yet it seems kind of counterintuitive that prior to the primary, that a ticket would be combined, that a lieutenant governor and governor would be combined, forcing this pairing for voters versus one -- each election on its own. How is that giving voters more choices? How is that giving voters more flexibility when you're forcing a pairing? Just curious.

MS. MILLS: Through the Chair, Senator von Imhof, I don't have any comment on the policy, but, you know, that's -- in order to encompass the open primary system with a lieutenant governor and governor pair, that's how the sponsors chose to put it together.

CHAIR STEVENS: Thank you. Further comments? Please continue, Ms. Mills.

MS. MILLS: Okay. And then Section 10 is just conforming changes.

Section 11, this would require that certain existing disclaimers on paid political advertisements be shown throughout the entirety of the communication if in a broadcast cable, satellite, Internet, or other digital format. So it's taking existing disclaimers but just requiring that they're there for a longer duration.

Section 12, additional disclaimer on political

advertisements funded by the outside entities. So that goes back to that definition. So this only has to do with independent expenditure groups that receive contributions -- more than 50 percent of their contributions from these outside-funded entities, and it would require an additional disclaimer on any paid political advertisements.

So Section 13, again, conforming changes.

Section 14, this is, again, the \$2,000. So disclosure by individual contributors whose contributions to independent expenditure groups exceed \$2,000 annually. So you're basically covering the gamut on everyone who gives over \$2,000 annually to an independent expenditure group, or an independent expenditure group that receives more than \$2,000 from an individual contributor would have to disclose that.

Section 15 would create new fines for failure to disclose certain contributions to independent expenditure groups as required by Section 7 and Section 9. And those, again, are the dark money and the -- just the contributions of more than \$2,000 annually to an independent expenditure group.

Section 16, conforming changes.

And then we already went through 17 through 19, which defines those new terms. So those would all be statutes added to --

CHAIR STEVENS: One moment, please. Senator von Imhof has a question.

SENATOR VON IMHOF: I just think -- as you go through 17 and 19, just to reiterate what Senator Coghill stated, I think it is very important that are the initiative supporters themselves following the true source, dark money, outside-funded entity over-reporting at this time leading by example? That I think that this committee, as we move forward

on this, should absolutely check with APOC on a regular basis and make sure that this dark money, true source, et cetera, et cetera is properly being vetted, because if the initiative supporters themselves are being cagey, well, isn't that interesting?

CHAIR STEVENS: Thank you, Senator von Imhof. Senator Coghill.

SENATOR COGHILL: Probably the question at this point would be, candidates will be subject to this, but will initiatives be subject to this?

MS. MILLS: Through the Chair, Senator Coghill, I'd have to go back and look at exactly how it's worded. The main thrust is that it's independent expenditure groups, but I'd have to go back and see exactly what that applies to.

SENATOR COGHILL: Mr. Chairman, I think that's something we need to consider as we move forward.

CHAIR STEVENS: A very important question. And you'll research that and get back to us?

MS. MILLS: I'm happy to do that, yeah.

CHAIR STEVENS: Thank you.

MS. MILLS: So now we're going to move back into kind of the regular how elections are run instead of the campaign finance with Section 20. And Section 20 is -- basically would establish the open primary system.

And then Section 21 would allow each candidate to have his or her party affiliation designated after the candidate's name on the ballot or choose the designation of nonpartisan or undeclared. So, again, you're talking about an open nonpartisan primary. Anybody gets to be a part of it. There's one primary ballot, and each candidate gets to choose what designation they have after their name.

Sections 22 through 23 would then require additional notices on the ballot and at each polling place, letting

voters know that a candidate's designated party affiliation on the ballot does not signify the political party or political group's approval or endorsement of that candidate. And you'll see later that it's also required in the election pamphlet itself.

Section 24, this is really the crux of your ranked-choice voting. This is where it's laid out and required. So it would establish ranked-choice voting, again, only for the general election, whereby each voter may rank all of the candidates. You don't have to, but you could rank all of the candidates.

This section would provide how the ranked-choice votes should be counted. So you start with the number-one ranking on all ballots. If there are more than two candidates and none of the candidates gets a majority of the total votes after a first round of counting, the candidate with the least amount of votes would be removed from the count. Okay?

And ballots that ranked that candidate as one on their ballot would then be counted for the second-ranked candidate on those ballots. So you'd move to number two for those where their first candidate got removed from counting.

This would continue until a candidate obtains a majority or there are only two candidates remaining, at which point the candidate with the highest number of votes wins. So you're either looking for a majority over 50 percent, or you're down to two candidates and whoever gets the most votes. So that's ranked-choice voting.

SENATOR COGHILL: Mr. Chairman.

CHAIR STEVENS: Yes, Senator Coghill.

SENATOR COGHILL: So if there is a clear majority on the first round, I get that. But at this point, you're now starting to change the dynamic from the majority vote to the highest vote count. That is a different set of circumstances

I think. So it's something to ponder as we go forward in this particular issue. I could see some circumstances where a vote count may be lower than the majority votes cast for an individual. So I think I'll have to look and see how that works, but it does create a question in my mind. That's all. Thank you.

CHAIR STEVENS: Important to think that through because there is a -- essentially a disadvantage for the voter who only chooses to vote for one, and that changes the dynamics of it. Senator von Imhof.

SENATOR VON IMHOF: Thank you. So in theory then, all the electronic votes or the voting pieces of paper run through the machine the first time and there's not a majority winner. So they take all those pieces of paper and run them through again. There's still not a majority winner. They take all those pieces of paper and run them through again. So basically what we're having is a bunch of secret runoffs, because there's a calculation in the back that's happening as we're running through all these ballots again and again if we're running them off and running them off and it's all secret. Does the initiative say that there's going to be an announcement? So Candidate A is no longer -- we're giving you an update. Candidate A got only ten votes, and so that person is no longer there. So we're going to run them off again. And we have these whole bunch of people that are watching this or not watching it. They're running off again, thousands of ballots, tens of thousands. So then do they give us an update again? Candidate B is now no longer there. Or is this all done just -- and at the very, very end this is who wins?

MS. MILLS: So through the Chair, Senator von Imhof, there is no requirement of that sort of announcement in the initiative bill.

CHAIR STEVENS: Just so I understand, I think it will lead to talks at the Division of Elections about how that's interpreted. And, you know, the big advantage I think in the Alaska election system is that we have paper ballots, and we can always go back and recount them. This adds a pretty confusing issue when you keep running them through the machine. Anyway, maybe we can ask our commissioner or our elections folks about that. Senator Begich.

SENATOR BEGICH: Thank you, Mr. Chairman. Just without either supporting or opposing this initiative, I would just clarify that similar to a system that -- it sounds like it's similar to a system, though, with limits that's used in Australia.

I mean, and so that's probably what I'd ask our division director, how that works, because this looks like it's limited so that it wouldn't be every single election but that there is -- Minneapolis uses a system like this, where they're constantly reporting the data, who's being taken off, and it's reported on a daily basis, but it takes a lot of time.

My question, and maybe it's for the lieutenant -- I mean, for the director of the Division of Elections but maybe for you. Do we even have machine that can -- we just bought new software. Do you know if that -- is that really a question for the Division of Elections? It is. So I'll withhold that question until later. We just purchased new machines, so --

CHAIR STEVENS: We did.

SENATOR BEGICH: -- I don't even know if they can accommodate this.

CHAIR STEVENS: Thank you, Senator Begich. Further questions or comments? Ms. Mills.

MS. MILLS: So then Sections 25 through basically 29

are different conforming changes for either ranked-choice voting or the open primary system. So I'm not going to spend a lot of time on those.

Moving to Section 30, this is similar to the change in the APOC commission membership. Again, you have four district absentee ballot counting boards and questioned ballot counting boards, and there's a certain way those numbers are appointed. This would add in that basically a political group could be viewed the same as political party when you're looking at how many registered voters and so who gets representation on those boards.

Sections 31 through 36, again, conforming changes.

Section 37 is kind of your crux for the open primary. The primary would no longer serve to determine the nominee of a political party or political group. Instead, the primary would narrow the number of candidates whose name would appear on the general election ballot to four. So everybody runs, and then it's the top four that move on to the general election.

And so Section 38, this goes back to the governor and lieutenant governor. It would amend the candidate declaration to require that candidates for governor and lieutenant governor include the name of the candidate's running partner. So you basically choose ahead of time before heading into the primary who your running partner is.

Section 39 relates to the open primary. It establishes the process for preparation and distribution of ballots to account for the open primary system where there would only be one primary ballot. So this current statute deals with having the separate ballots, depending on which political party. This would turn it into a one primary ballot system.

Section 40, again, relating to the open primary, would repeal and reenact the statute that establishes which

candidates will be placed on the general election ballot. Again, you have the top four move on, and it would also include a process for filling a vacancy that occurs after the primary election. There's statutes for dealing with that now, but, again, you'd get rid of the party petition process, and there would be another process by which you could fill a vacancy if it occurs after the primary but before the general.

Section 41 would allow a write-in candidate at the general election to designate his or her political party or political group affiliation or be designated as undeclared or nonpartisan, similar to what you're allowed in the open primary.

Section 42 would eliminate the requirement for write-in candidates, that a candidate for governor run jointly with a candidate for lieutenant governor from the same political party or group. Again, you could choose who your running mate is and political party affiliation wouldn't matter.

Section 43 would provide that the ranked-choice method of voting in the general election also applies to the election of electors of president and vice president. Again, you wouldn't -- the primary wouldn't fit in there. You'd have the same nomination process for getting onto the general election ballot for a presidential election, but the way you choose them, you choose the ranked-choice voting method in the general election.

CHAIR STEVENS: Thank you. Senator Begich.

SENATOR BEGICH: Thank you, Mr. Chairman. Going back, just very briefly, to Section 38 and then moving into these other sections. If it's a primary campaign with no party affiliation, then there would be no requirement for governor and lieutenant gubernatorial candidate to be of the same party if they were running as a team. Would there be under

this initiative?

MS. MILLS: So through the Chair, Senator Begich, there would not be a requirement that they be of the same party.

SENATOR BEGICH: Okay. Thank you.

CHAIR STEVENS: Thank you. Senator von Imhof.

SENATOR VON IMHOF: So is there anything in this initiative that talks about changing your party, as in "I'm going to change my party in June. The primary is in August" or anything about changing your party year after year? One year you're Republican, the next year you're Democrat, and then all of a sudden you're a political party group the third year? I mean, is there anything on that?

MS. MILLS: So through the Chair, Senator von Imhof, there -- this initiative bill does not address that at all. I will say that, thinking about our current laws, I don't think there's anything on that either except that, you know, you have to be a Republican -- the parties get to choose what their qualifications are for their candidates in their primary. That's the requirement. But a party, as we've seen because we had a recent court case on it, can choose to open up their primary to more than just members of their party as it stands right now.

CHAIR STEVENS: Senator Begich.

SENATOR BEGICH: And just to clarify, thank you, Mr. Chairman. But a party could also choose to pick its -- select its candidate by caucus. There's no prohibition on that either. They don't have to go to a primary process, do they? Other states don't. Is there a requirement that a party here use a primary?

MS. MILLS: Through the Chair, Senator Begich, in order to have your candidate on the general election ballot as a nominee of your party --

SENATOR BEGICH: Let me clarify.

MS. MILLS: Okay.

SENATOR BEGICH: So under this initiative, you wouldn't have a party affiliation. So if a party wanted to make its choice for who it was going to signal whom they supported, which candidate or candidates they supported, they would still have a process. They could run it through their own primary. In fact, I think this year my party is running its own primary for president. They're actually running a primary election, which they're paying for. I don't believe the state's paying for it. Or you could have a caucus process. Again, parties pay for their caucus processes now for the presidential elections.

And they could do what Minnesota, for example, does when they select who they prefer, or the state of Utah, where they select who they prefer, or the state of Colorado, where a certain percentage is required as a threshold or you don't get the official endorsement of the party. All those might be -- all those would be -- under even current law we could be doing those kinds of things. And then, of course, under current law you'd have the primary process, and then under this law you would have a primary process without partisanship indicated. Would that be basically correct?

MS. MILLS: So through the Chair, Senator Begich, that is correct. The parties have authority to determine how they decide who they're going to endorse. The real change is here is in the state-funded primary process.

SENATOR BEGICH: Thank you. Thank you, Mr. Chairman.

CHAIR STEVENS: Thank you for the questions. Please continue.

MS. MILLS: Okay. So we were on -- so that was 38, 39 --

CHAIR STEVENS: 43 I think we did.

MS. MILLS: Yeah, ranked-choice. So, yeah, we did the

ranked-choice voting. Okay. And then Sections 44 through 49 -- and really if you go down to 50 through 54, this is where you take the filling of vacancies that would normally go through either a special runoff process or some sort of party petition process, would become a special primary conducted as an open primary to fill a vacancy, followed by a special election. And this would apply to the office of United States Senator or United States Representative.

And then 50 through 54 would amend the special election process for filling a vacancy in the Office of the Governor. And, again, that's only if you have a lieutenant governor who succeeds and then has to step down and you're really stuck with the successor of the lieutenant governor as governor. That's when this circumstance applies. And, again, you'd have a special primary conducted as an open primary, followed by a special election instead of a party petition process.

SENATOR COGHILL: Mr. Chairman.

CHAIR STEVENS: Senator Coghill.

SENATOR COGHILL: Probably Section 43 changes one significant fact. At this point, we have done a winner-takes-all on electors, for the most part, and that is whatever party gets the general election gets to pick the electors, and that is three votes that could tip the balance of United States power.

In this particular case, what we've done is surrendered that to a ranked-choice voting selection style. And I think that's a significant change. So I don't think that that falls into one of the major policy calls. I think that is a policy call to itself, just to let you know.

CHAIR STEVENS: Thank you.

MS. MILLS: So Section 55, this would amend the statute providing for the qualifications and the confirmation process

for an appointee to a vacant legislative office, to include political group along with political party. This is, again, taking political group to be on the same level as a political party. So if you have a member of a specific political group, then being part of that political group would then become part of the qualifications in order to fill a legislative vacancy that doesn't require the special election.

CHAIR STEVENS: Senator Begich.

SENATOR BEGICH: Thank you. Cori, what do we do now when independent -- for example, if they were to resign, how would we deal with that now under the law? I'm just curious.

MS. MILLS: So through the Chair, Senator Begich, and I'd have to look back again specifically at the statute, but it does account for that.

And basically, first of all, if you have an independent who's essentially caucusing with one party, they would take that into account. If you had -- and that group would be the ones to vote on whoever is appointed, but otherwise the governor has to appoint someone who is also an independent. And if it comes down to them not having any sort of caucus or affiliation, as I recall, then they -- that appointment would just stand. I don't think you have any vote that occurs because that person is not part of any particular group within the Legislature.

CHAIR STEVENS: So if an independent were to resign or be replaced, replaced by an independent, if that first independent was in a caucus, the caucus would have to decide whether to accept them; is that correct?

MS. MILLS: Yes, if that particular independent was really part of and caucusing with a specific affiliated caucus group, that caucus group would have a say.

CHAIR STEVENS: Thank you.

MS. MILLS: As I recall.

CHAIR STEVENS: Senator Begich, further question on that?

SENATOR BEGICH: I think what I'd like is, Mr. Chairman, if perhaps with a little more thought and a little more time, the Department of Law would provide a more detailed or nuance description -- that would be helpful -- as opposed to just here at the table, because, of course, this Legislature has, for the bulk of its history in either the Senate or the House, had bipartisan caucuses where at least one member of another party has been in those caucuses, including, quite frankly, now both majority caucuses and currently. So I'd be very careful about that. I would want to have a more clear idea of what that is. I think we should have a more clear idea of what that is.

CHAIR STEVENS: Thank you, Senator Begich. So, Ms. Mills, if you could clarify that. Send us your comments to my office, and we'll make sure we distribute it to everybody.

MS. MILLS: Happy to do that. So we have gone through 55. We're now on 56 through 60. This is, again, filling a vacancy in the state Senate and would provide for a special primary conducted as an open primary followed by a special election, as we discussed before.

Section 61 through 63, just conforming changes.

Section 64 through 66 would specify what the election pamphlets have to include, or they do now. And this would add requirements. So for the general election and the primary to include a notice to voters that any political party or political group affiliation listed next to a candidate does not represent the political party or group's endorsement or nomination. That's similar to what has to go on the ballot, as well as the polling place.

And then election pamphlets would also include an explanation of the open primary system and how that works.

And, lastly, the general election pamphlet would explain the ranked-choice voting method. So those would be new requirements for the division to include in their pamphlet.

CHAIR STEVENS: Thank you.

MS. MILLS: Again, 67, 68, conforming changes.

69 would amend the definition of political party by deleting language referring to the nomination of a candidate by the group seeking to be recognized as a political party. So right now how you determine whether you've reached political party status has to do with how many votes your nominated candidate received in the general election. And because you would no longer have a party nomination process, a party -- political party primary, that would no longer apply.

So that language is deleted, which leaves you with political party status would only be determined by the number of registered voters the group has, not the number of votes a prior nominated candidate received. So you'd look at the number of registered voters that are registered to that party.

CHAIR STEVENS: Senator von Imhof.

SENATOR VON IMHOF: Does this mean that like a political group is sort of like a subset of a political party? I mean, I could be Republican, and I could be Tea Party, or I could be XYZ, you know, Big Hats or whatever it is. I mean, does it mean that you're -- is it a subset, or is it now we have Republicans, Democrats, and then any number of things?

MS. MILLS: Through the Chair, Senator von Imhof, I think the latter is an apt description. I would say Director Fenumiai has been dealing with this for years. They have a number of political groups at any one time that are sitting

on the edge, and they always have to do a check as to whether they have become a political party. And then you can also fall out of political party status.

The Libertarian Party is a really good example of one that, you know, in a presidential election you might reach above the threshold, and so all of a sudden they have an opportunity to be part of the primary process. And then they'll fall out of it when it's not a presidential election because you don't have as many voters voting for the Libertarian candidate. That's just one example. But you could be any number of political groups that are sitting, waiting to reach the threshold in any given election so that they can then be a political party for the next election.

SENATOR VON IMHOF: I have one more question.

CHAIR STEVENS: Yes, please, Senator von Imhof.

SENATOR VON IMHOF: Okay. So just kind of the political group, political party, then you said caucus. So we had a situation that when Governor Dunleavy was a senator, he left the caucus. He was Republican, but he left the caucus. Then he quit, and we filled him with Senator Mike Shower. It was the Republicans at that point -- because Mike was Republican -- both Mikes were Republicans, that's who chose him. But if Dunleavy was not part of the caucus, he was not part of any group under this, who would have chosen him?

MS. MILLS: Through the Chair, Senator von Imhof, are you speaking specifically to if there was an open primary, or what are the current --

SENATOR VON IMHOF: To fill a vacant legislative seat, a vacant -- I mean, does this deal with a vacated legislative seat after a primary or within 30 days, 60 days, or are we talking just an election? Are we talking about like how this body -- or like an election?

MS. MILLS: So on Section 55, through the Chair, Senator

von Imhof, specifically is relating to filling a vacancy by gubernatorial appointment and then who has to vote within the Legislature on that appointment.

SENATOR VON IMHOF: Right.

MS. MILLS: And so this would -- if you are not part of a political group or a political party, if the person who was in the office who vacated it wasn't within either of those groups, then there is -- which I just can't remember right now -- there's existing language on what you do with those types of individuals, and that would not change.

CHAIR STEVENS: I think probably -- I'm going to add, what if you are a party one and are replaced and there's nobody to confirm your replacement? Interesting conundrum. Thank you for bringing that up. Further comments? Yes, Representative Kopp.

REPRESENTATIVE KOPP: Thank you, Mr. Chairman. It occurs to me there's a very significant educational process for the public to understand all the nuances of this initiative that may take a considerable amount of time just, you know, going through the sectional, the highlights. It's a significant change to how they run today.

CHAIR STEVENS: Thank you, Representative. It's well worthwhile to go through these details. Senator Begich.

SENATOR BEGICH: Thank you, Mr. Chairman. Just two points of clarification: We have actually had a situation where we had one party represented. We had one and then two Libertarians in the early '80s in the Legislature. So I'd be curious to know, you know, how we would have done that.

And then, secondarily, to Representative Kopp's comment, I think you're about to get to Section 74, which acknowledges the complexity by providing a two-year time period for the Director of Elections to educate the public before the initiative takes --

CHAIR STEVENS: Thank you. And, Ms. Mills, any clarification you give us at a later date would be appreciated. Thank you.

MS. MILLS: Yes, I am happy to do that. I would refer you -- I did find the statute. It's -- 15.40.330 is the statute that talks about qualification and confirmation of appointees when filling a vacancy. And I'll get back to you in writing, but if anyone wants to look it up themselves, that's the statute, 15.40.330.

CHAIR STEVENS: Thank you. We are on 70; is that right?

MS. MILLS: Yes. So, and this would just add a definition of ranked-choice voting basically along the lines of what we already discussed earlier about having -- being able to rank all of the candidates. If your candidate has the least amount of votes and there's no majority, you would then -- your vote would then be counted for your second ranked-choice.

71, conforming changes.

72 is repealers. This is a fairly long list of repealers. And effectively what it does is it repeals statutes relating to party petitions. So when political parties put in a petition to fill a vacancy in a special election, it would get rid of that because, again, now you're moving to an open special primary. It would get rid of --

CHAIR STEVENS: Senator Coghill has a question on that point.

SENATOR COGHILL: So one of the things that we get to do as legislators, when a bill is presented to us, we get to look at the repealers, because those are pretty significant policy calls in themselves because the -- not only does it change the structure, but it is undoing a lot of things that have some historical and actually court context to it. Is there any reason that in an election

pamphlet we would put a description of those repealers?

MS. MILLS: Through the Chair, Senator Coghill, are you specifically speaking I assume about the ballot summary --

SENATOR COGHILL: Yes.

MS. MILLS: -- that's included?

SENATOR COGHILL: I mean, we have 70 sections of the bill, and 72 is a section of 22 repealers that all are pretty significant policy calls, notwithstanding the policy calls that are replacing them.

And I think for me, in full disclosure people should see what is compared to what they're going to put in place. I know that requires a lot of printing, but I think this can be disingenuous to the people of Alaska if we just put in repeal these languages. And just a point, so --

MS. MILLS: Through the Chair, Senator Coghill, I appreciate that. And I'll -- you know, I think the division director is sitting here, and we can take that back to the lieutenant governor.

They are -- we are pretty prescribed on what we put in, you know, and the entire initiative bill I think gets put in the election pamphlet, and then there's a ballot summary, and the ballot summary has been written. It was provided with the notifications yesterday, and it may already be on the division's website.

The ballot summary does make it clear that you're eliminating political party primaries. And most of these repealers are basically getting rid of any ability, from a state perspective, for the political parties to make a nomination that then gets on any sort of general election or special election ballot. And that's why I said it repeals any statutes relating to party petitions, any statutes relating to no-party candidates because now you no longer have the petition process for no-party candidates. They just

have to participate in the primary or be a write-in candidate. Those are now your two options.

And then it also repeals all of the special runoff elections because, again, you're moving to an open primary. So, Senator Coghill, through the Chair, I'd be happy to share that ballot summary also with the Legislative Council.

CHAIR STEVENS: Senator Coghill.

SENATOR COGHILL: Mr. Chairman, and I appreciate probably they're going to have to summarize, but the summarization quite often glosses over some of the fundamentals, for example, the money coming in and out of the state, the money changing from one person to another, again, at a campaign, the way we elect our electors, the way we do runoffs. I mean, you start going down the list of what has changed and what's being pulled out of law that already has some court precedence to them is something that I think the public is not getting the full story on. So it's just something to think about.

And I don't know if we can summarize those, but probably that's the best we can do. But I think the summary could as long as the 74 sections of this law, just for what it's worth. But I think -- just for me, Mr. Chairman, I think we're being disingenuous to the people of the Alaska if we don't tell them what those repealers are.

CHAIR STEVENS: Very good point. Thank you.

MS. MILLS: So that's the repealers. And, like I said, it is a substantial list, but that's what it's doing is getting -- really getting rid of those three categories of statutes.

Section 73 is a severability clause. You'll find these in most initiative petitions these days.

And then Section 74, as Senator Begich pointed out earlier, would require -- it's a temporary uncodified law to

require the Director of Elections for two years to make efforts to inform voters of the changes made to the state selection process under this initiative bill. And --

CHAIR STEVENS: Senator von Imhof.

SENATOR VON IMHOF: Thank you. So you talked a lot about political group, and I did find that it is, in fact, defined in statute, but it's not very clear. And essentially it says, "Political group means a group of organized voters which represents a political program and which is not qualified as a political party." "Represents a political program," what's that?

MS. MILLS: Through the Chair, Senator von Imhof, again, I think the director could talk about their process for taking applications for political groups and the process they go through on reviewing those for what they do currently.

CHAIR STEVENS: Senator Begich.

SENATOR BEGICH: Thank you, Mr. Chairman. Just to clarify, the ranked-choice process -- just going back through -- I've been thinking about your sectional -- does that apply to the primary, or is the primary just a straight primary, open primary, top four go then to a ranked-choice process to the general?

MS. MILLS: Through the Chair, Senator Begich, your latter is correct. So it only applies to the general election. So you get your top four from the primary. Those go on the general election, and then you get to do your ranked-choice. In the primary it would be a one vote for each position.

CHAIR STEVENS: Any further questions? Thank you very much. Senator Giessel.

PRESIDENT GIESSEL: Cori, could you clarify with what you just said? So in the primary, a plurality would be a winner. In the general, ranked-choice voting would apply,

and, again, in that ranked-choice voting, again, a plurality declares the winner. It doesn't have to be 50 percent plus one; am I correct?

MS. MILLS: Through the Chair, Senator Giessel, correct. And you would have your top four within that plurality go on to the general election ballot.

PRESIDENT GIESSEL: Thank you, Mr. Chairman.

CHAIR STEVENS: Thank you, Senator. Further questions or comments? Ms. Mills, thank you for your knowledge and your expertise and your ability to answer questions on the fly here. I appreciate it. We are expecting some more responses from you, which we'll share with the members. Thank you very much.

MS. MILLS: Happy to do that.

CHAIR STEVENS: We'll move on to comments from Legislative Legal. And I'd ask Megan Wallace and Noah Klein to come forward, if you would, please. Thank you for being with us. And if you'd put yourselves on the record, please.

MS. WALLACE: Good morning. For the record, Megan Wallace, Director of Legal Services, and I have with me today, Noah Klein, legislative counsel, also with Legal Services.

MR. KLEIN: Good morning. Noah Klein, legislative counsel with Legal Services.

CHAIR STEVENS: Thank you.

MS. WALLACE: Before I get into our prepared outline to address issues, there's a couple -- just hearing some of the questions that have been asked, there are just a few minor points of clarification or to answer a few questions that have come up this morning that I might make a brief comment on.

CHAIR STEVENS: Yes, please.

MS. WALLACE: With respect to I believe it was Senator

von Imhof and Senator Coghill's question regarding the Section 17 through 19, which defined the new terms "dark money, true source, and outside-funded entity," there was a question about whether those -- the contribution limitations that are -- that were put on, whether they apply to initiatives. And the definition for "contribution" -- which is already defined in statute -- does, in fact, mean -- also means influencing a ballot proposition or question. So those new requirements would also apply to initiatives.

Moving on, just briefly, there was some questions about certification or disclosure of the ranked-choice results. And in Section 26 of the initiative, while I can't speak as to how the division would make those announcements, Section 26 of the initiative does specifically state that the number of votes for each round of the ranked-choice tabulation process would be certified, and so, therefore, it implies that it will be made public, each round of the counting.

And there was just a large discussion about political groups. And as Senator von Imhof pointed out, that is already a term that we use in statute. And Ms. Fenumiai can speak more about the process, but there is already an application process in -- that exists now. And on the Division of Elections website, they keep a list of -- or there's a public list of political groups who have filed applications currently on the website.

Just some examples to educate the committee and maybe the public that is watching, some of the political groups that have filed applications include the Alaska Constitution Party, the Green Party of Alaska, OWL Party, Moderate Party of Alaska, and there's others. So those are examples of political groups as they exist in the state today, which would then be included in part of the vacancy process for the legislative offices that we were just discussing.

CHAIR STEVENS: Thank you, Ms. Wallace. I appreciate those clarifications.

MS. WALLACE: Just a reminder to the public, Legislative Legal Services is a nonpartisan agency that provides legal advice and drafting services to the Legislature. So our comments here today are politically neutral and issues that we have independently identified with respect to the Better Elections Initiative.

I wanted to start by discussing the legal standard if there were to be challenges post-enactment to the initiative, what a court would look at if there were questions about what a provision means. Is it vague? Those kinds of questions would be presented to a court.

When a court construes an initiative, it does so in a manner that differs from the manner in which a court would maybe construe a statute that is enacted by the Legislature.

So the Alaska Supreme Court has noted that, when they are construing the meaning of ambiguous statutes, they often will look at the plain meaning and maybe the legislative history whenever possible, but that process is different when they are reviewing a ballot initiative.

So when the Supreme Court -- the Alaska Supreme Court is reviewing the language of a ballot initiative, it will look to the published arguments made in support or opposition to determine what meaning the voters may have attached to the initiative.

And the court made a point to say that it will not accord special weight to the stated intentions of an individual sponsor. So, to me, that's an important distinction, too, to keep in mind with respect to the manner in which a court construes these initiative petitions. And that standard would apply to not only this initiative but the initiative we discussed last time, the oil tax

initiative.

CHAIR STEVENS: Senator Begich.

SENATOR BEGICH: So I'm curious about that. Thank you, Mr. Chairman. You're saying it's not the stated intention of the sponsor but the public statements that are made. But aren't the public statements that are made often made by the sponsor of an initiative petition? And what is the distinction there, and where do they come together?

We've -- for example, in both of these initiatives, we haven't actually heard from the sponsors. We've only heard from Leg. Legal, Department of Law, et cetera. So where's that distinction drawn? Because it sounds to me then that any testimony that a sponsor might make would not be relevant, but what would be relevant would be their public statements that they're making when they're not before a committee. Am I understanding that? Is that what you just said?

MS. WALLACE: Through the Chair, Senator Begich, I could clarify a little bit. They won't give special accord to the statements of the initiative sponsor, but they will look at -- and I think it's those statements after the ballot has been placed on the initiative. So maybe the statements of intent that are argued before the court that are post-election or post the initiative being placed on the ballot will be not given special accord. But the court will if those -- if the sponsor statements are part of the public record of what a voter would have had access to before the election, then those statements might be considered by the court.

SENATOR BEGICH: To clarify, Mr. Chairman --

CHAIR STEVENS: Please, Senator Begich.

SENATOR BEGICH: The sponsors often write initiatives for the election pamphlet statements. That's a sponsor

statement. That would not have the power of the public statements made? That pamphlet goes to everybody in the state. I'm confused by what you're describing as the standard. I don't understand I think fully what you're describing as the standard.

MS. WALLACE: Through the Chair, Senator Begich, the court will look at statements that were made in favor of or against the initiative at the time up to the time that the initiative is placed on the ballot.

What I'm clarifying is more of a scenario where if a certain provision is challenged and it's argued or litigated in court, the court would maybe not give -- will not give strong accord or weight to an argument post-election that is made by the initiative sponsor.

SENATOR BEGICH: I understand.

CHAIR STEVENS: Thank you. Please continue.

MS. WALLACE: So before preparing for today, Mr. Klein and I kind of divvied up the workload. And I'm going to run through just some general legal issues that our office spotted with respect to our review of the initiative. And if you have specific questions related to the language of the initiative or some more of the details, Mr. Klein is equipped to try to answer those questions.

The first legal issue that I wanted to discuss is that there -- with respect to the ranked-choice voting for general elections, it's our opinion that the ranked-choice initiative does raise an issue under Article III, Section 3 of the Alaska Constitution with respect to the election of the governor.

Article III, Section 3 states that "The governor shall be chosen by the qualified voters of the state at the general election. The candidate receiving the greatest number of votes shall be governor."

There is a question in terms of whether the ranked-choice voting process, which requires a majority of the votes, is in conflict with the Alaska constitutional provision that uses the language "the greatest number of votes."

It has been our longstanding opinion of our office that that language means a plurality. It's a question that the Alaska Supreme Court has not addressed, and so it is an open question.

But with respect to a scenario where a general election were to occur and the first rounds of votes were tallied and there was a plurality but not a majority, there is a question as to whether using ranked-choice to get to a majority of the votes cast is in conflict with the Alaska constitutional provision.

Maine had -- which is the first state in the nation to have ranked-choice voting -- passed an initiative I believe in 2016 and established ranked-choice voting for all of its general election positions. And the Maine Senate certified a question to the Maine Supreme Court asking about the constitutionality of some of the provisions in that initiative.

And the decision that was rendered by the Maine Supreme Court with respect to that question that was certified to the Maine Senate was that Maine's Constitution -- which does specifically use the word "plurality" in their Constitution -- held that the ranked-choice voting system with respect to the governor and legislative races was in contradiction with the Maine Constitution.

So it's my understanding, from the research that I've done, that Maine has moved forward with ranked-choice voting but with the exception of the race of the governor and state legislative offices.

CHAIR STEVENS: Senator Begich, you understand this thoroughly. I know.

SENATOR BEGICH: I do. I'm sorry about this, Mr. Chairman. In Maine, though, they challenged -- they did take the ranked-choice challenge to the Supreme Court. And, in fact, in the U.S. House race they contested that, and, in fact, a member of -- a person who actually won based on ranked-choice by getting a majority of the vote was declared the winner after being challenged by the person who initially led. That's actually what happened in the U.S. House race there.

You're drawing the distinction between the governor's race and the U.S. House race there. But the governor's race wasn't contested that way. I mean, I have to -- it was the U.S., meaning that the governor's race there wasn't a dispute, but there was in the U.S. House race. And the court in Maine ruled in favor of the candidate that eventually triumphed through ranked-choice voting. Isn't that right?

MS. WALLACE: Through the Chair, Senator Begich, I don't have any reason to doubt -- I didn't really specifically look at the U.S. House race in Maine, but I did read the opinion of the justices, which was I think before the challenge that you're speaking about.

And so it was, I think, a pre -- I don't know if it was pre-enactment, but it was, I think, the Maine Senate or the Maine Legislature was considering a repeal of certain provisions of the ranked-choice and had a question about constitutionality. And the opinion was specific to the governor's race and the state legislative race.

And the issue that I'm raising here at this table with respect to this initiative only applies to the governor's race and the lieutenant governor's race, and there is not similar language about state legislative races, unlike the

Constitution in Maine. So there are several distinctions.

SENATOR BEGICH: So, Mr. Chairman.

CHAIR STEVENS: Senator Begich.

SENATOR BEGICH: I'm not trying to be either supportive or in opposition to this initiative. I'm just trying to make sure that we have the right information on the table. So it was a 2016 -- 2017 decision that you're talking about, and then a 2018 election was held. There were more recent court decisions. And I would be -- it would be useful I think for us to know -- maybe a short memo just describing what the current state of the law in Maine is, if we're going to use that as an example.

And then, secondarily, to be clear, you were pointing out that we don't say the word "plurality" in our Constitution. And, in fact, we have had a number of governors elected with less than 40 percent of the vote in this state or one at least elected with less than 40 percent and at least three elected with less than 50 percent of the vote in the state of Alaska. So we have a tradition of not taking a majority vote as the standard in the state of Alaska, as well. That would be correct, right?

CHAIR STEVENS: Thank you, Senator. Then we'll get to Senator von Imhof and then Senator Giessel.

SENATOR VON IMHOF: So I don't know if you're the person, Megan, to ask or if it's Cori, but I understand that there is a lawsuit. It was taken to the superior court. And I was curious if there's an appeal, is what I understand, to the Alaska Supreme Court. Was part of the original court case, including contradiction of Article III, Section 3, on the candidate with the greatest number of votes for governor? Was that part of the case?

MS. WALLACE: Through the Chair, Senator von Imhof, no. The issue that is currently pending decision before the

Alaska Supreme Court is with respect to a single subject argument. That is the sole question that is before the Alaska Supreme Court now, because it would affect certification and placement of that initiative on the ballot.

CHAIR STEVENS: Thank you, Senator von Imhof.

SENATOR VON IMHOF: That's too bad.

CHAIR STEVENS: Comments. All right. Senator Giessel.

PRESIDENT GIESSEL: Thank you, Mr. Chairman. Just for clarity, the state of Maine only applies ranked-choice voting to its federal elections, and that was the congressional issue that arose. The reelection of a congressman in that election, he actually won the -- he won -- there were four candidates. He won the most votes, but then it automatically reverted to ranked-choice and another person won or was declared the winner in that case.

Mr. Chairman, there are numerous states between 1912 and 1930 that implemented and then repealed ranked-choice voting; those states being Florida, Indiana, Maryland, Minnesota, and Wisconsin. North Carolina also used it between 2006 and 2013 but repealed it. Thank you, Mr. Chairman.

CHAIR STEVENS: Thank you, Senator. Senator Coghill.

SENATOR COGHILL: Which brings up an interesting point: How to tell the public the difference between the greatest number of votes cast for an individual and the greatest number of votes counted for an individual. And I think that -- that's what it really comes down to. And we used to struggle with how to explain that. That's all. And so as we move forward in this, hopefully the clouds will clear on how we do that.

CHAIR STEVENS: Thank you.

SENATOR BEGICH: Can I ask --

CHAIR STEVENS: Yes, Senator Begich.

SENATOR BEGICH: Just a question of whether an analysis has been done by Leg. Legal. My party is the minority party in the state of Alaska at present. It hasn't always been, but it is at present. And I've been curious as to whether or not Leg. Legal or anyone that you're aware of has done any analysis to identify whether a process that leads to ranked-choice voting, where you have ranked-choice voting would lead to the permanent assignment of my party into the minority. Is that -- any kind of analysis been done, given that the state has generally in both statewide elections and in -- if you add up the total of House seats and Senate seats, and, you know, my party is always in the 43rd or -4th percentile, but the other party is always in the 48th to 49th percentile overall. Would this permanently relegate my party to the minority status in the state? Has that analysis been done, or do you know, or does anybody know?

MR. KLEIN: I don't know --

CHAIR STEVENS: And identify for the record, please, just --

MR. KLEIN: Excuse me. Noah Klein --

CHAIR STEVENS: Thank you.

MR. KLEIN: -- Legislative Legal. Through the Chair, Senator Begich, I don't know if that analysis has been done. I have not conducted that analysis. And I'll leave it at that.

MS. WALLACE: For the record, Megan Wallace. I will echo Mr. Klein's comments. I'm not aware that we've done any such analysis, but we're happy to look at the issue upon request.

CHAIR STEVENS: Thank you. No further questions. Please continue.

MS. WALLACE: The only other comment that I'll make with respect to the issue that's raised under Article III, Section

3 is that the opinion with respect to the language of the Alaska Constitution equating a plurality requirement is in part of our analysis of the Constitutional Convention history, and there were some comments and some debate over that provision.

And there were specific statements that were made with respect to requiring a majority of the votes cast to require election of the governor. And that appears to have been rejected explicitly by the Convention members.

And so, therefore, it's our opinion that the greatest number of votes does equate to plurality, but it is an open question. The Alaska Supreme Court has never considered it and could be a question that is raised with respect to this initiative.

Other legal issues that we've identified is the elimination of party primaries, and the establishment of open primaries could potentially raise an issue under freedom of association rights of political parties. There have been several U.S. Supreme Court decisions that have considered a blanket primary.

Specifically with respect to California, California Democratic Party vs. Jones, which was a 2000 U.S. Supreme Court decision, it looked at and invalidated a blanket primary in California.

About eight years later, the U.S. Supreme Court, in Washington State Grange, considered an open primary, similar to the one proposed in this initiative, and held that it did not severely burden a party's associational rights. I raise that just as a potential issue.

It's our opinion that because the initiative language appears to be more comparable to the Washington state language, that the likelihood that the U.S. Supreme Court would find that it severely burdens the associational rights

is unlikely, but the Alaska Supreme Court has held that the Alaska Constitution is more protective of political parties' associational interests than the federal Constitution. So it's difficult to predict how the Alaska Supreme Court may weigh in on that issue if challenged.

And, finally, the disclosure requirements for the true source or dark money political contributions have the potential to raise a free speech issue under the First Amendment of the United States Constitution and Article I, Section 5 of the Alaska Constitution.

And, again, it's difficult to predict how the Alaska Supreme Court might rule on this issue. As folks are well aware, you know, the Citizens United U.S. Supreme Court case would be, you know, relevant to that discussion. But, again, it's just an issue that we've identified and take no opinion as to the likelihood of success of any of those challenges.

CHAIR STEVENS: Senator Coghill.

SENATOR COGHILL: Just on that point, would the sponsor's intent have any weight if the voters put this into law, the intent in here is to challenge that U.S. Supreme Court case basically. So does that intent carry any weight with it when it comes to adjudication of this particular issue?

MS. WALLACE: Through the Chair, Senator Coghill, when the Alaska Supreme Court is weighing constitutional issues, the sponsors' intent is not usually a relevant part of that discussion. They generally look to the meaning -- the plain meaning of the Constitution and, you know, past precedent in evaluating whether or not the statute or law before them presents any constitutional issues.

SENATOR COGHILL: Mr. Chairman, I would just think that if people reading this are motivated by that particular issue, that could be unfortunate that they think what they're

doing has weight, and it may very well not have weight, just for what it's worth.

CHAIR STEVENS: Thank you. Please continue.

MS. WALLACE: Those are generally the legal issues that we flag. There may be other minor issues, or certainly our testimony isn't to encompass every possible legal challenge that might exist. But those are our high-level comments on the initiative, and we're happy to take any questions.

CHAIR STEVENS: Thank you. Senator Begich.

SENATOR BEGICH: Thank you, Mr. Chairman. This may also be one for the director, but one of my staff assistants has pointed out that under this process of the ranked-choice voting, wouldn't the ranked-choice count have to wait until the last absentee ballot was received because you wouldn't know the actual count until then? Have you given that consideration how that affects the absentee ballot process? Because we receive ballots from overseas, et cetera, for up to 15 days. And would that then be when the clock begins to run for determining when you eliminate the lowest candidate? I'm just curious if you've analyzed that at all.

MS. WALLACE: Through the Chair, Senator Begich, we have not analyzed that. I suspect that if the initiative were to pass, that would be a question that the Division of Elections is going to have to determine, you know, the manner and way it's going to carry out at the elections and counting the absentee ballots.

CHAIR STEVENS: Very good. And we're going to talk to Ms. Fenumiai about that. Senator Coghill, did you have a comment?

SENATOR COGHILL: Yes. So three new definitions in here, new concepts in the reporting mechanisms with dark money, true money, and out-of-state I think. I was just looking for -- I think it's Section 17. Dark money is Section

17; true source is Section 18; and outside-funded entity is Section 19. Those are new concepts in law.

The question that we're going to have to come up with is if they're new concepts and we are putting them before people, how do we have a comparison between what is now and what these new concepts are so they know the context in which they're voting? Maybe that's not a question for you, but that's a question that arises from me when we put a new concept in law.

And so maybe the question would be then, when you're putting a new concept in and taking old concepts out, is it reasonable to expect the general population to be able to read these statutes in that total?

I mean, I look at the repealer section. I'm looking at these new concepts, and I'm thinking how in the world are you going to get somebody to read these many sections of law and get the concepts of these new reporting mechanisms? You can put a general comment on there.

So with the new concepts, I'm just trying to get my feet under me on how do I describe them outside of just what a definition is? But the definition then is shot through a whole section of law. So do we owe it to the public to describe these new concepts as new concepts? Maybe that's the best way of saying it.

MS. WALLACE: Through the Chair, Senator Coghill, that's a difficult question. I'm not sure that they are necessarily legal issues that arise. The issue that you're describing is often an issue that comes up. It's similar to the oil tax initiative. It's very complicated material to describe to the voters, and I don't have any comment on the best way to do that.

SENATOR COGHILL: Yes. I'm sorry to ask our legal team that, but it's a question that plagues me on how do I describe

this to the general population? I'm just looking for any help I can get on that. Sorry. Very important, Megan.

CHAIR STEVENS: So I'm going to ask Senator Giessel to speak in a moment. But we have a time issue because we have to be on floor, Senate on the floor at 11:00, right? So I want to make sure we have a chance to speak to the Director of Division of Elections. Senator Giessel.

PRESIDENT GIESSEL: Mr. Chairman, my question to Megan has to do with the disenfranchisement of voters. So there was a 2015 published study by two researchers on elections. And they found, in examining four elections that used ranked-choice voting, that anywhere from 9.7 to 27 percent of the ballots were discarded through the ranked-choice voting process. So this is very concerning to me. Take a middle number there between 10 and 27 percent, maybe 15, 20 percent of Alaska ballots discarded, that would be 25,000 ballots discarded.

And my concern is, as I look at this initiative and the instructions on page 66 -- which the Division of Elections is supposed to explain to people, put in the ballot. My concern is that the people that will be most likely disenfranchised will be the elderly -- who've always voted the normal way and now are confused by this ranked-choice voting -- and uninformed voters, people who may have limited reading capabilities, but the fact is, disenfranchising voters when we have a very low voter turnout to begin with. Do you have any comments about that?

MS. WALLACE: Through the Chair, Senator Giessel, you raise another issue that could potentially be a subject of challenge to the initiative if it were to become law. It is not anything that this state has looked at or examined before, and so it would be a case of first impression. I don't have any specific comment of the way that the Alaska

Supreme Court is likely to come out on that, but it's certainly another issue that may come up if this were to become law and it's challenged.

PRESIDENT GIESSEL: Thank you, Mr. Chairman.

CHAIR STEVENS: I understand. Thank you. So we're to move on shortly here to the Director of Division of Elections. Any further comments, concluding comments from our attorneys?

MS. WALLACE: Thank you.

CHAIR STEVENS: Okay. Thank you very much. I appreciate your time, Mr. Klein and Ms. Wallace. Would the Director of the Division of Elections come forward, please, Gail Fenumiai. Pleased to have you with us. Pleased to have you back in the job.

MS. FENUMIAI: Good morning. Thank you, Mr. Chairman, and members of the committee. Gail Fenumiai, Director of the Division of Elections.

I was asked to give a brief summary of the statement of cost for implementing this initiative. And the division has expressed an estimated statement of cost of \$800,593 to implement this initiative. That includes the cost of -- that we incurred for processing the initiative, reviewing those signatures that were submitted.

It also includes the cost of a voter education, which would be required as a result of the initiative, that the division would be responsible for educating voters. We estimated that cost to be about \$150,000.

There are requirements for this initiative to be translated into multiple languages that we're required to do according to the Toyukak settlement, as well as the languages that are found under Section 203 of the Voting Rights Act. That estimate is about \$57,400.

The biggest chunk of this is, in order to do

ranked-choice voting, ballots have to have a digital image captured. And in order to capture a digital image, all of our hand-count precincts -- which total 137 -- would need to be outfitted with an ImageCast Precinct Scanner, which is our new equipment that we purchased.

And then following that, the images would then be returned to the division and uploaded, and then the ranked-choice voting process would start at the precinct level. Again, we would have to wait until -- it is my understanding that we would have to wait until the final deadline for all ballots that are legally acceptable to be received, reviewed, and counted before the absentee part of this whole process could start.

It was not evident to the division, when we did this estimate of cost, that there is software that is needed to accommodate this process, and that is approximately \$350,000 in addition to what the division presented. We were told that, yes, our new system can do this but didn't dig deep enough to find out that there were additional costs associated with that. So it's -- that is the division's estimated cost.

And then the cost statement also has \$103,000 in estimated costs from the Alaska Public Offices Commission, adding an Associate Attorney I position and some programming hours that they would need to do for their filing system.

CHAIR STEVENS: Do you have a total then for us?

MS. FENUMIAI: The total is \$906,943 without the additional \$350,000 for the software, because without that software, you can't do it.

CHAIR STEVENS: And the APOC figure, you're including that as well?

MS. FENUMIAI: Pardon me?

CHAIR STEVENS: The APOC --

MS. FENUMIAI: APOC is included in that, yes.

CHAIR STEVENS: \$960,000 plus \$350,000 for software potentially?

MS. FENUMIAI: Uh-huh.

CHAIR STEVENS: Thank you. Senator Coghill.

SENATOR COGHILL: That was my question. It's about a million two then?

MS. FENUMIAI: Approximately 1.2 million dollars, yes.

CHAIR STEVENS: Thank you very much for addressing those issues. Do you have some general comments you care to make before we go into questions.

MS. FENUMIAI: I don't at this time. It's definitely a complex procedure, but if it's enacted, the division will do the best they can to follow the laws of the state.

CHAIR STEVENS: Certainly. Then Senator von Imhof and then Senator Begich.

SENATOR VON IMHOF: Thank you. So building upon Senator Giessel's comments earlier, if a voter only votes for one candidate and that candidate does not get the majority of votes in the general election and then they have it go through the re-scanning of the ballots to find the next highest votes, does that particular ballot that only has one vote, does that get discarded? What happens to that ballot because they haven't ranked anybody for whatever reason?

MS. FENUMIAI: Through the Chair, Senator von Imhof, it's my understanding that if there are no additional rankings on that ballot and that first-choice candidate did not receive the majority of votes, then that ballot for that specific race would no longer be included in any future tabulations.

SENATOR VON IMHOF: So that voter generally -- follow up, please?

CHAIR STEVENS: Yes, please.

SENATOR VON IMHOF: So that voter generally is no longer represented in that race? That vote just no longer counts?

MS. FENUMIAI: Through the Chair, Senator von Imhof, their first vote would be the only vote that would count for that ballot, yes.

SENATOR VON IMHOF: Thank you.

CHAIR STEVENS: Thank you. Senator Begich, did you have your hand up?

SENATOR BEGICH: Yes.

CHAIR STEVENS: And then we'll go to Senator Coghill.

SENATOR BEGICH: So a couple of questions. You mentioned the 137 precincts that have to be hand-counted -- so just maybe a little more detail. I've got three questions, Mr. Chairman, if I could.

CHAIR STEVENS: Please.

SENATOR BEGICH: How do you envision that process? Perhaps a little bit more detail on how you would envision that with the hand-count precincts. You're taking a scanner -- which we're going to purchase -- you take a photograph, and then how would that work?

MS. FENUMIAI: Through the Chair, Senator Begich, the new ImageCast Precinct Scanners we purchased actually capture a digital image of every ballot that goes through the scanner. So the ballot image will be captured at the time the ballot goes through the scanner.

And the proposal by the division would be instead of those precincts hand-counting the ballots, they would actually have a scanner where the ballots would be fed through like they do in most of our urban precincts. And the tally would be done by the scanner, and then the digital images would then be sent to the division to be used to further do the rest of the tabulations that would be required by ranked-choice voting.

SENATOR BEGICH: Just to follow up on that question. So we already have purchased these scanners; is that what you're saying?

MS. FENUMIAI: Through the Chair, Senator Begich, we purchased scanners in all but 137 precincts.

SENATOR BEGICH: Okay. My second question really kind of looks at the system we use now for auditing our systems and how we do that. And if this initiative became law, do you have the capacity to do audits to ensure that the system would be fair?

MS. FENUMIAI: Through the Chair, Senator Begich, we will have to look at how all of our processes and procedures are done, and the division has not done that at this point in time. We do have a very good process in place with our current system.

The law -- the initiative, as proposed, does require that through each state of the tabulation process those results are to be posted. And then those results would then go through the same kind of certification process by the state review board I would imagine post-election, post all of the tabulation required by ranked-choice voting.

SENATOR BEGICH: And I think, Mr. Chairman, you just answered the question that was asked earlier, which is are the results posted as you're going through the tabulation process? And you said the initiative does speak to that, and it does do that?

MS. FENUMIAI: Through the Chair, Section 26 I believe I did mention that each stage there has to be a certificate provided for each stage of the tabulation process.

SENATOR BEGICH: And I say that, Mr. Chairman, because that was a question Senator von Imhof had brought up, and I did not know the answer to that.

And then my last question is, you know, we still have

provisions in state law. I don't know if it's one of the ones that was repealed -- that would be repealed under this initiative for hand-recounts if -- if we have a situation where the difference or the margin is within .5 percent. So how would we account for recounts under -- if this initiative became law?

MS. FENUMIAI: Through the Chair, Senator Begich, Are you referring to the hand-count verification process that takes place following the election or actual recount?

SENATOR BEGICH: I'm actually referring to both processes, and I'm trying to jam them into one question so I can get away with three questions. But it's both the point -- we have the automatic recount process, but we also have the hand tabulation to check. So how would we do those?

MS. FENUMIAI: Through the Chair, Senator Begich, it's my assumption that the hand-count verification process would continue in the same manner, and it would take a significantly longer period of time because the initial count for all first-choice ballots would have to be done, and then the second-choice ballots would have to be then sorted and tabulated, and it would take a very long period of time.

SENATOR BEGICH: Mr. Chairman, this actually brings one follow-up question, if I may?

CHAIR STEVENS: Please continue, Senator Begich.

SENATOR BEGICH: And that would mean do we have to then look at -- would we have to, if this initiative passed, look at changing our date for certifying an election to ensure that a sufficient amount of time is available?

MS. FENUMIAI: Through the Chair, Senator Begich, the division would need to look into that in further detail. The hand-count verification process takes place at the same time the complete election certification process is taking place.

As far as a recount -- you also mentioned a regular

recount -- it's my assumption that a recount would take place in the same manner. All the ballots would be re-tabulated, and then the ranked-choice voting tabulations would happen again as part of that recount process.

SENATOR BEGICH: But that process couldn't begin until after the last absentee ballot was received? You couldn't even begin that process?

MS. FENUMIAI: Through the Chair, correct. I do not have an estimation as to how long the whole tabulation process takes to get through all the ranked-choice votings.

SENATOR BEGICH: Thank you, Mr. Chairman.

CHAIR STEVENS: Thank you, Senator Begich. Senator Coghill and then the Senator von Imhof.

SENATOR COGHILL: He got most of my question. Then it's just a matter of we have under this law, should it pass, your chain of custody would be fairly clear? You're going to have an electronic transmission, but you can verify that with the actual ballots?

MS. FENUMIAI: Through the Chair, Senator Coghill, that's correct. We have not changed the use of paper ballots in the state of Alaska.

SENATOR COGHILL: All right. Thank you.

CHAIR STEVENS: Thank you. Senator von Imhof.

SENATOR VON IMHOF: So you just made the comment "significant longer period of time." And I'm very concerned about that because if there's going to need at each stage completion of the ballot count, a certificate, what if there's going to be a challenge? Then there's going to need to be an audit, and then we have to wait for each stage. And so if it goes through two or three processes, this could take weeks, if not months.

MS. FENUMIAI: Through the Chair, Senator von Imhof, it's my assumptions -- and, again, these are all just

assumptions because we have not dug deep into the weeds on how this would actually be implemented. But it's my assumption those pre-calculations of the ranked-choice voting are all part of the unofficial results, and then the certification of that results happens when the state review board convenes approximately 15 days following the election. They start working on the precinct materials. So it's my assumption we could start the ranked-choice voting tabulation at the precinct level and then go into absentee districts once all the final ballots have been received.

CHAIR STEVENS: Thank you. Yes, further comments? Senator von Imhof.

SENATOR VON IMHOF: How I read Section 26 is that you complete the ballot count and there must be a certificate. Then if there is going to be then information disseminated to the public after each stage, then I would think that there needs to be an allowance of a challenge after each stage, each certificate, each trial run of the ballots again if there is continually no majority winner. And so if it's just bam, bam, bam, bam, here's the end, here's the end, where is there a point that someone can say, "Wait, wait, wait, I don't like how you did that second or third count"?

MS. FENUMIAI: Through the Chair, Senator von Imhof, currently the challenges happen post-election certification, and then a challenge is requested of the division to conduct a recount. All results are considered unofficial until the state review board goes through and does their certification of the election. So I just don't have a good answer for you at this point in time.

CHAIR STEVENS: Thank you, Director Fenumiai. I appreciate your knowledge and your experience. Thanks for being with us. I have an announcement that I need to make before we adjourn. We're forming an emergency response

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preparedness subcommittee appointing the following members: Myself, Stevens, Chair; Senate President Giessel; Speaker Edgmon; Senator Coghill; Representative Kopp; Senator Begich; Representative Pruitt. And the subcommittee will be meeting in the very near future, and I'll be sure to keep the council informed of what happens.

III. ADJOURN

CHAIR STEVENS said if there is nothing further to come before the Council, we are adjourned.

[10:50:49 AM](#)