

From: [Jamie Delman](#)
To: [Rep. Ivy Spohnholz](#); [Rep. Zack Fields](#); [Rep. James Kaufman](#); [Rep. Calvin Schrage](#); [Rep. Ken McCarty](#); [Rep. David Nelson](#); [Rep. Liz Snyder](#)
Subject: HB 405 and HB 406
Date: Wednesday, April 20, 2022 11:05:07 PM

Dear Members of the House Labor & Commerce Committee,

I am writing regarding HB 405 and HB 406.

I support the intent of these bills. However, as currently drafted, the bills create uncertainty and are likely to have negative unanticipated consequences. Many Alaskan stakeholders are affected by trust legislation: i.e., Alaskans doing basic estate planning to provide for their families; Alaskans with special needs who benefit from trust arrangements to allow them to qualify for Medicaid services; Alaska Natives, as beneficiaries of settlement trusts; and Alaska charitable organizations, as trust beneficiaries.

I believe that in order to appropriately consider the interest of these stakeholders, additional study is needed. For this reason, I do not support HB 405 or HB 406 as presently written.

Sincerely,

Jamie M. Delman
Trust and Estate Attorney, Anchorage

From: [David Shaftel](#)
To: [Rep. Ivy Spohnholz](#); [Rep. Zack Fields](#); [Rep. James Kaufman](#); [Rep. Calvin Schrage](#); [Rep. Ken McCarty](#); [Rep. David Nelson](#); [Rep. Liz Snyder](#)
Subject: House Bills 405 and 406
Date: Wednesday, April 20, 2022 7:04:33 PM

Members of the Alaska House Labor and Commerce Committee:

I am an Alaska attorney who practices in the areas of estate and trust planning and administration.

I have worked on Alaska estate and trust legislation over a number of years.

I have reviewed HB 405 and 406, and understand the goals.

However, as presently drafted I am concerned that these bills will not accomplish their goals and rather will inhibit valid estate planning by Alaska residents.

I suggest that these bills be studied further. I know that members of the estate and trust community would be willing to assist.

Respectfully,

Dave Shaftel



FAULKNER BANFIELD

A PROFESSIONAL CORPORATION

8420 AIRPORT BLVD., SUITE 101 • JUNEAU, ALASKA 99801-6924

PHONE: (907) 586-2210 • FAX: (907) 586-8090

CHRISTOPHER J. WALKER

April 20, 2022

Sent by email only to the following:

Representative Zack Fields
State Capitol Room 24
Juneau, AK 99801
Representative.Zack.Fields@akleg.gov

Representative Ivy Spohnholz
State Capitol Room 406
Juneau, AK 99801
Representative.Ivy.Spohnholz@akleg.gov

Representative Ken McCarty
State Capitol Room 428
Juneau, AK 99801
Representative.Ken.McCarty@akleg.gov

Representative James Kaufman
State Capitol Room 405
Juneau, AK 99801
Representative.James.Kaufman@akleg.gov

Representative David Nelson
State Capitol Room 13
Juneau, AK 99801
Representative.David.Nelson@akleg.gov

Representative Calvin Schrage
State Capitol Room 104
Juneau, AK 99801
Representative.Calvin.Schrage@akleg.gov

Representative Liz Snyder
State Capitol Room 27
Juneau, AK 99801
Representative.Liz.Snyder@akleg.gov

Dear Representatives,

I am an attorney who has been practicing estate and trust law in Juneau since 2008. In that time, the largest part of my practice has been assisting Alaskans with their estate planning and administration, including using trusts to protect minor children's inheritance, maintain incapacitated individuals' eligibility for Federal benefits, transition ownership of family businesses, balance the needs of blended families, and facilitate charitable giving.

I am writing this letter regarding HB 405 and HB 406. As I understand it, these bills are motivated by concern that Alaska trusts serve as a harbor for the assets of criminals and other bad actors. I empathize and agree with these concerns, but in my legal practice I have never encountered any reason to suspect that Alaska is such a harbor.

Even assuming this takes place in Alaska, I do not think these bills will make a positive impact on the problem. I think the problem these bills attempt to address is a global one that is best addressed at a national level. The Corporate Transparency Act and the proposed regulations are steps in a national solution. I do not think state-level legislation will be effective or appropriate to tackle the problem.

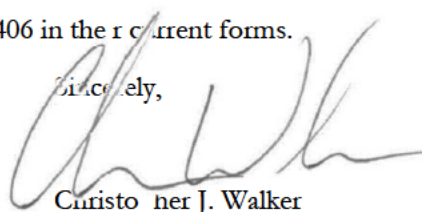
As currently drafted, these bills will instead have negative consequences for Alaskans. These bills will increase costs for Alaskans who need trusts to address their legitimate estate planning needs. Alaskans who value

April 20, 2022

privacy may be driven to form the trusts they need in other states. Finally, I am concerned about unknown and unintended consequences due to the speed with which these bills have progressed and the evolving nature of national regulation.

For these reasons, I oppose HB 405 and HB 406 in their current forms.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher J. Walker", written over the printed name.

Christopher J. Walker

Alaska Bar No. 0811095

CAVALIERE LAW FIRM, LLC

MICHAEL J. CAVALIERE, J.D., LL.M (TAX)

P.O. Box 80288
Fairbanks, Alaska 99708
Phone (907) 374-0516
Fax (888) 283-8996
www.cavalierelawfirm.com
mike@cavalierelawfirm.com

April 20, 2022

Representative Zack Fields
State Capitol Room 24
Juneau, AK 99801
Representative.Zack.Fields@akleg.gov

Representative Ken McCarty
State Capitol Room 428
Juneau, AK 99801
Representative.Ken.McCarty@akleg.gov

Representative David Nelson
State Capitol Room 13
Juneau, AK 99801
Representative.David.Nelson@akleg.gov

Representative Liz Snyder
State Capitol Room 27
Juneau, AK 99801
Representative.Liz.Snyder@akleg.gov

Representative Ivy Spohnholz
State Capitol Room 406
Juneau, AK 99801
Representative.Ivy.Spohnholz@akleg.gov

Representative James Kaufman
State Capitol Room 405
Juneau, AK 99801
Representative.James.Kaufman@akleg.gov

Representative Calvin Schrage
State Capitol Room 104
Juneau, AK 99801
Representative.Calvin.Schrage@akleg.gov

Dear Members of the House Labor & Commerce Committee,

I am an attorney practicing in Fairbanks, Alaska, and have been practicing in the trusts and estates area in Alaska since 2003. I moved to Alaska in 2003 as a direct result of the trust legislation the state passed in 1997 and 1998. I am writing this letter regarding HB 405: *"An Act relating to the establishment of trusts; requiring the filing of certain trust information, and requiring compliance with a federal law,"* and HB 406: *"An Act relating to the validity of trusts involving persons sanctioned by the United States Department of the Treasury; and relating to the recording of documents conveying land to persons sanctioned by the United States Department of the Treasury."*

Since 1997, Alaska has been a leader in adopting laws to improve Alaskans' estate and tax planning options. The Alaska Legislature has diligently worked with the industry for over 25 years to build thoughtful and deliberate statutes that allow for excellent planning opportunities while protecting against abuse. I understand the intent of these bills and understand the concern about Alaska being a destination for people with nefarious intentions. However, as currently drafted, I must oppose

the legislation because of the negative and unintended consequences these bills will have on Alaskans ability to use trusts in their estate planning.

These bills would harm existing estate plans for Alaskans and eliminate plans from being created in the state. Because of the reporting requirements in HB 405 Alaskans will be deterred from using trusts to provide for minor children, disabled family members, and charities. Alaskans will be punished if these bills are enacted. Since the Alaska Legislature has already enacted statues that make Alaska an unattractive place for people with nefarious intentions the benefit of these bills is greatly outweighed by the harm to tens of thousands of Alaskans who use trusts as part of their estate plans.

Understanding the intent of HB 405 and 406, I recommend strengthening our existing laws rather than creating new ones. The Alaska Trust and Estate Professionals (ATEP) group proposed alternatives that I do support. More information can be found at http://www.akleg.gov/basis/Bill/Detail/32?Root=hb%20405#tab5_4 regarding these proposed solutions.

Despite the many unfair and disparaging comments made about the Alaska trust and estate planning industry, this industry has made significant, wide-ranging economic benefits to Alaska. In 2021, the McDowell Group conducted an independent study on the economic impact of trusts in Alaska. The results were revealing: the trust industry supported about 260 jobs and roughly \$21.6 million in labor income to the Alaska economy in 2019, and it has continued to grow. It also greatly benefits financial institutions, such as Alaska community banks, which receive substantial deposits from these entities for loans to Alaskans. If these bills are enacted jobs and revenue will be lost.

I believe that if the Alaska trust industry is allowed the opportunity to meaningfully participate in this process we can further deter people from using Alaska for nefarious purposes. Until that time, I must oppose this legislation for the above stated reasons. If I can be of any assistance please feel free to contact me.

Sincerely,

CAVALIERE LAW FIRM, LLC



Michael J. Cavaliere

MJC

April 20, 2022

Sent by email only to the Members of the House Labor & Commerce Committee

Representative Zack Fields
State Capitol Room 24
Juneau, AK 99801
Representative.Zack.Fields@akleg.gov

Representative Ivy Spohnholz
State Capitol Room 406
Juneau, AK 99801
Representative.Ivy.Spohnholz@akleg.gov

Representative Ken McCarty
State Capitol Room 428
Juneau, AK 99801
Representative.Ken.McCarty@akleg.gov

Representative James Kaufman
State Capitol Room 405
Juneau, AK 99801
Representative.James.Kaufman@akleg.gov

Representative David Nelson
State Capitol Room 13
Juneau, AK 99801
Representative.David.Nelson@akleg.gov

Representative Calvin Schrage
State Capitol Room 104
Juneau, AK 99801
Representative.Calvin.Schrage@akleg.gov

Representative Liz Snyder
State Capitol Room 27
Juneau, AK 99801
Representative.Liz.Snyder@akleg.gov

RE: Opposition to HB 405

Dear Member of the House Labor & Commerce Committee,

I am an estate planning attorney located in Anchorage who practices exclusively in trusts and estates. I am writing this letter regarding HB 405; *"An Act relating to the establishment of trusts; requiring the filing of certain trust information, and requiring compliance with a federal law."*

Alaska Trust & Estate Professionals (ATEP) had prepared a response to HB 405 and HB 406, dated April 13, 2022, and I agree with the concerns raised in that response. I write specifically to discuss AS 13.36.030 as amended by HB 405. HB 405 purports to condition the existence of a trust on a filing and reporting requirement (and in addition will assess civil fines if those requirements are not met).

I will be clear; I oppose the filing and reporting requirements contained in HB 405.

I have doubts about the constitutionality of conditioning the existence of a trust on a reporting requirement (similar to one that is required for corporations). While a trust has some similar qualities to a corporation, it is very different. A corporation is a creature of statute and requires the state for its existence. A trust is a relationship with respect to property and is one of the many "bundles" of rights that a human being has over his or her property. It is well established in American law that these property rights are inherent to all human beings and predate (and exist

independently of) any organized government. I doubt the authority of this Honorable Committee to eliminate these rights in the fashion that HB 405 envisions.

But even if you can, rendering trusts invalid because of the failure to comply with a reporting requirement would greatly increase litigation surrounding trusts, foster uncertainty in property interests, clog title to real property, and discourage Alaskans from setting up a trust in their native state.

Notwithstanding the philosophical and moral issues that the elimination of property rights raises, trusts are deeply personal, private relationships. One of the benefits of a trust is that families can pass property in a private manner and not have some of their most intimate family details become public record (like they become when you create a will). I suspect that if HB 405 passed, most Alaskans who would be inclined to create a trust in Alaska would set up a trust in another jurisdiction so that the arrangements of their estate can remain private. The broad sweep of HB 405 has the unintended consequence of depriving law-abiding Alaskans of a right they formerly had under law, and would deprive Alaskan banking institutions and trust companies of money that could have otherwise been invested in this state.

As I understand it, HB 405 is intended to combat money laundering. While that is a noble goal, it is my opinion that such regulation is best left to the criminal law whereby a wrongdoer can be adjudged as such before being subject to civil disabilities.

I oppose HB 405.

Sincerely,

Louis P. Grasso



PETER B. BRAUTIGAM
MARIBETH CONWAY
JANELLA KAMAI
COLLEEN KNIX
CHRISTOPHER P. LAUER
COLE M. LINDEMANN
F. STEVEN MAHONEY
ROBERT L. MANLEY
CHARLES F. SCHUETZE

Sent by Email Only to the Members of the House Labor & Commerce Committee

April 20, 2022

Representative Zack Fields
State Capitol Room 24
Juneau, AK 99801
Representative.Zack.Fields@akleg.gov

Representative Ken McCarty
State Capitol Room 428
Juneau, AK 99801
Representative.Ken.McCarty@akleg.gov

Representative David Nelson
State Capitol Room 13
Juneau, AK 99801
Representative.David.Nelson@akleg.gov

Representative Liz Snyder
State Capitol Room 27
Juneau, AK 99801
Representative.Liz.Snyder@akleg.gov

Representative Ivy Spohnholz
State Capitol Room 406
Juneau, AK 99801
Representative.Ivy.Spohnholz@akleg.gov

Representative James Kaufman
State Capitol Room 405
Juneau, AK 99801
Representative.James.Kaufman@akleg.gov

Representative Calvin Schrage
State Capitol Room 104
Juneau, AK 99801
Representative.Calvin.Schrage@akleg.gov

Re: HB 405 and HB 406

Dear Members of the House Labor and Commerce Committee:

We do **not support** and we **strongly oppose** HB 405 and HB 406. Specifically, we do **not support** any Alaska Statute that requires a reporting requirement for Alaska trusts.

Although we generally agree with the goal of helping Ukrainians by stopping rich Russian Oligarchs and other nefarious people, given our knowledge and expertise, HB 405 and HB 406 will not promote justice for Ukraine and will not meaningfully impede money launderers or other financial criminals. Rather, these two House Bills will subject

ordinary Alaskans to limitations on trust formation and to state and federal penalties that exist in no other corner of the United States.

As estate planning attorneys with over 200 years of combined legal experience, we draft trusts for Alaskans every day who want to protect their assets, avoid probate, minimize costs and taxes consistent with federal law, and ensure that their assets pass to their loved ones. Our clients consist of Alaskan voters like yourself and include:

- Mothers and fathers who want to protect their assets for the benefit of their children and grandchildren.
- Married and unmarried couples who want to provide for their partners.
- Business owners who are providing for their key employees.
- Generous people who want to leave money to charity in an organized manner.
- Families who need trusts to support family members with special medical needs.
- People who want to access the same tax benefits enjoyed by couples in every other U.S. state, such as those created under IRC §2056(b) and IRC §2056A.
- Parents who want to provide for children from a previous relationship.
- People who want to maximize their retirement benefits through the use of specialized trusts authorized by 26 U.S.C. §409.
- People who want to ensure that their families will benefit from cabins, homesteads, and other emotionally significant property for generations to come.
- Alaskans with homes in Alaska and other states (snowbirds)

Consistent with the above, we are not aware of any of our clients ever setting up a trust for illegal or nefarious purposes, with all trusts being prepared well within applicable federal and state law. We take very seriously our role as members of a self-regulating profession.

HB 405 and HB 406 go too far and will hurt the everyday Alaskan who is trying to do basic estate planning to avoid the burdens of probate, provide for their family, and minimize costs and federal taxes.

If HB 405 and HB 406 become law, many of our clients will make the choice to no longer use a trust in their planning given the broad and overreaching impact HB 405 and HB 406. The laws will effectively eliminate the use of planning with trusts for all Alaskans.

We strongly encourage you to carefully and thoughtfully read the Alaska Trust and Estate Professionals Response dated April 13, 2022, which is available at http://www.akleg.gov/basis/Bill/Detail/32?Root=hb%20405#tab5_4.

If HB 405 and HB 406 become law, trusts will no longer be a viable estate planning tool for Alaskans. The dismantling of the trust industry will impact an estimated 450 to 650 workers in Alaska.¹ The estate and trust planning work in Alaska supports many attorneys, accountants, financial advisors, and other professionals, their staffs, and the businesses that depend on them. Given our expertise, if HB 405 and HB 406 becomes law many Alaskans will elect to move their estate planning to one of the 49 states that do not impose such draconian and misguided restrictions on the use of trusts in estate planning.

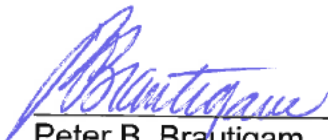
In closing, those of us who have studied law may recall J. Learned Hand's words:

" . . . a transaction, otherwise with an exception of the tax law, does not lose its immunity, because it is actuated by a desire to avoid, or, if one chose, to evade taxation. Anyone may so arrange his affairs that his taxes shall be as low as possible; he is not bound to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one's taxes." Helvering v. Gregory, 69 F.2d 809 (2d Cir. 1934) (Hand, J.), Aff'd 293 U.S. 465, 55 S. Ct. 266, 75 L.Ed. 596 (1935).

Should you have any questions, please call Chris Lauer of our office.

Sincerely,

Manley & Brautigam P.C.

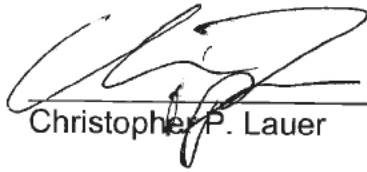


Peter B. Brautigam

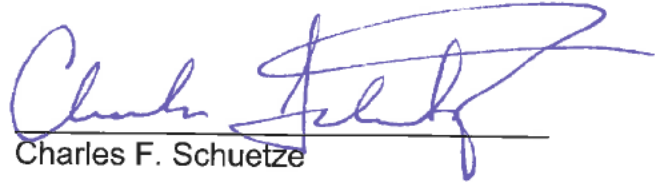


Maribeth Conway

¹ This number is based on an estimate of the approximate number of law firms that prepare trusts, their paraprofessionals and staff, and professional trustees and staff qualified under AS 06.26.



Christopher P. Lauer



Charles F. Schuetze



Colleen Knix



Janella Kamai

AFFIDAVIT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Peter B. Brautigam, being duly sworn, state following:

I am an attorney licensed to practice law in Alaska. In addition, I have an LL.M. in tax law. I have been practicing for over 38 years as a trust and estate attorney. I am current Alaska State Chair for ACTEC (www.actec.org).

In my 38 years of practice, I have counselled and worked with thousands of Alaskans plan their estates. Most all estate plans contain a trust of some type for some family-related purpose to preserve, protect, and pass resources on to the next generation. As an estate planning attorney, I have pdrafted thousands of trusts for clients.

In my 38 years of practicing law, I have **NEVER** known any client to establish a trust for nefarious or illegal purposes. Every trust that I have drafted for clients has been prepared to comply with all applicable federal and state laws.

Peter B. Brautigam

SUBSCRIBED AND SWORN to before me this 20 day of April, 2022, at Anchorage, Alaska.

Notary Public in and for Alaska

My commission expires: 4-11-2025

To: Alaska House of Representatives, Labor and Commerce Committee

Re: Letter in opposition to HB 405 and HB 406

Based on my years of experience on the subject at hand, I must oppose HB 405 and HB 406.

The consequences to many Alaskans would be detrimental to the future of their businesses, families, and charitable interests.

I have reviewed the Alaska Trusts and Estate Professional (ATEP) response to HB 405 and HB 406, and strongly concur with their conclusions. Having lived in this state for over 50 years and assisted Alaskans in personal planning for over 30 years, I am convinced these bills are not in the best interest of Alaskan citizens.


Alaskans spend many years planning and saving for the future, building businesses, caring for future generations, and supporting charitable interests. It is important to encourage long-term commitments to Alaska, and not discourage planning by forcing them out to go out of state to protect the futures of their loved ones. This would be detrimental to Alaskans and Alaska's long-term interests. Regardless of the bills' intent, it is the unintended consequences that require our most sincere attention.

Please take the time to read ATEP's response to these bills. These bills address a problem which does not exist in Alaska at this time and, given the safeguards in place, is unlikely in the future.

STEPHEN E. GREER
ATTORNEY AT LAW

P.O. BOX 242903
ANCHORAGE, ALASKA 99524-2903

3350 Midtown Place
Anchorage, AK 99503



April 20, 2022

Sent by email to the Members of the Alaska House Labor & Commerce Committee:

Representative Zack Fields
State Capital Room 24
Juneau, AK 99801

Representative.Zack.Fields@akleg.gov

Representative Ken McCarty
State Capital Room 428
Juneau, AK 99801

Representative.Ken.McCarty@akleg.gov

Representative David Nelson
State Capital Room 13
Juneau, AK 99801

Representative.David.Nelson@akleg.gov

Representative Liz Snyder
State Capital Room 27
Juneau, AK 99801

Representative.Liz.Snyder@akleg.gov

Representative Ivy Sponholz
State Capital Room 406
Juneau, AK 99801

Representative.Ivy.Sponholz@akleg.gov

Representative James Kaufman
State Capital Room 405
Juneau, AK 99801

Representative.James.Kaufman@akleg.gov

Representative Calvin Schrage
State Capital Room 104
Juneau, AK 99801

Representative.Calvin.Schrage@akleg.gov

Dear Members of the Alaska House Labor and Commerce Committee:

The problem with HB 405 and HB 406 are their overreach, which will have doubtful effect in resolving the perceived problem they are meant to rectify, but will affect the lives of everyday Alaskans. Let me recite a simple example.

Husband and wife come into my office and want to do their estate planning so their minor child isn't left with a mess when they die. They expect more children in the future. I tell them that a Will is effective only in and presupposes a probate proceeding, whereas a revocable trust is simply a Will substitute where the assets owned by that trust doesn't have to go through a court proceeding when they die. I cite that even the simplest probate case takes approximately a year to complete from beginning to end. Furthermore, when they die, if they want their wife's sister to take care of their assets for the benefit of their children until the children reach a certain age they will have to utilize a trust to do so. The parents, being grateful that the sister is willing to take on the role of the parent if they are deceased, want to make this as easy as possible for her so their assets can be expended for the care of their child, and not for unnecessary legal expenses, until the child reaches a suitable age when the child can manage the assets on his/her own. They also tell me that have another home in another state which they received from a deceased parent, as well as having their own home in Alaska. I explain to them that by utilizing a revocable trust, not only can they avoid the time and expense of a probate proceeding in Alaska, but if they have the out-of-state real estate owned by their trust they will avoid an ancillary probate proceeding in that state when they die. I explain that trusts as a tool for estate planning have been around longer than our country and are the primary vehicle by which modern estate planning is done.

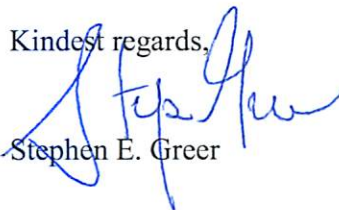
Now I must explain to them, that unfortunately, out of fear that they might be Russian oligarchs or drug dealers, that as a result of this Bill, they as the settlors must disclose to the state a large amount of information regarding their testamentary wishes and that the time and cost of complying with this law, which exists nowhere else in the country, will have to increase dramatically, otherwise the trust will not be enforceable. Furthermore, if they have another child who is a beneficiary, they must amend this trust filing and if they fail to do so there will be a \$500.00 penalty. The parents tell me they are neither drug dealers or Russian oligarchs and they

do not understand why the legislature feels they have the right to delve into their personal affairs in this manner. I tell them that our state feels they because there is a possibility that they might be Russian oligarchs or drug dealers, the state now has the right to know who their beneficiaries will be when they die.

They thank me for their time and state they will do nothing until they move to another state where their family's right of privacy will be respected and thus they intend to put off their estate planning until they move to another state, with the hope that they don't die while residing in Alaska. I tell them I understand, and will also tell them that because of the draconian overreach of this law, it has realistically restricted my ability to do effective estate planning for them or any other Alaskan and I will also have to consider moving to another state if I want to continue to do estate planning for my clients. This is just one simple example of how this Bill affects everyday Alaskans, all out of fear that the parents might be Russian oligarchs or drug dealers.

The proposed bills are much akin to a physician, in an effort to kill one cancer cell, ends up killing their patient. My practice is devoted exclusively to estate planning and my clients are individuals like you and your friends and neighbors. I have always done estate planning for these clients the last 40 years through the use of revocable trusts. Estate planning, if these bills become law, will effectively bring estate planning to an end in Alaska. As an aside, there is not one estate planning lawyer, who I know, who has thoroughly thought about the ramification of these bills, who supports them. Portraying these bills as a legislative effort of preventing Russian oligarchs and drug dealers from using trusts to hide their wealth might make headlines, but if a legislator cares about their own life situation and the lives of their constituents, they will have to question the wisdom and ramification of these bills and won't support their passage.

Kindest regards,



Stephen E. Greer



April 21, 2022

Sent by email only to the Members of the House Labor & Commerce Committee

Representative Zack Fields
State Capitol Room 24
Juneau, AK 99801
Representative.Zack.Fields@akleg.gov

Representative Ivy Spohnholz
State Capitol Room 406
Juneau, AK 99801
Representative.Ivy.Spohnholz@akleg.gov

Representative Ken McCarty
State Capitol Room 428
Juneau, AK 99801
Representative.Ken.McCarty@akleg.gov

Representative James Kaufman
State Capitol Room 405
Juneau, AK 99801
Representative.James.Kaufman@akleg.gov

Representative David Nelson
State Capitol Room 13
Juneau, AK 99801
Representative.David.Nelson@akleg.gov

Representative Calvin Schrage
State Capitol Room 104
Juneau, AK 99801
Representative.Calvin.Schrage@akleg.gov

Representative Liz Snyder
State Capitol Room 27
Juneau, AK 99801
Representative.Liz.Snyder@akleg.gov

Re: HB 405 & 406

Dear Member of the House Labor & Commerce Committee,

We write to respectively oppose HB 405 and 406. The goal of this legislation—to prevent Russian oligarchs and other bad actors from using trusts in Alaska to hide their wealth—is noble. However, the problem the legislation intends to fix needs to be done at the federal, not the state level. To enact this legislation in Alaska would take the State from the forefront of the trusts and estates industry, a position it has spent the last 25 years cultivating, and instead relegate Alaska to a last tier jurisdiction.

Our firm works with a broad spectrum of Alaskans, many of which, consistent with the ethos of this state, strongly value their privacy. It is often difficult enough to help clients overcome the fear of planning for their demise and effectively put pen to paper on their estate planning goals, whether it be for family, friends, or charity. Advising these very clients that their trust is somehow ineffective until it passes a state registration requirement that would require the expansion of already strained state agencies with some indeterminant fee system/tax would have a chilling effect

on meaningful planning for Alaskans. Due to already strained state resources, and the associated delays in the issuance of opening probate documents from the Court system, we have many clients that engage in probate avoidance via trust-based planning to ensure the timely administration of their property and their affairs. These very clients would be caught up in this legislation, the registration requirement, and associated fee/tax regime.

Unlike many jurisdictions, Alaska already has a Registration of Trust requirement where certain information about trusts is filed with the Alaska Superior Court. This information includes the name of the trust, who created the trust, the identity of the trustee, and the address of the trustee. This provides a level of transparency with regard to who is creating trusts based in this state, while balancing the legitimate privacy concerns of Alaskans.

The legislation as presented raises a number of legal issues under state law. A serious debate needs to be had on the implications to hundreds of years of established common law governing trusts. Such debate has not occurred, and this legislation has been proposed in a rushed manner without the input of the trust and estate industry or the local bar. Never before has a state made a trust ineffective until it meets state regulatory muster. Questions as to how this impacts Alaska residents, the privileges and immunities clause, and the equal protection clause need to be given serious consideration and study. Such study should first be done by the Uniform Law Commission.

While there is much speculation as to what a Russian oligarch could do under Alaska law, the legislature has not demonstrated that such a problem meaningfully exists in Alaska. A regime of U.S. Sanctions and federal income tax reporting requirements for non-citizen income tax withholding already exists. However, HB 405 & 406 will have a real impact on our fellow Alaskans. In light of the lack of concrete evidence of what an oligarch could do, the legislature has failed to demonstrate a compelling state interest for legislation that impugns the personal right to privacy of Alaskans that create trust-based estate plans, as well as the long-standing common-law principal governing the freedom of disposition of one's property.

We cannot support legislation that would have such an invasive impact on the personal affairs of hard-working Alaskans that engage in legitimate estate planning when similar laws are not simultaneously enacted by the 49 other states. To truly achieve the purported goal of this legislation, this important policy debate needs to be had in the halls of Congress, not in Juneau.

Very truly yours,
Foley & Pearson, P.C.



William M. Pearson
Counselor at Law



Chelsea Ray Rickkola
Counselor at Law



Melanie Iverson Kaufman
Counselor at Law



CALISTA CORPORATION
www.calistacorp.com

April 21, 2022

Alaska House of Representatives Labor and Commerce Committee
The State Capitol Building, Room 124
120 4th Street
Juneau, Alaska 99801

Via email to: House.Labor.And.Commerce@akleg.gov

Re: HB 405 and 406

Dear Members of the Alaska House of Representatives Labor and Commerce Committee:

I am the General Counsel for Calista Corporation (“Calista”), an Alaska Native Regional Corporation with more than 35,000 Alaska Native shareholders.

In 2018, Calista Shareholders approved the creation of the Calista Corporation Settlement Trust (the “Calista Settlement Trust”), an Alaska Native Corporation Settlement Trust authorized by the Alaska Native Claims Settlement Act (“ANCSA”) at 43 U.S.C. §1629e. As mandated by ANCSA, the purpose of the Calista Settlement Trust is “to promote the health, education, and welfare of its beneficiaries and preserve the heritage and culture of Natives.” 43 U.S.C. § 12629e(b)(1). The beneficiaries of the Calista Settlement Trust consist of those individuals who own shares of stock in Calista, but only while they own shares of Calista. The Calista Settlement Trust serves Calista’s shareholders by providing financial benefits to its beneficiaries while helping preserve and maintain Calista’s traditional land and the culture of its Native people. Many other Alaska Native Corporations have, like Calista, established ANCSA Settlement Trusts for the benefit of their shareholders, descendants, and their Native culture. This includes CIRI, Chugach Alaska Corporation, Koniag, Inc., BBNC, Old Harbor Native Corporation, and many others.

I am writing to the Committee in opposition to HB 405A and HB 406A because, as currently drafted, HB 405A and HB 406A will have unintended and deleterious impacts on Alaska Native Corporations, their ANCSA Settlement Trusts, and their shareholders, without any corresponding benefit to the State or public.

HB 405A require all trusts registered in Alaska, including ANCSA Settlement Trusts, to file with the Department of Commerce, Community and Economic Development a list of all beneficiaries of the trust. The version of HB 405A dated April 14, 2022, that is apparently being considered, would further require trusts to file updates with the Department each time there is a change in beneficiaries or their contact information.

For Alaska Native Corporations with ANCSA Settlement Trusts, this would require them to both file a list of all shareholders with the Department upon creation of an ANCSA Settlement Trust and, under the April 14, 2022 version of HB 405A, file such a list each time a shareholder gifts their shares, a descendant inherits shares, or even when a shareholder changes their address. As an example, in Calista’s case, that would mean filing with the Department of Commerce, Community and Economic Development (“the Department”) a list of all 35,000 plus shareholders of Calista and, under the revised version of HB 405A being considered, supplementing that list each time one of those 35,000 plus shareholders changes their address or gifts theirs

shares, or when a descendant inherits shares. This will impose an administrative nightmare and unnecessary additional cost on both Alaska Native Corporations and the State.

HB 406A states that a trust “is not valid if a settlor, trustee, trustor, or beneficiary of the trust is listed on the most recent Specially Designated Nationals and Blocked Persons List published by the United States Department of the Treasury, Office of Foreign Assets Control.” While we certainly do not expect any Alaska Native Corporation shareholder to end up on the Specially Designated Nationals and Blocked Persons List, HB 406A may require Alaska Native Corporations and their ANCSA Settlement Trusts to compare their beneficiaries to that list and/or report their beneficiaries to the State or federal government, with a corresponding significant, and unnecessary administrative burden.

The Sponsor Statement for HB 405A states that its intent is to “update[] Alaska law to ensure trusts in Alaska will not be used to shield assets of Russian oligarchs or other enemies of the United States.” The Sponsor Statement for HB 406A states that its intent is to “update[] Alaska trust law to ensure trusts held or managed by enemies of the United States can no longer operate in the State of Alaska.”

There is no risk that ANCSA Settlement Trusts established by Alaska Native Corporations can be used to shield assets of Russian oligarchs held or managed by enemies of the United States. ANCSA Settlement Trusts must be approved by vote of the shareholders. ANCSA requires their Trustees to be appointed by the Board of Directors of the sponsoring Alaska Native Corporation. Their beneficiaries are the shareholders of the Alaska Native Corporation, or a defined group of shareholders, such as Elders. Including ANCSA Settlement Trusts within the scope of HB 405A and HB 406A will not advance the purposes of the bills, and will only impose a massive unnecessary paperwork burdens on Alaska Native Corporations and the State.

Therefore, in light of the unintended impacts that HB 405A and HB 406A will have on Alaska Native Corporations and ANCSA Settlement Trusts, we are opposing HB 405A and HB 406A unless ANCSA Settlement Trusts are excluded from their scope.


ANCSA Settlement Trusts are intended to promote the health, education, and welfare of its beneficiaries and preserve the heritage and culture of Natives. They provide a critical component to Alaska Native Corporations’ continued efforts to support their Shareholders, to promote the interests of Alaska Natives, and to preserve Native Culture. We urge the Committee to ensure that it does not impose unnecessary and unintended burdens on Alaska Natives in its efforts to address the misuse of trusts by Russian oligarchs or other enemies of the United States.

Please do not hesitate to contact me with any follow-questions or if further information is needed.

Warm Regards,

CALISTA CORPORATION

DocuSigned by:



A77ED299690C462...

Walter T. Featherly
General Counsel