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M E M O R A N D U M February 19, 2025

SUBJECT: Potential Amendments to Ballot Measure 1
(Work Order No. 34-LS0504)

TO: Representative Justin Ruffridge
Attn: James Sexton

FROM: Allison L. Radford
Legislative Counsel

You requested an opinion regarding whether the legislature may make certain amendments to Ballot Measure No. 1.[1] Specifically, you asked if it would be constitutional to amend the ballot measure to exempt employers with fewer than 50 employees from the requirement to provide sick leave, remove the entitlement to use sick leave as it accrues, and eliminate the requirement that unused paid sick leave carry over from the previous year.

You also inquired about the constitutionality of repealing the provision that sick leave "shall begin to accrue at the commencement of employment or July 1, 2025, whichever is later".[2] Repealing this portion of the relevant subsection would have no legal effect. If repealed, the sick leave requirements in the bill would still apply to hours worked on or after the effective date of the measure, which is July 1, 2025. Therefore, absent a new provision of law specifically changing the accrual timeline, sick leave would still accrue beginning July 1, 2025, for existing employees and on the day of hire for new employees. Accordingly, this portion of your inquiry will not be addressed further in this memo.

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[1] For Ballot Measure No. 1 - 23AMLS "An Initiative To: Increase Alaska's minimum wage, provide workers with paid sick leave, and protect workers from practices that violate their constitutional rights" and supporting materials, *see* Division of Elections, State of Alaska, *Petition and Ballot Measures, Ballot Measures on the Ballot, 2024 General Election*, ELECTIONS.ALASKA.GOV, https://www.elections.alaska.gov/petitions-and-ballot-measures/ (last visited Feb. 4, 2025).

[2] 23.10.066(e), as enacted in sec. 4 of Ballot Measure 1, provides "Paid sick leave as provided in this section shall begin to accrue at the commencement of employment or July 1, 2025, whichever is later. This subsection also provides "An employee shall be entitled to use paid sick leave as it is accrued."

As this memo will explain, current case law does not provide the benefit of a bright-line-rule or clear precedent, accordingly it is difficult to predict with any certainty whether the amendments you suggest could survive a constitutional challenge.

Legislative authority to amend an initiated law

The Alaska Constitution addresses the legislature's authority to amend an initiated law. Article XI, sec. 6, states in part: "An initiated law . . . may not be repealed by the legislature within two years of its effective date. It may be amended at any time." The Alaska Supreme Court held in *Warren v. Thomas* that "the legislature has broad powers to amend an initiative."[3]

Although the Alaska Constitution does not expressly limit the legislature's authority to amend an initiated law, legislative amendments cannot, in effect, repeal the initiative. In *Thomas*, the Alaska Supreme Court upheld legislative amendments to a conflict-of-interest law enacted by initiative. The legislative amendments included changes that required the repeal and reenactment of some provisions, changed the filing due date for disclosure statements required for certain public officials, exempted officials who left office during a certain time period from the requirement to file a statement, and revised penalties for some violations of the act. The court found that the central issue was "whether the legislature has exceeded [its] broad power by passing an amendment which so vitiates the initiative as to 'constitute its repeal.'"[4] The court answered this in the negative, finding that the amendments made "considerable language changes, but these clarify and render the law more precise" and the amendments did not "so emasculate the law that it is effectively repealed,"[5] but instead "preserve [the initiative's] basic structure

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[3] 568 P.2d 400, 402 (Alaska 1977); *see also Warren v. Boucher*, 543 P.2d 731, 737 (Alaska 1975) (finding an initiative proposal substantially similar to a legislative act under art. XI, sec. 4, which states a petition is void if, before the election, the legislature enacts substantially the same measure); *Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173 (Alaska 1985) (upholding a trial court opinion in its entirety, which held that "[t]he two *Warren* cases establish the proposition that the provisions of section 6 of article XI on amendment of adopted initiatives and on voiding pending initiatives vest the legislature with broad powers to protect the state against the untoward effects of initiatives.").

[4] *Thomas*, 568 P.2d at 402 (quoting *Boucher*, 543 P.2d at 737). More recently, in *State v. Trust the People*, 113 P.3d 613, 623 (Alaska 2005), the court reaffirmed its holding in *Thomas*, noting that the Alaska Constitution gives the legislature broad powers to amend laws enacted by initiative but that such amendments must effectuate the intent of the electorate and cannot so vitiate an act passed by initiative as to constitute a repeal. *Trust the People*, however, addresses whether an initiative proposal is substantially similar to an act of the legislature under art. XI, sec. 4.

[5] *Id.* at 403.

and purpose."[6] The court noted that "[f]or the purposes of this appeal it is unnecessary for us to decide at what point an amendment might be so drastic as to constitute a repeal of an initiated law in violation of the Alaska Constitution."[7]

There is limited case law addressing the legislature's authority to amend initiated law, and there is even less regarding the point at which a legislative amendment is so drastic as to constitute a repeal of an initiated law. However, based on the information available, I have the following observations that may assist you when considering amendment options.

Potential Amendments to Ballot Measure No. 1

As in *Thomas*, a court deciding whether a legislative amendment conflicts with an initiated law will likely consider the intent of the voters and whether the amended law still effectuates the electorate's intent.[8] Ballot Measure No. 1 included an uncodified law section with "findings and intent." This section stated that there is a "public interest to increase the minimum wage . . . require a minimum amount of paid sick leave, and protect workers' constitutional rights . . . in order to increase participation in the workforce."[9] This section goes on to assert that "it is important to require a minimum amount of paid sick leave to Alaska workers consistent with their personal health, safety, and general well-being, as well as the health, safety and well-being of their families."[10]

Arguably the limited amendments you have inquired about could be found, like the amendments at issue in *Thomas*, to not be so drastic of a change to "the law that it is effectively repealed." The provisions you asked about include amending the measure to exclude employers with fewer than 50 employees from the paid sick leave provisions, removing the employee entitlement to use sick leave as it accrues, and removing requirements that unused sick leave carry over to the next year. A court could find that these provisions, while narrowing the scope of the sick leave portion of the initiative, nevertheless retain the "basic structure and purpose" of the measure and fulfill the overarching voter intent to raise the minimum wage, implement annual inflation based

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[6] *Id.* at 404.

[7] *Id.*

[8] *Id.* at 403 (noting that "the amended law still imposes substantial disclosure requirements on public officials and effectuates the intent of the electorate that those in a position of public trust be held to a high standard of financial disclosure.").

[9] *Ballot Measure No. 1*, ELECTIONS.ALASKA.GOV, https://www.elections.alaska.gov/doc/oep/2024/Ballot%20Measure%201_Eng.pdf (last visited Feb. 4, 2025).

[10] *Id.* at sec. 5.

increases, establish paid sick leave, and prohibit compelled participation in political or religious meetings.

However, the amendments you suggest are not without risk. First, sec. 4 of the measure, which establishes the sick leave benefit, already makes a distinction on employer sick leave obligations, delineated based on the number of persons employed. Employers with fewer than 15 employees are required to provide 40 hours per year of sick leave, versus the 56 hour requirement for employers with 15 or more employees. Further, any intended exemptions from the paid sick leave benefit requirement are addressed in sec. 7. Accordingly, it is clear from the face of the measure which employers are intended to be included in or exempted from the obligation to provide sick leave and which allowances are to be made for smaller employers. Likewise, sec. 4 is express in the requirement that unused sick leave will be carried over to the next year, but places limits on the number of hours an employer is required to let an employee accrue and use. Similarly, in contrast to the common practice of employers requiring a minimum period of employment before vacation leave is available, this measure provided that an employee is entitled to use sick leave immediately upon accrual. This contingency is logically connected to the stated health, safety, and well-being purpose of providing paid sick leave, since permitted and intended uses of sick leave, unlike vacation leave, are often unplanned. Thus, the provisions you are considering amending would have been included in the material facts the electorate considered when deciding how to vote on the initiative.

When weighing the impact of the amendments you propose on the overall intention of the electorate, the court would also likely consider what portion of employees intended to be beneficiaries of the initiative would be affected by the amendments. For example, I was not able to determine with any specificity how many employers in the state have fewer than 50 employees. However, information published by the U.S. Small Business Administration estimates that in 2022 there were 15,107 businesses in the state with fewer than 20 employees.[11] I was unable to locate any statistics on how many businesses in the state have 20 – 50 employees. According to the U.S. Bureau of Labor Statistics, there were approximately 358,400 Alaskans in the workforce in December of 2024.[12] Assuming an average of eight employees at each business with fewer than 20 employees, the number of employees at those businesses who would not be eligible for sick leave as a result of the amendment would be 120,856, or roughly a third of all employees in the workforce. If this is the case, exempting employers with fewer than 50 employees could be substantial, and would increase the chances that a court could find the affected provisions in the measure "are materially changed by, and rendered repugnant to, the

[11] *2022 Small Business Profile, Alaska*, U.S. Small Business Administration Office of Advocacy, https://advocacy.sba.gov/wp-content/uploads/2020/06/2020-Small-Business-Economic-Profile-AK.pdf (last visited Feb. 4, 2025).

[12] *Economy at a Glance, December 2024, Alaska,* U.S. Bureau of Labor Statistics, https://www.bls.gov/eag/eag.ak.htm (last visited Feb. 5, 2025).

amendatory act"[13] by the amendment. If the number of employees at these businesses were much lower, affecting fewer employees, that may weigh in favor of upholding the amendment. A similar factual analysis would be relevant to determining whether it would be unconstitutional to amend the law to remove the requirement that unused paid sick leave be carried forward to the next year, and that earned sick leave be available for immediate use.

You also asked if there were any steps that would need to be taken to amend an initiative that are different than amending other statutory provisions. The answer is that the process is the same as passing any other bill.

Please let me know if you have any additional questions, or if you would like me to draft a bill to amend Ballot Measure No. 1.

ALR:mjt
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[13] *Meyers v. Bd. of Supervisors of Los Angeles Cnty.*, 243 P.2d 38, 42 (Cal. 1952).