

LEGAL SERVICES

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

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

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

MEMORANDUM

April 9, 2017

SUBJECT: Questions relating to CSHB 200()
Work Order No. 30-LS0038\U

TO: Representative Gabrielle LeDoux
Attn: Courtney Enright

FROM: Alpheus Bullard
Legislative Counsel



This memorandum accompanies the bill described above. Ms. Enright asked several questions. Her questions, paraphrased for clarity, and my answers follow.

Under CSHB 200() if two candidates for governor receive an equal number of votes in the primary election, how would the Division of Elections (division) determine which candidate may select a candidate for lieutenant governor first?

If the two highest vote-getters for the office of governor receive identical numbers of votes at the primary election, these two candidates' names will be placed on the general election ballot as the two named candidates for governor. *See* the bill's sec. 15.25.100(b). However, the bill does not address how two candidates for governor, each of whom received the same number of votes at the primary election, must select their lieutenant governor running mates under the bill's sec. 15.25.100(c). If both candidates wanted to run with the same candidate for lieutenant governor, it is possible that the division would resort to the having the candidates draw lots to determine which candidate for governor would first chose a running mate (*see* AS 15.20.530). If you would like the bill to include a provision addressing this possibility, please advise.

Under the Constitution of the State of Alaska, could the primary election for lieutenant governor be eliminated allowing each candidate for governor to select a candidate for lieutenant governor to run with them on the general election ballot?

It is likely that an Alaska court would find that a primary election system in which candidates running for the office of lieutenant governor do not appear on the primary ballot does not meet the requirements of the state constitution. Given that art. III, sec. 8 of the Constitution of the State of Alaska¹ requires "[t]he lieutenant governor [to] be

¹ That provision in its entirety provides:

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nominated in the manner provided by law for nominating candidates for other elective offices[.]" it is likely that a court would find that candidates for lieutenant governor must be nominated at the primary election in the same manner as other candidates for elective public office.

Why is that portion of AS 15.80.008(a) that required a political party to submit its bylaws to the Director of the Division of Elections and the United States Department of Justice removed?

The provision is removed because the bill repeals AS 15.25.014. AS 15.25.014 is repealed in the bill because preclearance of Alaska's election practices and procedures is no longer required under sec. 4(b) of the Voting Rights Act.² Even if preclearance were still required, AS 15.25.014 would be made unnecessary by the adoption of a top two nonpartisan open primary election system.

The requirement that political parties must submit their bylaws to the Department of Justice and the director was enacted into law in 2001 (*see* ch. 103, SLA 2001), at the time Alaska adopted its modified "closed" primary election system in response to the Supreme Court's decision in *California Democratic Party v. Jones*, 530 U.S. 567 (2000).³ At that time, Alaska was a covered jurisdiction under sec. 5 of the Federal Voting Rights Act of 1965, as amended (42 U.S.C. 1973 *et seq.*). As a covered jurisdiction, all of the state's election processes and procedures were subject to scrutiny as to whether they would lead to a retrogression in the position of certain minority populations' ability to participate in the electoral franchise. Note that because this draft bill establishes a top two nonpartisan open primary, a state political party's bylaws would not affect who was qualified to vote in a state primary election under the bill and could not result in any denial or abridgement of voting rights.

If you have questions, please do not hesitate to contact me.

TLAB:dls
17-307.dls

Attachment

Election. The lieutenant governor shall be nominated in the manner provided by law for nominating candidates for other elective offices. In the general election the votes cast for a candidate for governor shall be considered as cast also for the candidate for lieutenant governor running jointly with him. The candidate whose name appears on the ballot jointly with that of the successful candidate for governor shall be elected lieutenant governor.

² *United States Supreme Court in Shelby County v. Holder*, 133 S. Ct. 2612 (US 2013).

³ For the statement of legislative purpose, *see* sec. 1 ch. 103 SLA 2001.