

**ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE**

June 30, 2020

9:04 a.m.

MEMBERS PRESENT

Representative Jonathan Kreiss-Tomkins, Co-Chair (via
teleconference)
Representative Zack Fields, Co-Chair (via teleconference)
Representative Grier Hopkins (via teleconference)
Representative Andi Story (via teleconference)
Representative Sarah Vance (via teleconference)

MEMBERS ABSENT

Representative Steve Thompson
Representative Laddie Shaw

OTHER LEGISLATORS PRESENT

Representative Sara Hannan (via teleconference)
Representative Andy Josephson (via teleconference)
Representative Geran Tarr (via teleconference)

COMMITTEE CALENDAR

PRESENTATION(S): ALASKA'S BETTER ELECTION INITIATIVE

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

SHEA SIEGERT, Campaign Manager & Spokesperson
Alaskans for Better Elections
Anchorage, Alaska

POSITION STATEMENT: Co-provided a presentation titled "Alaskans
Vote Yes on 2 for Better Elections."

SCOTT KENDALL, Attorney/Advisor
Alaskans for Better Elections
Anchorage, Alaska

POSITION STATEMENT: Co-provided a presentation titled "Alaskans Vote Yes on 2 for Better Elections."

KAY BROWN
Anchorage, Alaska

POSITION STATEMENT: Presented her concerns with Ballot Measure 2 during the presentation on Alaska's Better Election Initiative.

GLENN CLARY, Chair
Alaska Republican Party
Anchorage, Alaska

POSITION STATEMENT: Presented his concerns with Ballot Measure 2 during the presentation on Alaska's Better Election Initiative.

ACTION NARRATIVE

[9:04:20 AM](#)

CO-CHAIR JONATHAN KREISS-TOMKINS called the House State Affairs Standing Committee meeting to order at 9:04 a.m. Representatives Hopkins (via teleconference), Vance (via teleconference), Fields (via teleconference), and Kreiss-Tomkins (via teleconference) were present at the call to order. Representative Story (via teleconference) arrived as the meeting was in progress.

PRESENTATION(S): ALASKA'S BETTER ELECTION INITIATIVE

[9:04:24 AM](#)

CO-CHAIR KREISS-TOMKINS announced that the only order of business would be a presentation on Alaska's Better Election Initiative.

[9:06:28 AM](#)

SHEA SIEGERT, Campaign Manager & Spokesperson, Alaskans for Better Elections, co-provided a presentation titled "Alaskans Vote Yes on 2 for Better Elections." He said Ballot Measure 2 would appear on the ballot in the November [2020 General Election].

[9:08:22 AM](#)

SCOTT KENDALL, Attorney/Advisor, Alaskans for Better Elections, as co-provider of the presentation, turned to slide 2 and explained that Ballot Measure 2 would make three reforms to Alaska's election system. The first reform, he said, would strengthen financial disclosure for independent expenditure groups in Alaska. In a sense it would prohibit dark money, which is money that to the voter appears anonymous. Dark money comes through an independent expenditure group that may have gotten that money from yet another group, but the ultimate source of donations is often unknown. This is an artifact of the Citizens United v. Federal Election Commission ("Citizens United") case passed in 2010 by the U.S. Supreme Court that allowed unlimited spending in candidate campaigns for the very first time; it was said that the disclosure of who is spending the money will be the solution and basically sanitized this spending. However, Mr. Kendall continued, state level statutes have never quite caught up to the state of the art of what Citizens United did. So, Ballot Measure 2 is a reform that says if someone gives their money to say, the American Chamber of Commerce, and the chamber then gives the money to an independent expenditure group, then reporting on that is going to go all the way back to whoever is the ultimate source of the funds. No longer will these funds be anonymous.

MR. KENDALL said the second reform is to go back to Alaska's tradition in the sense of open primaries to have a "top-4 open primary." Up until about 2000 Alaska had a "blanket primary," which is when every candidate appears on a ballot and yet the party candidates still run against one another. The U.S. Supreme Court ruled that unconstitutional. Since then, pure open primaries - in which all candidates are on a single ballot, all voters can vote the ballot, and the top finishers are chosen - have been approved by the U.S. Supreme Court. Ballot Measure 2 puts every candidate on the same ballot, and the top four finishers move on to the General Election.

MR. KENDALL said the third reform is that the General Election takes place with what is called "ranked choice voting" (RCV) or "instant runoff voting." This would give voters the option to vote for the candidate of their choice just like they do now if they choose to. However, they will have the option of ranking their choices one, two, three, and so on. If the person that they supported in first place comes in last, their vote will then be tabulated for their second-place vote, and so on. This assures that any winning candidate has a majority of support, essentially 50 percent plus 1.

[9:11:24 AM](#)

MR. SIEGERT displayed slide 3, titled "Ending 'Dark Money.'" He brought attention to the symbol on the left side of the slide labeled "true source" and explained that true source is defined as the person who earned or inherited the money. Under the current system, the true source gives money to an intermediary group, a shell company that is set up four or five months out of a campaign. That shell group then gives to an independent expenditure group in Alaska, at no limits whatsoever and at complete anonymity for the true source as to who is spending in the political industry in Alaska. It is the intermediary group, not the true source, that shows up under the financial disclosure reports at the Alaska Public Offices Commission (APOC), which leaves voters out and leaves them with no ability to truly know who is spending to influence their vote during the campaign year in Alaska. Ballot Measure 2 would end the dark money and shine a light on the true source of where the money being spent in Alaska is coming from.

[9:14:40 AM](#)

MR. SIEGERT moved to slide 4 titled "Top-4 Open Primary" and noted he is part of the 62 percent of Alaskans who choose not to register with either party. He chose to be a non-partisan, he continued, but when he goes to the August primary the State of Alaska requires that he must be a partisan and must choose between one of the two semi-closed primaries. This leaves 62 percent of the registered voters in Alaska out of the process, it doesn't give them the freedom to choose between the parties. For example, he cannot vote for a Republican for U.S. Senate and vote for a Democrat for the Alaska House of Representatives. This is what the Top-4 Open Primary is aimed at.

MR. SIEGERT turned to Slide 5 titled "Top-4, Single-Ballot, Open Primaries." He drew attention to a list of many candidates in the primary with candidates of numerous parties. He explained that all of these candidates would be on the same primary ballot and there would be four winners in the primary election. These four winners would then move on to the General Election. This creates a standard so that voters aren't treated differently based on their party registration. Also, he continued, it doesn't treat candidates differently based on their party registration. Currently, a candidate who chooses not to run in either primary is a petition candidate who must get signatures. There is no standard by which to get to the General Election based on party line, so what people will do is show up as a

petition candidate on the General Election. [The initiative] is saying "no, every candidate no matter their party registration needs to show up on a ballot and needs to get enough votes to get to the General Election."

[9:17:21 AM](#)

MR. SIEGERT showed slide 6 titled "Ranked Choice Voting Example Ballot" and drew attention to the example ballot. Under the initiative, he explained, people will rank their choices when they go to the General Election. There will be a fourth choice on the right-hand side and then a Candidate D at the bottom, so it can be seen how the voter ranks their choices.

MR. SIEGERT reviewed slides 7-9, titled "Ranked Choice Voting - General Election," and explained how this type of voting is tabulated. Addressing slide 7 depicting Results-Part 1, he noted that none of the four winners in the example of voting results has broken the 50 percent threshold of the votes. In the example, Candidate John Doe is in last place and so is eliminated. Turning to slide 8 depicting Results-Part 2 of the example voting results, he explained that [this one voter in the example] preferred Candidate John Doe, who is eliminated. This one voter's [second] choice is Candidate Pizza Dough, so this voter's vote goes to Pizza Dough as the voter's next preferred choice. But still, no candidate has yet reached the 50 percent threshold, so Candidate Cookie Dough is then the next person to be eliminated. Mr. Siegert moved to slide 9 depicting Results-Part 3 and explained that when Cookie Dough is eliminated, all of Cookie Dough's voters chose Pizza Dough as the next best choice; so, all of those voters go to Pizza Dough and Pizza Dough ends up with 62 percent of the electorate. This means that a candidate cannot win a General Election without the majority of the vote. A candidate must campaign to all of the voters within their district, not just to those with the same letter next to their name as the candidate's. This opens up voter information and puts the burden of campaigning back on the candidate to make sure that they are talking to all the registered voters within their district and making sure that they are elected with a true majority of the electorate.

MR. SIEGERT displayed slide 10 titled "Voter Confusion?" and outlined how this voting method works in Maine, a state that passed it in 2016. In the Maine election, he said, 99 percent of voters were not confused and voted flawlessly. In Portland, Maine, the first year after ranked choice voting (RCV) was enacted on the municipal level, 94 percent of voters surveyed

said they fully understood the ballot design. Currently, 22 cities in the U.S. and one state use RCV. If Ballot Measure 2 is passed, \$150,000 will go to voter education and ensuring that people understand how to rank their candidates one through four.

MR. SIEGERT recounted that in the 2008 Alaska Democratic presidential primary 8,880 voters voted, in 2016 10,610 voters voted, and in 2020 when RCV and a mail-in ballot were used close to 20,000 people voted. In a KTUU article on April 10, 2020, Alaska Democratic Party chair Casey Steinau said it allows people's votes to count and people won't feel they are wasting their vote because they know they can vote for the candidate of their choosing who actually represents them. It also ensures that people know the candidates on the ballot and that the winner of the primary or the general is going to have over 50 percent support.

[9:22:12 AM](#)

MR. KENDALL elaborated on slide 11 titled "Other Benefits." He said an indirect benefit of this reform is an eased transition to vote by mail. This is because the number of ballots for the primary is reduced from two, and possibly three if there are ballot measures, to one ballot. The Division of Elections, he related, has said the major barrier [to vote by mail] is sending two ballots to all unaffiliated voters since it is unknown which ballot they want. With RCV there would be just one ballot.

MR. KENDALL stated that the second benefit of this reform is that it would make partisan redistricting obsolete. The purpose for doing a census every 10 years, he continued, is to rebalance populations between house districts and senate districts while at the same time keeping communities intact. In Alaska and every state in the U.S., redistricting has devolved into a partisan exercise where whatever party has control of the most seats on the redistricting board attempts to impact the other party's voters and do as few districts as possible and thereby gain an advantage in the legislature. Both parties have engaged in this in Alaska's history. Partisan redistricting becomes a zero-sum game in a system where voters have four choices and can rank those choices instead of having two choices. Redistricting reverts back to what it should be, which is simply a rebalancing of populations.

MR. KENDALL said the third benefit of this reform is that it is proven to elect a more diverse group of elected officials who reflect their communities. This has been seen in municipalities

that have enacted RCV and studies have found that in the ranked choice communities the diversity of the elected officials reflected the populace. That is a benefit to the electorate in a diverse state like Alaska.

[9:26:10 AM](#)

MR. KENDALL stated that the fourth benefit is increased turnout. Some of the states that have gone to an open primary have seen an instant 50 percent increase in primary turnout. A great thing about enhanced primary turnout is that almost all of those voters turn into General Election voters.

MR. KENDALL added that the fifth benefit is creation of a safe bipartisan space for big solutions to Alaska's big challenges. For example, a Democratic legislator may know that there needs to be a bipartisan compromise on a spending cap on Alaska's budget. The legislator can work on that if it is known that it reflects the wishes of the legislator's entire district and they won't face a closed primary where they may be taken out for that reason. Legislators cannot be punished by, say, 5 percent of their district for something that much of the district wants.

MR. KENDALL moved to slide 12, titled "Constitutionality," and stated that every part of Ballot Measure 2 has been in binding case law. He said RCV has been upheld by the Ninth Circuit Court of Appeals, the highest court with governance over Alaska short of the U.S. Supreme Court. In 2011, RCV was upheld in whole in Dudum v. Arntz. In this case the court ruled that RCV doesn't violate the principle of one person, one vote, and it doesn't diminish anyone's vote.

MR. KENDALL said there has been discussion that open primaries aren't lawful, but he thinks this is confusion about the old "blanket" primary system that was ruled unconstitutional. Open primaries, as written in Ballot Measure 2, were upheld by the U.S. Supreme Court's 2012 ruling on Washington State Republican Party v. Washington State Grange.

MR. KENDALL, in regard to financial disclosures, explained that disclosure of dark money is embedded in the Citizens United case. This 2010 U.S. Supreme Court decision allowed unlimited spending, but also actually said that whatever kind of disclosure is wanted can be forced, but speech cannot be stopped.

MR. KENDALL further pointed out that the single subject challenge in Alaska was raised at the outset in [Kevin Meyer, et al v. Alaskans for Better Elections (2020)]. Alaskans for Better Elections prevailed in superior court and recently prevailed in the Alaska Supreme Court in that although it has three components, the Better Elections Initiative is on the single subject of election reform to improve Alaska's elections. Now, every constitutional barrier is out of the way and the measure is on the ballot this November.

MR. SIEGERT concluded the presentation. He said the goal is to return competition and return free market elections to Alaska. These policies are encompassed in Ballot Measure 2, he added, which will be on the election in November.

[9:30:24 AM](#)

CO-CHAIR KREISS-TOMKINS invited the next witness, Ms. Kay Brown, to testify.

[9:32:18 AM](#)

KAY BROWN stated she is speaking today as an individual. She noted that she served 10 years in the Alaska House of Representatives and has worked on elections in a number of professional and volunteer capacities since the early 1980s. She stated she is deeply concerned about Ballot Measure 2 for several reasons, but today she will focus her remarks on some of the issues that have not yet been much discussed.

MS. BROWN disagreed that all the constitutional barriers have been resolved. She said she believes there are constitutional conflicts that likely will be challenged if this ballot measure passes. The initiative conflicts with the Alaska State Constitution and the constitution cannot be amended by initiative.

MS. BROWN said a second area of concern is that the measure is needlessly complicated and confusing. At 25 pages long its plethora of changes will likely have unintended consequences. She offered her belief that if Alaskans are going to pass this measure, they have a right to understand the entire proposal, but she doesn't know how that will happen because there is no real evaluation of the changes proposed. Who will provide that clarity? She hears some of the goals stated by the proposers such as transparency and openness, but questions whether this is the right solution for Alaska at this time.

MS. BROWN elaborated regarding unconstitutional issues. She said the initiative's requirement that the lieutenant governor must run as a team with the gubernatorial candidate in the primary directly conflicts with the Alaska State Constitution, Article III, Section 8, which provides that the lieutenant governor shall be nominated in the manner provided by law for nominating candidates for other elective offices. For other elective offices, candidates run in stand-alone party primaries in order to be nominated by their party. There is no provision in the initiative to nominate a lieutenant governor, which is a legal problem. She argued that another legal problem resides in Article III, Section 3, which states, "The governor shall be chosen by the qualified voters of the State at a General Election. The candidate receiving the greatest number of votes shall be governor." She said "the greatest number of votes" is referring to a plurality system, which is what is had now in state races in Alaska and most local races, and a majority is not required for election, as would be mandated by this initiative. The constitutional conflicts are serious legal flaws that could invalidate the proposal if it were to be challenged in court after adoption. The attorney general in the single subject challenge that was recently addressed by the Alaska Supreme Court did not raise these issues.

MS. BROWN said the proposal's complexity is another concern. It is exceptionally complicated for a ballot measure, she stated. It is 25 pages long with 74 sections, and it's not clear what much of it does. It appears to be a cobbled together hodge-podge of requirements and changes that are needlessly complicated and confusing. Part of it may be good, but this is not well thought out. This initiative was brought forward by a group of Alaskans who are backed by outside interests who are eager to bring their national agenda to Alaska. Alaska's election system isn't perfect, she continued, but it isn't broken in any fundamental sense that this initiative addresses. Alaska's election system is considered nationally to be a model system compared to many other systems in the U.S. because of its centralized structure. If anything is broken it is the initiative process. This measure illustrates the difficulty of dealing with complex issues and lengthy statute changes by initiative process. It appears this initiative was put together without much or any public comment from Alaskans and some important elements have been overlooked. She has tried to read and understand this initiative and she has found it quite frustrating. Where is the detailed explanation of what this initiative would do?

[9:37:57 AM](#)

MS. BROWN said the committee has heard today about three of the main topics in the initiative, but what about the dozens of other changes that are proposed? What substantive provisions are included in the 22 statutes that are repealed by Section 72? Many of these provisions have not been explained or justified. For example, changes are proposed to the appointment procedures for poll watchers, precinct counting boards, absentee and questioned ballot review boards, and the Alaska Public Offices Commission (APOC). What is the rationale for these changes and how would the operations of these entities be affected? This initiative applies ranked choice method of voting to the election of presidential electors. How would that work? Would the names of specific presidential electors appear on the ballot and who nominates them? This initiative appears to set up a new two-step election process when it becomes necessary to replace state senators, governor, lieutenant governor, and members of congress and the senate. How would this work? What exactly is this process that is being set up and how is it different from the way these positions are filled now when there is a vacancy? Why is this new process proposed to apply to state senators but not to state house representatives?

MS. BROWN stated that another issue relates to the notices that must appear in written pamphlets in public polling places essentially saying that party labels don't mean anything. Why is this necessary? Referring to Section 11, she said there are new disclosure rules for broadcast digital and other communications that require a lengthy paid-for-by statement to remain onscreen throughout the entirety of the communication. Is that really feasible? And to what communications exactly would that apply? Another point is that the initiative amends the definition of political party and creates confusion about the difference between political parties and political groups. Why are political groups added throughout the statutes? If political parties no longer have specific rights and duties, why not just merge parties and groups?

[9:40:43 AM](#)

MS. BROWN addressed the open primary system. She said Alaska has an open primary system as does the Democratic Party, but the Republicans choose not to participate and have a closed system. This initiative as structured would transform the primary dramatically into an ineffective winnowing that seems to have no

real point. This provides that the top four candidates advance, yet most races in Alaska seldom have more than four candidates. So, what is the point? Where does the top-four-advance concept come from? It appears that this is being forwarded by national interests as a proposed solution to the top-two-advance system used in California and Washington State, which has unintended consequences and problems, and so they want to make Alaska a guinea pig for fixing problems with the process in those other states. This initiative would establish one open primary for candidate advance without regard to party or even declaring a party. She called attention to Section 21, which appears to allow candidates to hide their party affiliation from voters by choosing to be listed as undeclared partisan even if the candidate does have a party registration. Is that the intent of this provision? Eliminating party labels is not going to increase transparency or improve voters' understanding about where candidates stand. Labels mean something and parties stand for something.

MS. BROWN pointed out that there is a lot of confusion about the dark money provisions in Section 17 and what that applies to. The core question is, Does it apply to corporations and, if no, why not and why aren't corporations held to the same standards? Does it apply to ballot measure groups and would it apply to this group, Alaskans for Better Elections? There is confusion about how the provision would be implemented. How does this initiative affect candidates who spend less than \$5,000 a year? She noted that Alaska Administrative Code, 2 AAC 50.258, already deals with the true source of contributions. What exactly is being changed, she continued, and how does this compare with the existing requirements?

MS. BROWN summarized by saying that Ballot Measure 2 impacts all Alaskans and fundamental voting rights. She said everyone who has any capacity working in elections is going to have to put significant effort into trying to understand and comply with it. It is going to have a broad impact across the spectrum of voters, candidates, the groups that work with them, and all the people who would administer this. It isn't clear how the provisions in this proposal interact with existing processes or why some are being proposed. It is complicated, confusing, poorly explained, and legally flawed and it needs more work to adopt for use in Alaska.

[9:45:24 AM](#)

GLENN CLARY, Chair, Alaska Republican Party, stated the initiative is incorrectly titled because it is anything but better. He urged every Alaskan to vote no on Ballot Measure 2. He said the initiative is extremely inferior compared to Alaska's current election system. The initiative would destroy the very foundations of freedoms that Alaska was founded upon. Alaska's present system of electing those to represent Alaskans was established by sovereign Alaskans working together in trust and unity, constitutionally guaranteeing every Alaskan the right to one vote under a system that continues to operate without flaws and fraud. The initiative being discussed today was conceived in private by a select few whose desire is to dismantle and destroy all that sovereign Alaskans hold dear regarding their election system.

MR. CLARY pointed out that the 25-page initiative proposes 17 major changes to existing state statutes and 75 section amendments to Alaska election laws in order to codify the initiative into law if it garners enough votes to become law. He said Alaska's constitution provides for representative form of government to initiate, debate, hold hearings, and pass legislation to govern the state. The drafting of this disastrous document did not have its origins in the spotlight of public view. This initiative was not weathered with house and senate committee hearings, public testimony, town hall meetings, or legislative floor amendments and votes. This initiative is a complicated document, and it is difficult to understand all the devious consequences designed by its select, private, elite authors. A change of this magnitude to Alaska's election system deserves full debate and disclosure. Anyone signing the petition to place this initiative on the ballot should have been required to read it in its entirety and the majority of people would not have signed the petition. Legislation this important mandates complete public education, not just catch phrases and sound bites like "better elections" and "stop dark money."

MR. CLARY charged that Ballot Measure 2 is unconstitutional on several fronts. In 2000, he said, the U.S. Supreme Court ruled that the California blanket primary is unconstitutional and violates the First Amendment rights of freedom of association. Alaska outlawed the blanket primary, but this initiative would dictate the unconstitutional open primary. In 2008 the U.S. Supreme Court ruled that political parties have the right to offer voting to self-identified members and not to the general public. This initiative would destroy Alaska's two-ballot process, along with the constitutional right of freedom of association. Several rulings of the supreme court have defined

first amendment rights of freedom of speech, which includes spending one's money as one sees fit in campaigns. This inferior initiative includes a clause supporting an amendment to the U.S. Constitution to allow citizens to regulate money in Alaska's elections; it is located in the center of page 1. This initiative wants to override the rulings of the U.S. Supreme Court. If passed this initiative would be unconstitutional regarding the Alaska State Constitution, Article III, Section 3, which states that the governor will be elected by a plurality of votes. This initiative would elect a governor via a ranked voting system.

MR. CLARY drew attention to page 1, Section 1, of the initiative which reads: "The uncodified law of the State of Alaska is amended by adding a section to read: FINDINGS AND INTENT. The People of the State of Alaska find..." He said this section goes on to list five inaccurate statements claiming that the people of Alaska hold true. However, he continued, the people of Alaska had no input, no voice, no authorship, no representation, and no participation in the development of this document. It was written by a few to confuse the masses into voting for it. Ballot Measure 2 would destroy the existing election system in Alaska.

MR. CLARY argued that the initiative has three components designed to disenfranchise voters. He said the portion of the initiative commonly known as the "jungle primary" is created to confuse and even mislead voters by masking the party affiliation of the candidate. No candidate party affiliation is mandated to appear on a ballot or general ballot. The Division of Elections (DOE) cannot include a candidate's primary affiliation unless the candidate sends a written letter to the DOE demanding that their party affiliation appears on the ballot, which is incomprehensible. Voters deserve to know that for which a candidate stands. A part of a candidate's identity and position relates to the party with which the candidate affiliates. Section 22 of the initiative requires the state to campaign for candidates and neutralizes a candidate's party affiliation by forcing the DOE to place signs, notices, and paragraphs at polling places on the ballot that state: "A candidate's designated affiliation does not imply that the candidate is nominated or endorsed by the political party or political group or that the political party or political group approves of or associates with that candidate, but only that the candidate is registered as affiliated with the party or group." Mr. Clary questioned what right the state has to define and identify what a candidate does or does not believe about his/her affiliation

with a political party or group. This removes the right of every candidate to self-identify with the party or group of their choosing. He stated that this is communistic and should be stopped. He opined that voters should be extremely upset about this and should vote no on the initiative when they cast their ballot.

MR. CLARY said the segment calling for ranked choice voting in the General Election forces Alaskans to vote for candidates in addition to the candidate of their choice. Any of the individuals can emerge as a winner while an arbitrary process of elimination jettisons other candidates. All of this further disenfranchises voters by watering down the power of the individual vote.

MR. CLARY said Section 25, Item 3, of the initiative deletes an important existing statute. The initiative removes the existing statute that says if a voter marks fewer names than there are persons to be elected to the office, a vote shall be counted for each candidate properly marked. Alaskans will lose this right of voting for just the candidate they support if this initiative passes.

MR. CLARY stated that Section 37 of the initiative continues to dismantle Alaska's election system. He said it amends the statute to read: "The primary election does not serve to determine the nominee of a political party or political group but serves only to narrow the number of candidates whose names will appear on the ballot at the General Election. Except as provided in AS 15.25.100(d), only the four candidates who receive the greatest number of votes for any office shall advance to the General Election." He charged that political parties would become extinct. There will be no need for candidates or voters to affiliate or associate with one another under a banner of common principles and ideals. If this initiative passes, he continued, he can see the Republican Party establishing a convention primary and petitioning the courts for the freedom of association under the first amendment of the constitution. Better election groups have fundamental rights to raise money from any source that it believes in and from the people who believe in what they're doing. That's why this group can accept money from outside groups like the Tides Foundation. They also have the right to pay hundreds of thousands of dollars to local law firms whose partners, along with a former Alaska legislator and former Alaska attorney general, helped draft and support this devastating initiative. Ironically, the initiative seeks to discard those freedoms.

MR. CLARY added that if Alaskans want to clean up their own political smog, then they should resist this type of statute by voting no. The initiative is an attempt by elitists to control and dictate how Alaska should conduct its election process. He opined that the individuals promoting these preposterous ideas are intolerant to Alaska's representative form of government. They seek to impose their will on the people of Alaska using the initiative process, he said, because their concepts lack the ability to stand on their own merits through the legislative representative governmental process. It is a political shell game to manipulate, rearrange, and diminish a person's vote, paving the way for the elite to control the will of the people. Voters want to decide for themselves who will represent them, not a jungle-primary backroom sleight of hand process to manipulate the voting process for the benefit of a few.

[9:57:13 AM](#)

CO-CHAIR KREISS-TOMKINS requested Mr. Kendall or Mr. Siegert to speak to the points raised in Ms. Brown's testimony about the constitutionality of Ballot Measure 2.

MR. KENDALL replied that one alleged conflict with the Alaska State Constitution mentioned by Ms. Brown is that the lieutenant governor is elected in the manner of governor. He said there is no conflict because under the new system everyone is elected in the same manner. So, in the manner clause, essentially this becomes a reinforcement of what's gone on here. When that change is made, they are both elected together through that same top-four primary, so there is no conflict there; nor were raised by Attorney General Clarkson. The second alleged conflict is the idea that the constitution requires a plurality requirement that a governor could be elected with 33 percent of the vote as long as everyone else gets less. The Alaska State Constitution says the governor shall be elected with the greatest number of votes and greatest means the highest number of votes. Ballot Measure 2 says the candidate receiving the greatest number of votes through the final tabulation is the winner. There is no conflict. It is apparent, he continued, that this conflict has arisen out of Maine. He explained that Maine has a constitution that actually says the governor and state legislators shall be elected by a plurality - a very different word with a different meaning. Alaska's constitution has no such restriction and so there is no such conflict, and no such conflict was raised by the Alaska Department of Law or Attorney General Clarkson.

MR. KENDALL addressed the conflict that was raised regarding the initiative being a violation of the party's rights of association under the First Amendment. He said it is settled law through the U.S. Supreme Court, with the 7-2 decision written by Justice Clarence Thomas. It was settled that open primaries, so long as they do not purport to elect the party's official candidate, could be open primaries. The exact system in the initiative is the system approved by the U.S. Supreme Court. The disclaimers discussed by Mr. Clary in the voter guide and otherwise are simply a reinforcement of the fact; it is protective of the party's associational rights. It says they are not the official candidate of the party simply because they are not and cannot purport to be through this system. The parties can go to convention and take their internal votes and they can officially endorse a candidate. The disclaimers are merely meant to protect those associational rights that Mr. Clary and Ms. Brown are worried about.

[10:02:20 AM](#)

REPRESENTATIVE HOPKINS requested Mr. Kendall or Mr. Siegert to clarify how Ballot Measure 2 would impact the presidential electors and how it would impact the poll workers and poll watchers, as stated by Ms. Brown. He also asked how the section that was mentioned by Ms. Brown would apply only to senators and not to house representatives. He further asked why political groups are not lumped in with political parties in statute and whether this applies to corporations.

MR. KENDALL responded that he thinks presidential electors might be a misunderstanding. He explained that the vote for president would be conducted by ranked choice voting. Who Alaska's three Electoral College votes go to will be determined through the ranked choice vote. For example, in 1992 President Clinton was running against President Bush and Ross Perot. When there is a significant third-party candidate it is possible that none of the candidates reaches a majority, he noted. So, if Clinton got 40 percent of the vote, Bush got 38 percent, and Perot got [22 percent], then Mr. Perot is in last place. The votes for Mr. Perot in first place would now be assigned to a second-place vote, which may result in Clinton or Bush winning. It is simply running the same system that is run for all other races. The three electors would go en masse by Alaska's rules, they would not be split up like they are in some other states.

MR. KENDALL agreed poll watchers would be impacted but said poll workers would not be impacted. With poll watchers, he

explained, ancillary changes were needed because this system envisions a world in which the norm is not always two candidates Democrat and Republican. It clarifies that a candidate doesn't need party status to have a poll watcher there if the candidate so desires, which makes sense and puts that candidate on equal footing with a party candidate. It doesn't impact poll workers at all. But for poll watchers it puts third party and no party candidates on the same footing, so a candidate doesn't have to have a party to have a person in the room, which should be the right of all candidates.

10:06:22 AM

MR. KENDALL, in regard to Senate, but not House, special elections, said there are some ancillary changes that make Alaska's special elections, which are very rare, fall in line with this new system. There is no disparate or intended disparate difference between state Senate and House members. It may just be the fact that state House members come up every two years, obviating the need for these special elections. He offered to get in touch with Ms. Brown to have a more nuanced discussion in this regard.

MR. KENDALL, regarding political groups, said it is an ancillary change like the poll watchers where there is a need to change. This is related to how people are perhaps appointed to APOC and other things. In a world where the parties are no longer sole gatekeepers in a sense to the ballot, except for petition candidates, there needs to be other methods of identifying what a political party is than just a performance at the polls and so that is how they will get their representation on APOC. The parties will occupy a different sphere. Parties will have all of their associational rights, all their rights to endorse candidates, have official candidates, have their values, and have their platforms. Some of these changes are merely the adjustment necessary when they are no longer essentially acting as gatekeepers to the ballot.

MR. KENDALL addressed the statements about the initiative being 25 pages long with lots of sections. He said the length of the measure isn't a result of complication - "there's no hiding the ball" - it's the result that the initiative's drafters, himself included, made the specific choice to be entirely transparent, so the measure looks like a bill that the legislature would pass. It shows every deletion and every change that is necessary, including the main change as well as the changes necessary because of the unintended consequences. When creating

a new system of elections, it is necessary to delete a lot of statutes because they describe the old system. Instead of filing a two-page initiative that doesn't include all of the drafting, all of the deletions, everything the legislature's staff is going to have to do to enact it, [the initiative's sponsors] chose to be extremely transparent. [The sponsors] combed through the elections code and believe this is every change that will occur under this new system; the initiative isn't overly complicated; it is good drafting.

MR. KENDALL, regarding whether the measure applies to corporations, surmised that this question is talking about the "dark money" component. If that is the question, then, yes, it applies. This applies to every donor, whether the donor is a wealthy individual or a corporation. Whether the donor inherited, earned, or created the money that is ultimately used in the election, it is going to be reported as the ultimate source. A corporation could be such an entity, so a corporation is on the hook just as an individual is on the hook.

[10:10:00 AM](#)

REPRESENTATIVE HOPKINS inquired whether Mr. Clary's belief is correct that if all the General Election names are not filled out in the order of one, two, three, or four as that voter's choice, then that ballot would be thrown out.

MR. KENDALL replied that that is 100 percent false. He explained that if a voter fills in only the first bubble for one person, then it would count just like it counts today. That is so clear that the statement appears even in the ballot summary drafted by the attorney general and his attorneys. If a voter wishes to vote for one candidate, the voter can.

[10:11:17 AM](#)

CO-CHAIR KREISS-TOMKINS requested Mr. Clary speak further to Republican Party associational rights and how a Republican convention primary would interact with Alaska election law, especially should this initiative pass and become law.

[Mr. Clary did not respond as he was no longer online.]

[10:12:47 AM](#)

CO-CHAIR KREISS-TOMKINS asked Ms. Brown whether Mr. Kendall's response had answered her questions regarding poll watchers, APOC, as well as her other questions.

MS. BROWN replied she is intuiting that the reason these changes are proposed is that one of the goals of this initiative is to minimize the role of political parties as Mr. Kendall said. She said she thinks there will be a change in regard to poll watchers, the precinct counting board, the absentee and questioned counting boards, the current statutes provide for basically bipartisan representation, and also the partisan provisions for how people are appointed to the APOC. It isn't clear, she continued, what the changes will look like for these institutions that are now part of the process and how they will be affected. If the parties are not the entities proposing for those appointments, then how does that work and what does that look like? Why are things related to these ancillary government issues being changed?

[10:15:30 AM](#)

CO-CHAIR KREISS-TOMKINS recalled that a comment was raised about how the dark money provisions would apply to the initiative itself. He requested Mr. Siegert or Mr. Kendall address how, if passed, this initiative would change how the initiative itself would be treated under the law by the rules that it is proposing.

MR. SIEGERT answered that it would apply exactly as Alaskans for Better Elections is reporting right now, which is reporting to APOC. He confirmed it would apply to Alaskans for Better Elections. He explained that ballot initiatives in Alaska are run through an independent expenditure group. Right now, his group's financial disclosure can be found on APOC's website. As well, his group's financial disclosure can be found on its own website. The true source of the donations will be seen, and it will be seen that hundreds of Alaskans have donated over the past few months. When looking at the Division of Elections [website] it will be seen that more than 40,000 Alaskans have signed the petition and are the true backers of this initiative and want to see it on the ballot in November.

MR. KENDALL allowed it is a little more nuanced than that. He said the primary reason it is different is ballot measures have always had unlimited contributions allowed. The legal thinking being that a statute is a statute. The public can read a statute and the statute can't be corrupted by overly generous

campaign contributions. Citizens United really changed the regime for candidates and so that is the regime that Alaskans for Better Elections focused on. He said Mr. Siegert is right that even now Alaskans for Better Elections is complying with the world as the group wishes it to be and is disclosing and over-disclosing.

[10:18:24 AM](#)

CO-CHAIR KREISS-TOMKINS offered his understanding that Ms. Brown is a former executive director of the Alaska Democratic Party (ADP) and is familiar with the primary processes, although the ADP's process differs from the Alaska Republican Party. He requested Ms. Brown to speak to what convention primaries might look like for one of the major political parties in Alaska to pursue were Ballot Measure 2 to pass.

MS. BROWN replied she is not familiar with that from her tenure with the Alaska Democratic Party and she isn't totally familiar with what Mr. Clary was referring to for the Alaska Republican Party. But, she said, it seems that there is no method within the measure for a party to get its endorsed candidates to the ballot or identified on the ballot as their endorsed candidate.

[10:20:42 AM](#)

REPRESENTATIVE HOPKINS asked whether the ranked choice voting system would impact local or municipal elections as well, or only impact state elections.

MR. KENDALL responded that it would not. Municipal elections are run under a different regime, he explained, a kind of open primary where all candidates, for the most part in most municipalities, appear on a single ballot. Then, absent getting to a certain threshold, which in Anchorage he thinks is 45 percent, there is a runoff between the top two candidates. Municipal elections are closer to the proposed system than to the state system, but municipalities decide their own election system. The team at Alaskans for Better Elections hopes that municipalities will decide to follow the lead of the state once the state enacts these reforms. The measure impacts how state officials are elected - state senators, state representatives, governor, lieutenant governor, and congressional delegation.

[10:22:11 AM](#)

CO-CHAIR KREISS-TOMKINS related a question received by text from Representative Story, who is online and can hear but who cannot be heard by the others online. In her text she asked how the residents in states that are doing ranked choice voting have felt about the results. She further asked how residents have felt when a candidate is elected with a majority that includes voters' second choices, meaning there is no outright winner of the majority vote and so the second-choice votes have to be tallied in to get to that clear majority.

MR. KENDALL answered that Maine is the only state currently doing ranked choice voting as Alaska would. He noted that Maine is politically like Alaska in that over 50 percent of residents identify as independent of the two major parties. He further noted that it is also in a number of municipalities; just recently enacted in New York City with nearly 70 percent support. It is on the ballot in Massachusetts for November, like it is in Alaska. He said his group is unaware of any jurisdiction where ranked choice voting has been enacted and then changed back. Maine's ranked choice voting was passed by popular initiative and the Maine legislature attempted to roll it back to the original system and Maine voters on two occasions enacted a referendum, essentially a people veto, to change it back to ranked choice voting and to expand it to their presidential race. He related a high-profile congressional race in Maine where in the initial tabulation the Republican candidate was in the lead with 42 or 43 percent of the vote, but when the Independent candidate was eliminated the vast majority of that candidate's votes went to the Democrat and the Democrat ultimately narrowly won that race. The race was challenged in court and was upheld; so, when challenged, the ranked choice voting system worked.

[10:25:41 AM](#)

CO-CHAIR KREISS-TOMKINS asked whether Ms. Brown would like to offer comments in regard to RCV systems in place in the U.S.

MS. BROWN replied that use of RCV at a state level is new and so there isn't much history. She recounted that a similar proposal - instant runoff voting - appeared on Alaska's 2002 ballot primary and was defeated with 65 percent voting no.

[10:26:55 AM](#)

REPRESENTATIVE HOPKINS, in regard to vote counting, recalled that the Maine governor at that time complained the election was

stolen by a fishy calculation system, which is an algorithm system for counting the votes to build up to a winner. He asked what that calculation system would look like on the ballot in a General Election, the speed of the results, and voter security.

MR. KENDALL responded that voter security would not be impacted at all because Alaska has one of the most secure election systems in that there is always a paper ballot. If results are challenged, the paper ballots can be physically counted. He said an algorithm is not used and described a visual for how the counting works: in a race with three candidates the ballots are put into three boxes, one for each candidate their first choice; then, ballots for the candidate that is in last place are taken out of that candidate's box and the second choice is looked at and the ballot is placed accordingly into the boxes of the top two candidates; when the count gets to 50 percent plus one, that candidate is the winner. If 50 percent plus one is arrived at in the initial tabulation, no other tabulation is necessary. This method assures that the winning candidates are preferred by a majority of the voters. It is ensuring majority rule rather than the current situation where winning statewide candidates and sometimes winning local district candidates can win with a support in the thirtieth percentile. This results in the candidate answering to a very small slice of their electorate or to a closed primary electorate. The speed of tabulation can happen very quickly, there isn't another runoff - the results are tabulated and shown and then the next tabulation can be shown virtually instantly. He noted that the Division of Elections' newly acquired voting equipment is able to read ranked choice ballots, so all the information can be captured on election night and results received virtually as fast as they are now, allowing for mailed ballots to come in after the fact.

[10:30:04 AM](#)

CO-CHAIR KREISS-TOMKINS asked whether Representative Vance or Representative Fields had any questions. Hearing no response, he concluded the committee meeting. He related his intention for the committee to continue to offer a forum on this initiative for the rest of the year given the committee's jurisdiction on elections.

[10:32:10 AM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 10:32 a.m.