

**HB**

**163**

HB163  
Sectional Analysis for Work Draft D dated 2/2/00  
Prepared by the Division of Elections

<u>SECTION</u>	<u>EXPLANATION</u>
1	Election employees exempt from jury service during the months of a primary or general election.
2, 3, 5, 8, 10, 17-25, 29, 31-33, 37, 41, 51, 59, 61-62, 64,	Change the term election judges and clerks to election officials or board members.  Change term chairman to chairperson.
4, 79	Allow permanent fund dividend mailing address to be used on the official voter registration record. Requires the PFD division to pay for the printing of the voter registration form.
6	Remove requirement to have registrars. This is outdated due to the NVRA.
7	Remove requirement that Division of Elections post names of voters 40 days prior to an election. Allow for political parties to have one free list per year.  This is not an efficient way for voters to identify whether or not they are properly registered. The division will be looking into other methods, such as adding more information to the present Interactive Voice Response (IVR) system that was used to locate a voter's polling place during the 1998 primary and general elections. We are also researching a secure way of posting the voter list on the internet.
9, 11	Revise wording on election board appointments. Board names will continue to be solicited from the party district committees and state central party committees. The member from the which the governor is a member and the party from which the candidate receiving the second highest number of votes may both submit two names. The election supervisor will appoint one from each of the above political parties.

12	Change the wording which appears for a ballot initiative from "For or Against" to "Yes or No." This will make the wording for ballot questions consistent throughout Title 15.
13, 50	Revise to conform to the ballot layout of optical scan ballots. Replace square with oval.
14	Change "major election districts" to "four judicial districts."
15	Change requirement mandating that posters, which provide notice of an election, be placed in each election precinct.  This works in rural Alaska but not in urban Alaska. People in urban Alaska rely more on the newspaper for the notice of an election. Posting notices in rural Alaska is an adequate method of providing notice.
16	Remove requirement to include in a broadcast notice the name of the newspaper and the date the newspaper was published.
26	Update to make consistent with the new list maintenance law.
27	Remove requirement for voter to provide former address when voting a questioned ballot. This information is not used to determine the voter's eligibility and is not printed on the questioned oath and affidavit.
28	Deletes reference to a second ballot stub. Optical scan ballots only have one stub.
30	Expands the list of acceptable identification which can be provided by a voter when voting.
34, 47	Change improperly marked ballot to spoiled ballot

35	<p>Remove the requirement that a voter, after voting, return the ballot to an election official for removal of the stub.</p> <p>Accu-Vote ballots only have one stub, which is removed by the election official when issuing the ballot.</p>
36, 38	Clarifies that this section applies to hand-count precincts.
39	<p>Clarifies that this section applies to hand-count precincts. Makes conforming changes to the ballot layout of optical scan ballots. Repeals the reference to stickers. Clarifies what name variations will be counted for write-in candidates.</p>
40	Prohibits the use of stickers by write-in candidates.
42	Updates the scope of review by the state review board. The terminology in present statute is outdated.
43	Clarifies when ballots and stubs for national and other elections can be destroyed.
44, 53	Clarifies what portions of a ballot will count if someone moves from one house district to another after the 30-day cutoff.
45	Delete requirement that an instruction sheet be provided with each absentee ballot. This is only done with by-mail ballots.
46	<p>Removes requirement that a voter may only vote absentee in-person through an Absentee Voting Official (AVO) in the voter's election district.</p> <p>Allows AVOs to conduct absentee in-person voting on election day</p>
48	This is a new section on early voting. Applies to absentee in-person at the regional election offices. This would only apply to voters residing in house districts for which the regional office has

	<p>jurisdiction. Voters registered in HD 1-9 could vote in this manner at the Juneau office absentee voting station. Voters in HD 10-28 at the Anchorage absentee voting station. Voters registered in HD 29-36 at the Fairbanks office absentee voting station. Voters registered in HD 37-40 at the Nome office absentee voting station.</p> <p>The voter would verify that the registration information on file with the division is current and sign an early voting register. After voting the ballot, the voter would insert their ballot into the Accu-Vote precinct tabulator. Ballots would not be counted until after 8:00 p.m. on election day.</p> <p>If the voter's residence is different from that on the official registration file, the voter will be required to complete an absentee in-person oath and affidavit envelope. The voted ballot would be placed in this envelope and held for review by the regional office.</p> <p>This could significantly reduce the number of absentee ballots requiring review by the regional office. In the 1998 general election, there were 13,646 absentee in-person ballots cast. Of those, 12,038 were full count ballots.</p>
49	<p>Special needs voting. This is a replacement for the current absentee voting by personal representative. Although the division was successful in passing legislation last year to change the personal representative voting process, it is still not working.</p> <p>This would eliminate the requirement of the voter to complete an application. The voter would make a request to an elections official or through a personal contact (family member or friend) to get a special needs ballot.</p> <p>The representative would sign an oath, take the ballot and voting materials to the voter. After voting, the voter completes an oath and affidavit envelope similar to that as required by absentee in-person voting.</p> <p>The representative would serve as a witness and return the ballot to the election official.</p>
52	<p>Allows the questioned review board to finish their review of questioned ballots up to 15 days after the election. Current law</p>

	says the review must be completed by the 10 <sup>th</sup> day.
54	Clarifies that hand-count rules apply to challenges which arise during a recount concerning the voter's intent.
55	Allows the director to set the counting schedule for all by-mail elections.
56	Allows a declaration of candidacy to be filed by any reliable electronic means.
57	Requires that in order to appear on the general election ballot, each candidate for governor must have a lieutenant governor candidate and vice versa.
58	Requires that write-in candidates file a declaration with the division.
60	Make the requirements of a nominating petition the same as for declaration of candidacy.
63	Eliminate the requirement to have 10 copies of a constitutional amendment at the polling place. One copy will be posted in each precinct.
65	References new section on special needs voting.
66	Change the date material is required from candidates for the Official Election Pamphlet (OEP) from 7/15 to 7/22.
67	Change the mailing date of the OEP from 30 days before the election to 22 days.
68-70	Update definitions to conform with statute changes.

71	Update definition of felony involving moral turpitude to make it broader and easier to administer.
72-75	Update definitions to conform with statute changes.
76	Clarifies that is it the responsibility of local governments to determine if a voter qualifies to vote in a local election.
77	Adds the transportation of ballots to be exempt from state procurement procedures.
78	Makes conforming change to Title 39. Candidate must file a financial disclosure statement under AS 39.50 simultaneously with filing a declaration of candidacy.
80-81	Repealer section. Repeals Article 4 – Punch Card Voting and other outdated sections.
82	Gives authority to the director to adopt regulations to implement this Act.
83	Revisor s Instructions Global changes in Titles 3, 15, 44 and 46: "election district, electoral district or house election district" to "house district" "election districts" to "house districts" "chairman" to "chairperson"
84-86	Effective date clauses.

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE CROFT

TO: HB 163

1 Page 1, line 12, following "'chairman';":

2 Insert "relating to initiative, referendum, and recall petitions;"

3 Page 27, following line 11:

4 Insert new bill sections to read:

5 **"\* Sec. 67.** AS 15.45.110(a) is amended to read:

6 (a) The petitions may be circulated throughout the state [ONLY BY A  
7 SPONSOR AND] only in person.

8 **\* Sec. 68.** AS 15.45.110(c) is amended to read:

9 (c) A circulator [SPONSOR] may not receive payment or agree to receive  
10 payment that is greater than \$1 a signature, and a person or an organization may not  
11 pay or agree to pay an amount that is greater than \$1 a signature, for the collection  
12 of signatures on a petition.

13 **\* Sec. 69.** AS 15.45.110(e) is amended to read:

14 (e) A person or organization that violates (c) or (d) [(b) - (d)] of this section  
15 is guilty of a class B misdemeanor.

16 **\* Sec. 70.** AS 15.45.130 is amended to read:

17 **Sec. 15.45.130. Certification of circulator [SPONSOR].** Before being filed,  
18 each petition shall be certified by an affidavit by the person [SPONSOR] who  
19 personally circulated the petition. The affidavit must state in substance that (1) the  
20 person signing the affidavit meets the residency, age, and citizenship qualifications  
21 of AS 15.05.010 [IS A SPONSOR], (2) the person is the only circulator of that  
22 petition, (3) the signatures were made in the circulator's [SPONSOR'S] actual  
23 presence, (4) to the best of the circulator's [SPONSOR'S] knowledge, the signatures  
24 are those of the persons whose names they purport to be, (5) the signatures are of

1 persons who were qualified voters on the date of signature, (6) the person has not  
2 entered into an agreement with a person or organization in violation of  
3 AS 15.45.110(c), (7) the person has not violated AS 15.45.110(d) with respect to that  
4 petition, and (8) the circulator [SPONSOR] prominently placed, in the space provided  
5 under AS 15.45.090(5) before circulation of the petition, in bold capital letters, the  
6 circulator's [SPONSOR'S] name and, if the circulator [SPONSOR] has received  
7 payment or agreed to receive payment for the collection of signatures on the petition,  
8 the name of each person or organization that has paid or agreed to pay the circulator  
9 [SPONSOR] for collection of signatures on the petition. In determining the  
10 sufficiency of the petition, the lieutenant governor may not count subscriptions on  
11 petitions not properly certified.

12 \* **Sec. 71.** AS 15.45.340 is amended to read:

13 **Sec. 15.45.340. Circulation [BY SPONSOR].** The petitions may be  
14 circulated throughout the state [ONLY BY A SPONSOR AND] only in person.

15 \* **Sec. 72.** AS 15.45.360 is amended to read:

16 **Sec. 15.45.360. Certification of circulator [SPONSOR].** Before being filed,  
17 each petition shall be certified by an affidavit by the person [SPONSOR] who  
18 circulated the petition. The affidavit shall state in substance that (1) the person  
19 signing the affidavit meets the residency, age, and citizenship qualifications of  
20 AS 15.05.010 [IS A SPONSOR], (2) the person is the only circulator of the petition,  
21 (3) the signatures were made in the circulator's [SPONSOR'S] actual presence, and  
22 (4) to the best of the circulator's [SPONSOR'S] knowledge, the signatures are the  
23 signatures of persons whose names they purport to be. In determining the sufficiency  
24 of the petition, the lieutenant governor may not count subscriptions on petitions not  
25 properly certified.

26 \* **Sec. 73.** AS 15.45.580 is amended to read:

27 **Sec. 15.45.580. Circulation [BY SPONSOR].** The petitions may be  
28 circulated [ONLY BY A SPONSOR AND] only in person throughout the state or  
29 senate or house [ELECTION] district represented by the official sought to be recalled.

30 \* **Sec. 74.** AS 15.45.600 is amended to read:

31 **Sec. 15.45.600. Certification of circulator [SPONSOR].** Before being filed,  
32 each petition shall be certified by an affidavit by the person [SPONSOR] who

1 personally circulated the petition. The affidavit shall state in substance that (1) the  
2 person signing the affidavit meets the residency, age, and citizenship qualifications  
3 of AS 15.05.010 [IS A SPONSOR], (2) the person is the only circulator of that  
4 petition or copy, (3) the signatures were made in the circulator's [SPONSOR'S]  
5 actual presence, and (4) to the best of the circulator's [SPONSOR'S] knowledge, the  
6 signatures are those of the persons whose names they purport to be. In determining  
7 the sufficiency of the petition, the director may not count subscriptions on petitions  
8 not properly certified."

9 Renumber the following bill sections accordingly.

10 Page 31, line <sup>18</sup>20, following "AS 15.20.740;":

11 Insert "AS 15.45.110(b);"

12 Page 31, line 21:

13 Delete "sec. 88"

14 Insert "sec. 96"

15 Page 32, line 1:

16 Delete "15.45.580,"

17 Page 32, line 9:

18 Delete "Section 85"

19 Insert "Section 93"

20 Page 32, line 10:

21 Delete "sec. 87"

22 Insert "sec. 95"

23 Delete "1999"

24 Insert "2000"

# ALASKA STATE LEGISLATURE

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House of Representatives  
House District 34

## Sponsor Statement for HB 163 Changes to Election Law

House Bill 163 is primarily a housekeeping bill that will update current election law to conform with the optical scanning ballot tabulation system.

The goal of House Bill 163 is to make the electoral process more efficient while continuing to maintain the integrity of the process.

In addition to housekeeping measures which are outlined in an accompanying sectional analysis, House Bill 163 contains three policy changes which will help make the election process more efficient for both the electorate and the Division of Elections.

- *Write-in Candidates*

It became apparent after the 1998 gubernatorial election that the state needs clear procedures for the qualification of write-in candidates and for the counting of votes. House Bill 163 will prohibit the use of stickers by write-in candidates. Write-in stickers cannot be used with the state's optical scan ballot tabulation system. The Division has been advised by the manufacturer, Global Elections Systems, that stickers could damage the Accu-Vote machines.

- *Revision of Absentee by Personal Representative Process*

The current statutory process is too cumbersome and the resulting mistakes by people attempting to assist other voters have resulted in the disqualification of many ballots. Current law requires the personal representative to deliver an application to the voter, return the application to an election official, pick up the ballot and voting material, deliver the material to the voter and then return the voted ballot and material to an election official, and ~~multiple signatures on a complex form~~. The new process would allow the personal representative to deliver an application and voting material at one time and then return the voted ballot and material to an election official. The same checks and balances remain in place to protect the integrity of the electoral process.

♦ *Change to the Absentee In-Person Voting Process*

Early voting would apply to absentee voting in the regional election office absentee voting stations. Voters registered in a house district in which the regional election office has jurisdiction would no longer be required to complete an absentee oath and affidavit envelope. This will significantly reduce the number of absentee ballots requiring review by the division of elections. If a voter's residence address information is different from that which appears on the division's records at the time of voting, the voter will be required to complete an oath and affidavit envelope.

# FISCAL NOTE

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

BILL NO. HB 163

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected \_\_\_\_\_ Office of the Governor  
 Title An Act relating to voters and elections BRU Elective Operations  
 Component Elections  
 Sponsor Representative James  
 Requester House State Affairs Committee Component No. 21

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual	(12.5)					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>(12.5)</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	(12.5)					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>(12.5)</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2000) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

The division will no longer be required to pay for the printing of the voter registration form in the annual permanent fund dividend booklet

Prepared by Gail Fenumia *Gail Fenumia*  
 Division Division of Elections  
 Approved by LI Governor Fran Ulmer *Fran Ulmer*  
 Agency Office of the Lieutenant Governor

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### MEMORANDUM

January 25, 2000

**SUBJECT:** HB 163 Amendments bringing Alaska statutes into line with Buckley v. American Constitutional Law Foundation, No. 97-930, 525 U.S. 182 (1999) (Work Order No. 21-LS0769)

**TO:** Representative Eric Croft  
Attn: Peggy Wilcox

**FROM:** Kathryn L. Kurtz *KK*  
Legislative Counsel

Enclosed is the draft amendment to HB 163 that you requested to bring Alaska's initiative law into line with the United States Supreme Court decision in Buckley v. American Constitutional Law Foundation, 525 U.S. 182, 119 S.Ct. 636, 142 L.Ed.2d 599 (1999).

#### **Name Badges**

The Buckley case found a Colorado provision requiring circulators to wear name tags unconstitutional. Alaska has a similar requirement in AS 15.45.110(b). That section requires a sponsor circulating an initiative petition to display identification containing the sponsor's name. This requirement is clearly unconstitutional under Buckley. To solve this problem, the enclosed amendment would simply repeal AS 15.45.110(b).

#### **Registered Voter Requirement**

The second problem presented by the Buckley case is more difficult to solve. In Buckley, the court invalidated a Colorado statute requiring that petition circulators be registered voters. The court reasoned that such a restriction unduly limited the number of people who could convey the initiative proponent's message. Buckley, 119 S.Ct. at 643-44. The court seemed particularly concerned about the exclusion of individuals who are eligible to vote, but for political reasons not willing to register to vote, from the pool of petition circulators. *Id.* at 644. The court suggested that the purposes of the registration requirement advanced by the state were better served by the state's residency requirement--which was not challenged in the case. Similarly, no "eligible to vote" qualification was challenged in the Buckley case. *Id.* at 645.

Alaska also requires, albeit indirectly, that petition circulators be registered voters. Under AS 15.45.110(a), only sponsors may circulate petitions. Sponsors are, by definition, the qualified voters who subscribed to the initiative application. AS 15.45.060, art. XI, sec. 2,

Representative Eric Croft

January 25, 2000

Page 2

Constitution of the State of Alaska. Although the constitution does not expressly make registration a prerequisite to being a "qualified voter," AS 15.05.010(6) does. So, Alaska law effectively requires all petition circulators to be registered voters--precisely what the Buckley case prohibits.

The enclosed draft removes the AS 15.45.100(a) provision that says only sponsors can circulate petitions. It also changes all references to "sponsor" in AS 15.45.130 to "circulator." I believe this is the approach Mr. Botelho was suggesting. See Botelho letter at 4 - 5. I left intact the AS 15.45.090 reference to sponsors, on the theory that sponsors would be the ones responsible for getting the petitions to non-sponsor circulators.

Mr. Botelho seems to believe that this approach is free of constitutional problems. See Botelho letter at 4. I do not share this view. Article XI, section 3 of the Constitution of the State of Alaska provides:

After certification of the application, a petition containing a summary of the subject matter shall be prepared by the lieutenant governor **for circulation by the sponsors**. If signed by qualified voters, equal in number to ten per cent of those who voted in the preceding general election and resident in at least two-thirds of the house districts of the State, it may be filed with the lieutenant governor.

(emphasis added).

This provision might be read narrowly to imply that only sponsors may circulate initiative petitions, and this may be the basis for the existing statutory requirement to that effect. There is some support for this narrow reading of the constitution in a comment made by Delegate Sweeney at the Constitutional Convention. Discussing a proposal that would require at least 10 sponsors for each initiative petition, she argued for a 15% signature requirement rather than 10%, noting that "[i]f you have 4,000 votes to get **it requires each sponsor to secure 400 votes**, and I believe it should be left at fifteen percent." Proceedings of the Alaska Constitutional Convention at 1028 (December 17, 1955) (emphasis added). This comment seems to suggest that Mrs. Sweeney envisioned each of those ten sponsors going out and getting 400 signatures each, and that she did not find this requirement especially burdensome. However, Mrs. Sweeney was one delegate among many, and it may be that a court would not find her remarks representative of the intent of the body.

A less literal reading would make sponsors responsible for gathering the necessary signatures, but allow them to delegate some of the actual work of soliciting signatures to others. This is the approach that the enclosed draft takes.

Although I am not entirely comfortable with this approach, I feel it is superior to the only other option I could think of--which would be to change statutory references requiring that sponsors be "qualified voters" to requiring that they meet the residency, age, and citizenship requirements of AS 15.05.010. That approach is problematic, because the constitution uses

Representative Eric Croft  
January 25, 2000  
Page 3

the term "qualified voters" for both petition sponsors and petition signers. Given that, it would be odd to require different qualifications for the two groups in statute. Also, the Buckley case does not say that a state can not require initiative sponsors or signers to be registered voters--the issue in that case was limited to petition circulators.

Your observation that a provision of the state constitution which conflicted with the federal constitution should be considered void was, by the way, correct--the Alaska Supreme Court has observed that "provisions of state law, including state constitutional law, are void if they conflict with federal law." Hickel v. Southeast Conference, 846 P.2d 38, 51 n.22 (Alaska 1992).

### **Referenda and Recalls**

The Buckley case only specifically addressed the circulation of initiative petitions. However, I think the same logic extends to referendum and recall petitions as well. The enclosed amendment addresses referendum and recall petitions as well as initiative petitions.

### **Other Changes**

This amendment also changes the effective date of HB 63 from 1999 to 2000.

If I may be of further assistance, please advise.

KLK:glc:pl  
00-021.glc

Enclosure

BUCKLEY, SECRETARY OF STATE OF COLORADO  
v. AMERICAN CONSTITUTIONAL LAW FOUNDATION, INC., et al.

certiorari to the united states court of appeals for the tenth circuit

No. 97-930. Argued October 14, 1998--Decided January 12, 1999

Colorado allows its citizens to make laws directly through initiatives placed on election ballots. The complaint in this federal action challenged six of the State's many controls on the initiative-petition process. Plaintiffs-respondents, the American Constitutional Law Foundation, Inc., and several individuals (collectively, ACLF), charged that the following prescriptions of Colorado's law governing initiative petitions violate the First Amendment's freedom of speech guarantee: (1) the requirement that petition circulators be at least 18 years old, Colo. Rev. Stat. §1-40-112(1); (2) the further requirement that they be registered voters, *ibid.*; (3) the limitation of the petition circulation period to six months, §1-40-108; (4) the requirement that petition circulators wear identification badges stating their names, their status as "VOLUNTEER" or "PAID," and if the latter, the name and telephone number of their employer, §1-40-112(2); (5) the requirement that circulators attach to each petition section an affidavit containing, *inter alia*, the circulator's name and address, §1-40-111(2); and (6) the requirements that initiative proponents disclose (a) at the time they file their petition, the name, address, and county of voter registration of all paid circulators, the amount of money proponents paid per petition signature, and the total amount paid to each circulator, and (b) on a monthly basis, the names of the proponents, the name and address of each paid circulator, the name of the proposed ballot measure, and the amount of money paid and owed to each circulator during the month, §1-40-121. The District Court struck down the badge requirement and portions of the disclosure requirements, but upheld the age, affidavit, and registration requirements, and the six-month limit on petition circulation. The Tenth Circuit affirmed in part and reversed in part. That court properly sought guidance from this Court's recent decisions on ballot access, see, e.g., *Timmons v. Twin Cities Area New Party*, 520 U. S. 351, and on hand-bill distribution, see, e.g., *McIntyre v. Ohio Elections Comm'n*, 514 U. S. 334. The Tenth Circuit upheld, as reasonable regulations of the ballot-initiative process, the age restriction, the six-month limit on petition circulation, and the affidavit requirement. The court struck down the requirement that petition circulators be registered voters, and also held portions of the badge and disclosure requirements invalid as trenching unnecessarily and improperly on political expression. This Court agreed to review the Court of Appeals dispositions concerning the registration, badge, and disclosure requirements. See 522 U. S. \_\_\_\_.

Precedent guides this review. In *Meyer v. Grant*, 486 U. S. 414, this Court struck down Colorado's prohibition of payment for the circulation of ballot-initiative petitions, concluding that petition circulation is "core political speech" for which First Amendment protection is "at its zenith." *Id.*, at 422, 425. This Court has also recognized, however, that "there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order ... is to accompany the democratic processes." *Storer v. Brown*,

415 U. S. 724, 730; see *Timmons*, 520 U. S., at 358; *Anderson v. Celebrezze*, 460 U. S. 780, 788.

Held: The Tenth Circuit correctly separated necessary or proper ballot access controls from restrictions that unjustifiably inhibit the circulation of ballot-initiative petitions. Pp. 7-22.

(a) States have considerable leeway to protect the integrity and reliability of the ballot-initiative process, as they have with respect to election processes generally. "[N]o litmus-paper test" will separate valid ballot-access provisions from invalid interactive speech restrictions, and this Court has come upon "no substitute for the hard judgments that must be made." *Storer*, 415 U. S., at 730. But the First Amendment requires vigilance in making those judgments, to guard against undue hindrances to political conversations and the exchange of ideas. See *Meyer*, 486 U. S., at 421. The Court is satisfied that, as in *Meyer*, the restrictions in question significantly inhibit communication with voters about proposed political change, and are not warranted by the state interests (administrative efficiency, fraud detection, informing voters) alleged to justify those restrictions. This judgment is informed by other means Colorado employs to accomplish its regulatory purposes. Pp. 7-8.

(b) Beyond question, Colorado's registration requirement drastically reduces the number of persons, both volunteer and paid, available to circulate petitions. That requirement produces a speech diminution of the very kind produced by the ban on paid circulators at issue in *Meyer*. Both provisions "limi[t] the number of voices who will convey [the initiative proponents'] message" and, consequently, cut down "the size of the audience [proponents] can reach." *Meyer*, 486 U. S., at 422, 423.

The ease with which qualified voters may register to vote does not lift the burden on speech at petition circulation time. There are individuals for whom, as the trial record shows, the choice not to register implicates political thought and expression. The State's strong interest in policing lawbreakers among petition circulators by ensuring that circulators will be amenable to the Secretary of State's subpoena power is served by the requirement, upheld below, that each circulator submit an affidavit setting out, among several particulars, his or her address. ACLF did not challenge Colorado's right to require that all circulators be residents, a requirement that more precisely achieves the State's subpoena service objective. Assuming that a residence requirement would be upheld as a needful integrity-policing measure--a question that this Court, like the Tenth Circuit, has no occasion to decide because the parties have not placed the matter of residence at issue--the added registration requirement is not warranted. Pp. 8-13.

(c) The Tenth Circuit held the badge requirement invalid insofar as it requires circulators to display their names. The District Court found from evidence ACLF presented that compelling circulators to wear identification badges inhibits participation in the petitioning process. Colorado's interest in enabling the public to identify, and the State to apprehend, petition circulators who engage in misconduct is addressed by the requirement that circulators disclose their names and addresses on affidavits submitted

with each petition section. Unlike a name badge worn at the time a circulator is soliciting signatures, the affidavit is separated from the moment the circulator speaks, when reaction to the message is immediate and may be the most intense, emotional, and unreasoned. Because the badge requirement compels personal name identification at the precise moment when the circulator's interest in anonymity is greatest, it does not qualify for inclusion among "the more limited [election process] identification requirement[s]" to which this Court alluded in *McIntyre*, 514 U. S., at 353. Like the Tenth Circuit, this Court expresses no opinion on the constitutionality of the additional requirements that the badge disclose whether the circulator is paid or volunteer, and if paid, by whom. Pp. 13-16.

(d) The Tenth Circuit invalidated the requirement that ballot-initiative proponents file a final report when the initiative petition is submitted insofar as that requirement compels disclosure of each paid circulator by name and address, and the total amount paid to each circulator. That court also rejected compelled disclosure in monthly reports of the name and address of each paid circulator, and the amount of money paid and owed to each circulator during the month in question. In ruling on these disclosure requirements, the Court of Appeals looked primarily to this Court's decision in *Buckley v. Valeo*, 424 U. S. 1. In *Buckley*, the Court stated that "exacting scrutiny" is necessary when compelled disclosure of campaign-related payments is at issue, but nevertheless upheld, as substantially related to important governmental interests, the reporting and disclosure provisions of the Federal Election Campaign Act of 1971. Mindful of *Buckley*, the Tenth Circuit did not upset Colorado's disclosure requirements as a whole. Notably, the Court of Appeals upheld the State's requirements for disclosure of payors, in particular, proponents' names and the total amount they have spent to collect signatures for their petitions. Disclosure of the names of initiative sponsors, and the amounts they have spent to gather support for their initiatives, responds to Colorado's substantial interest in controlling domination of the initiative process by affluent special interest groups. The added benefit of revealing the names of paid circulators and amounts paid to each circulator, the lower courts fairly determined from the record as a whole, has not been demonstrated. This Court expresses no opinion whether other monthly report prescriptions regarding which the Tenth Circuit identified no infirmity would, standing alone, survive review. Pp. 16-20.

(e) Through less problematic measures, Colorado can and does meet the State's substantial interest in regulating the ballot-initiative process. To deter fraud and diminish corruption, Colorado retains an arsenal of safeguards. To inform the public about the source of funding for ballot initiatives, the State legitimately requires sponsors of ballot initiatives to disclose who pays petition circulators, and how much. To ensure grass roots support, Colorado conditions placement of an initiative proposal on the ballot on the proponent's submission of valid signatures representing five percent of the total votes cast for all candidates for Secretary of State at the previous general election. Furthermore, in aid of efficiency, veracity, or clarity, Colorado has provided for an array of process measures not contested here by ACLF. P. 21.

120 F. 3d 1092, affirmed.

Ginsburg, J., delivered the opinion of the Court, in which Stevens, Scalia, Kennedy, and Souter, JJ., joined. Thomas, J., filed an opinion concurring in the judgment. O'Connor, J., filed an opinion concurring in the judgment in part and dissenting in part, in which Breyer, J., joined. Rehnquist, C. J., filed a dissenting opinion.

[http://www.caselaw.findlaw.com/cgi-bin/getcase.pl?court=US&vol=000  
&invol=97-930#section2](http://www.caselaw.findlaw.com/cgi-bin/getcase.pl?court=US&vol=000&invol=97-930#section2)

# STATE OF ALASKA

DEPARTMENT OF LAW  
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December 10, 1999

The Honorable Fran Ulmer  
Lieutenant Governor  
Office of the Lieutenant Governor  
P.O. Box 110015  
Juneau, AK 99811-0015

Re: *Effect of Buckley v. American Constitutional  
Law Foundation on State of Alaska Initiative  
Statutes*  
A.G. file no: 663-99-0171  
1999 Op. Att'y Gen. No. 2

Dear Lt. Governor Ulmer:

## I. Introduction

We have prepared this opinion to advise you and your staff about the effect on Alaska statutes of a recent United States Supreme Court decision. The decision is *Buckley v. American Constitutional Law Foundation*, 119 S. Ct. 636, 142 L. Ed. 2d 599, 67 U.S.L.W. 4043 (1999), in which the Court invalidated certain requirements set out in Colorado law regarding initiative petitions. This is important to Alaska because the *Buckley* case will affect some of Alaska's laws on initiative petitions. The holding of *Buckley* leads to the conclusion that a few of Alaska's laws governing initiatives are clearly unconstitutional, and that these laws should therefore be amended and not enforced until the constitutional defects are cured.<sup>1</sup>

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<sup>1</sup> As you will see from the discussion below, the Court's holding in *Buckley* as applied to certain of Alaska's election statutes satisfies the requirements of our supreme court's holding in *O'Callaghan v. Coghill*, 888 P.2d 1302, 1304 (Alaska 1995) (executive branch may abrogate a statute which is clearly unconstitutional under a United States Supreme Court decision dealing with a similar law, without having to wait for another court decision specifically declaring the statute unconstitutional).

**II. *Buckley* Invalidates Requirements on Residency, Identification Badges,  
and Reporting of Payments to Individual Petition Circulators**

The Court in *Buckley* invalidated three types of requirements for initiative petitions set out in Colorado's statutes and constitution. First, the Court struck down the requirement that initiative petition circulators be registered voters. *Buckley*, 119 S. Ct. at 644. Second, the Court invalidated the requirement that initiative petition circulators wear identification badges containing the circulator's name. *Buckley*, 119 S. Ct. at 646. Third, the Court invalidated the requirement that proponents of an initiative report to the state the names and addresses of all paid circulators and the amounts paid to each circulator. *Id.* at 647. The Court found that the three controls at issue were excessively restrictive of political speech, in violation of the First Amendment to the United States Constitution.

**III. Impact of *Buckley* Decision on Alaska Law Regarding Initiatives**

**A. Registered Voter Requirement**

There are a number of provisions in Alaska's constitution and statutes that may be affected by the holding of *Buckley* invalidating the requirement that initiative petition circulators be registered voters. First, Alaska law requires that persons who sponsor, sign, or circulate initiative petitions be "qualified voters," and part of the test for being a qualified voter is that the person be registered to vote. An explanation of "qualified voter" is set out in two places. Alaska Statute 15.05.010, entitled "voter qualification," provides that

A person may vote at any election who

(1) is a citizen of the United States;

(2) is 18 years of age or older;

(4) has been a resident of the state and of the election district in which the person seeks to vote for at least 30 days just before the election; and

(6) *has registered before the election as required under AS 15.07 and is not registered to vote in another jurisdiction.*

(Emphasis added.) Similarly, AS 15.60.010, entitled "definitions," provides:

(25) "qualified voter" means a person who has the qualification of a voter and is not disqualified as provided by art. V, sec. 2, of the state constitution and AS 15.05.030.

However, the scope of *Buckley's* prohibition on requiring that an initiative petition circulator be a registered voter is not entirely clear. First, it is unclear whether the *Buckley* Court meant to include petition signers as well as circulators in its holding on this point. The Alaska Constitution and Alaska statutes require that initiative petition signers and circulators be "qualified voters."<sup>2</sup> The constitutional provisions addressing the requirements for an initiative petition are article XI, sections 2 and 3.<sup>3</sup> The statutes requiring that qualified voters sign and circulate an

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<sup>2</sup> There are similar requirements for a referendum set out in the constitutional provisions referenced below and in Alaska Statutes 15.45.250 – 15.45.465.

<sup>3</sup> The Alaska Constitution, article XI, section 2, sets out the requirements for an application for an initiative or referendum as follows:

An initiative or referendum is proposed by an application containing the bill to be initiated or the act to be referred. The application shall be signed by not less than one hundred *qualified voters* as sponsors, and shall be filed with the lieutenant governor. If he finds it in proper form he shall so certify. Denial of certification shall be subject to judicial review.

(Emphasis added.)

The Alaska Constitution, article XI, section 3, sets out the requirements for a petition for an initiative or referendum as follows:

(continued. . .)

initiative petition are AS 15.45.030(2), AS 15.45.060, AS 15.45.100, AS 15.45.120, AS 15.45.130(5), and AS 15.45.140.

Under *O'Callaghan*, 888 P.2d 1304, the holding of *Buckley* should be read narrowly and limited to its express terms. Under the language set out in *Buckley*, the Court struck down the requirement that petition circulators be registered voters. The Court did not address the issue of a requirement set out in state law that persons who sign an initiative petition application be registered voters.<sup>4</sup> Therefore, Alaska could retain the requirements set out in the Alaska Constitution and statutes that petition signers be qualified voters. However, it is clear that Alaska may not retain the requirement that petition circulators be qualified voters. The Court in *Buckley* suggested that the requirement that petition circulators be registered be replaced with a requirement that the circulators provide an affidavit demonstrating that they are residents of the state. *Id.* at 644.<sup>5</sup>

Under this limiting analysis, article XI, sections 2 and 3, of the Alaska Constitution would stand. Similarly, the following statutes would stand: AS 15.45.030, AS 15.45.060, AS 15.45.100, AS 15.45.120, AS 15.45.130(5), and AS 15.45.140. However, AS 15.45.110(a)

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(...continued)

After certification of the application, a petition containing a summary of the subject matter shall be prepared by the lieutenant governor for circulation by the sponsors. If signed by *qualified voters*, equal in number to ten per cent of those who voted in the preceding general election and resident in at least two-thirds of the election districts of the State, it may be filed with the lieutenant governor.

(Emphasis added.)

<sup>4</sup> In *Buckley* the Colorado law challenged did require that persons who signed initiative petitions be "registered electors" at the time of signing. *Id.* at 119 S. Ct. 640-641 n. 7.

<sup>5</sup> However, the Court expressly reserved judgment on the question of whether an actual statutory residency requirement would be permissible. Until there is authority to the contrary it is not clear that a court would invalidate the residency requirement.

requiring that petition circulators be sponsors would be clearly unconstitutional because of the requirement that sponsors be registered voters. Instead, under *Buckley*, Alaska could impose a requirement that petition circulators provide an affidavit that they are state residents, rather than registered voters. Similarly, many parts of AS 15.45.130 would be clearly unconstitutional because of the requirement that petition circulators be sponsors. Again, the sponsor requirement could be replaced by a requirement that the petition circulators provide an affidavit that they are Alaska residents. We suggest that your staff prepare an administrative regulation to address this matter. Under the regulation an initiative petition circulator could establish Alaska residency either by demonstrating that he or she was a registered voter or by submitting an affidavit attesting to residency in Alaska.

#### **B. Identification Badge Requirement**

The *Buckley* Court invalidated the requirement that initiative petition circulators wear identification badges containing the circulators' names. Alaska Statute 15.45.110(b) provides that "a sponsor shall display identification containing the sponsor's name when circulating a petition." Thus, AS 15.45.110(b) is clearly unconstitutional under *Buckley*.

#### **C. Requirement That Payment to Individual Petition Circulators be Reported**

The *Buckley* court struck down a requirement that ballot initiative proponents who pay circulators file a final report disclosing information specific to each paid circulator, including the circulators' names and addresses and the total amount paid to each circulator. In contrast, unpaid petition circulators were not required to disclose their names or other information. *Id.* at 646. The *Buckley* Court also invalidated the requirement that initiative proponents file a monthly report containing the names and addresses of each paid circulator and the amount of money paid and owed to each circulator during the month in question. Alaska Statute 15.45.130(8) includes a requirement

that all sponsors file an affidavit containing the petition circulator's name and whether the circulator has or will receive payment for collection of signatures. Alaska's requirements are not the same as those invalidated in *Buckley*. In Alaska, all sponsors, paid or unpaid, must disclose their names. Those sponsors who did receive payment for petition circulation only need identify the fact of payment, not the amount. Therefore, the requirement of identifying the petition circulators by name is not clearly unconstitutional under *Buckley*.

Similarly, it is unclear whether the requirement of identifying whether petition circulators are paid or unpaid is unconstitutional under the holding of *Buckley*, noted above. The requirement set out in AS 15.45.130(8) is not identical to the requirements invalidated in *Buckley*. The Court in *Buckley* left open the question of whether the state could require petition circulators to disclose whether they were paid or unpaid. *Id.* at 646. Therefore, although it is a fairly close question, we would advise that the requirement set out in AS 15.45.130(8), that the sponsor's affidavit state whether petition circulators are paid or unpaid, is not clearly unconstitutional. Finally, the remaining language set out in AS 15.45.130(8) requiring identification of each person or organization that has paid or agreed to pay the sponsor for collection of signatures is allowable under *Buckley*. *Id.* at 647.

#### IV. Corrective Action in Light of *Buckley*

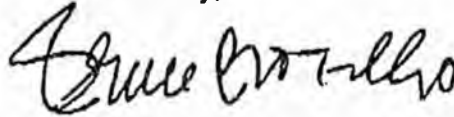
The next consideration is determining what action the state should take regarding the Alaska statutes that are clearly unconstitutional under *Buckley*. First, we recommend that corrective legislation be introduced to cure the constitutional defects. During this past legislative session we worked with the Division of Elections on legislation to update the elections code. This legislation was introduced as HB 163 and SB 120. We are available to work with your staff to add provisions to one of these bills that will address the constitutional problems with the initiative provisions of the

The Honorable Fran Ulmer, Lieutenant Governor  
A.G. File No: 663-99-0171

December 10, 1999  
Page 7

elections code in light of *Buckley*. Second, for the reasons set out in this opinion we advise you not to enforce the statutes discussed above as we have concluded they are "clearly unconstitutional."

Sincerely,



Bruce M. Botelho  
Attorney General

BMB:bw

cc: Janet Kowalski, Director  
Division of Elections  
Office of the Lieutenant Governor