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April 26, 2001

TO: HOUSE STATE AFFAIRS COMMITTEE

Re: House Bill 213 and House Joint Resolution 25
Limitations on initiatives

I have attached materials relating to House Bill 45, from the previous session, when this bill and joint resolution were considered and rejected. These materials are still pertinent.

It appears that the present bill is even worse than the bill that was previously rejected. Last session, the number of signatures required to meet each of the 30 additional required benchmarks was 4% - in the new bill it is 7%.

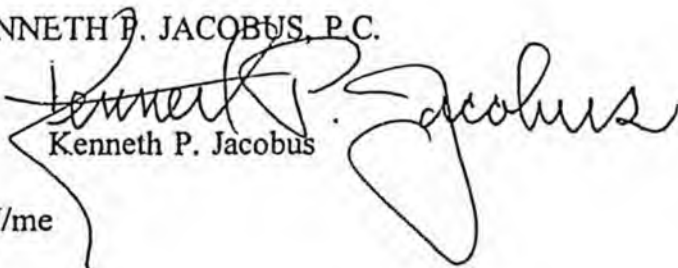
There is no reason that Republicans should lead the charge to deprive the voters of Alaska of their right to initiative. In particular, we want to elect a Republican governor at the next election, and retain Republican seats in the newly reapportioned legislature. We cannot have a proposed Constitutional amendment on the ballot which allows our opponents to argue that the Republicans want to deprive the voters of Alaska of their initiative rights.

If have any particular questions, please let me know.

Very truly yours,

KENNETH P. JACOBUS, P.C.

By


Kenneth P. Jacobus

KPJ/me

Encl.

January 24, 2000

TO: SENATE JUDICIARY COMMITTEE

Re: House Bill 45, Limitations on Initiatives

Dear Chairman Taylor and Committee Members,

I am the legal counsel for the Republican Party of Alaska and have worked on several initiative petitions. I will be testifying today at the hearing on this bill, but did want to submit certain information in writing. These comments are my own as an individual and do not represent any policy or statement of the Republican Party of Alaska.

First, the members of the committee must read two excellent articles by Liz Ruskin and Martha Bellisle at Page One of the Metro Section of the Anchorage Daily News of Sunday, January 23, 2000. These articles present an excellent, accurate and objective view of the issues.

House Bill 45 proposes and requires the adoption of a Constitutional Amendment to limit the rights of Alaskan voters to participate in the initiative process. Article One, Section Two of the Alaska Constitution specifically provides:

All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole.

Especially given the present political situation in Alaska, there is no way that anyone can justify a Constitutional amendment to restrict the initiative power of the people. It will end up being another massive embarrassment to the Republican legislators and Republican Party if this Constitutional amendment is placed on the ballot. There will be massive criticism across the entire political spectrum.

I can understand that certain legislators did not like certain laws that were enacted by the initiative, but this is no reason to restrict the rights of the people to enact these laws. Under our Constitution and our form of government, the power of the people is supreme, and the rights of the people should not be limited because some legislators did not like what the people did.

In addition, there is no problem which needs to be addressed, except the problems created by the Legislature itself when it previously limited the people's initiative rights. These limitations were

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in violation of the Constitution of the United States, and greatly increased the costs and risks involved in an initiative petition.

Despite the relative simplicity of the process and lower costs as compared to states such as California or Oregon, we have only a small number of petitions, only a smaller number of which actually make it to the ballot.

PROPOSED ADDITIONAL LIMITATIONS

HB 45 proposes that the present Constitutional requirement of 10% of the number of votes cast statewide in the last general election, including at least one signature from each of 27 election districts, be changed to 10% of the number of votes cast statewide in the last general election, including at least ~~7~~% from each of 30 election districts. This additional limitation is not appropriate, particularly where we are going to have to amend our basic document of government - the Alaska Constitution - to do so.

One proposed justification for change is that it will force initiatives to be more broadly based. Upon closer examination, this is not a problem. For example, the 1998 Official English for Government initiative, processed under prior law, submitted multiple signatures from all 40 election districts. I am certain, without checking, that the initiatives which are going to be on the ballot in 2000 - hemp and property tax limitation - also have multiple signatures from all or almost all of the election districts. In order to pass the law once it is on the ballot, broad-based support is important. The circulators already seek this broad-based support from the beginning during their signature-gathering processes.

For example, both the hemp and property tax limitation petitions actually had people circulating petitions in most parts of Alaska - all the way from south-east to north of the Arctic Circle. Petition circulators actually flew or drove to other areas of Alaska in order to collect signatures. The petition upon which I am now working - instant run-off voting (IRV) - has actually distributed petitions to volunteer circulators who are responsible for circulation in all 40 election districts. This has been done, in part, in order to educate voters in all areas as to what the proposed law is all about. I am continuing to add additional local areas for circulation. For example, yesterday I mailed a petition to Nikiski for volunteer signature-gathering.

Another proposed justification for change is to insure that petitions are local and volunteer rather than paid efforts. Any proposed change which makes the process more difficult, however, has exactly the opposite result. Each change makes a locally-based volunteer petition more difficult, without affecting the ability of a well-funded petition to get on the ballot. A good example is

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the 2000 hemp initiatives. Actually, there were two proposed marijuana initiatives gathering signatures for the 2000 ballot. 99HEMP, the one that will make the ballot, was funded by California-based hemp crusader Jack Herer. 99MJNA, a local initiative to revise state drug laws, tried to rely completely on volunteers and failed miserably in the attempt to gather sufficient signatures. A local initiative to raise alcohol taxes also relied on volunteers. Despite having more than 200 volunteers gathering signatures, it did not obtain sufficient signatures to make the 2000 ballot.

As an aside, no one should fear well-paid initiative petition efforts, even from sources outside of Alaska. If the idea is not good, the voters will defeat it. Also, the Daily News Articles cite a study of 168 initiative petitions in 8 states done by Elisabeth Gerber, a political science professor at the University of California, San Diego. From this study, Professor Gerber concluded that the more money that is spent on an initiative, the more likely it is that the initiative will fail.

At present, about 23,000 valid signatures are needed to place an initiative on the ballot. Petitions have a signature validity rate of from 70 to 75%. Two years ago, if a petition came up short of valid signatures, there was an additional 30 days allowed during which a supplemental petition could be submitted to make up the shortfall. Then, a petitioner could be safe turning in 30,000 signatures, knowing that there was an additional 30 days to make up any shortfall that might occur. (Cost - a combination of \$30,000 @ \$1/signature or substantial volunteer hours) Now that the Legislature has removed the grace period, a petitioner cannot be safe turning in less than 40,000 signatures, because there is no opportunity to make up any shortfall. (Cost - a combination of \$40,000 @ \$1/signature or 1 1/3 times as many volunteer hours) I have not calculated the effect of House Bill 45 on the cost of petitioning because it would be too time consuming with too much estimating involved. I know that a petitioner would need to turn in many more than 40,000 signatures, at substantial additional cost, because a petitioner could not afford to miss the required 4% of valid signatures in each of 30 election districts.

The year 2000 is a presidential election year, will have property tax limitation and hemp legalization on the ballot, and may very well also include a \$25,000 Permanent Fund payout. One can reasonably expect a large voter turn-out. This means that the number of signatures required for an initiative petition will substantially increase after the 2000 general election, even without any change at all in the Alaska Constitution or laws.

HB 45 will kill volunteer petitions. Volunteer petitions already have one foot in the grave because the 30 day grace period has been taken away. I believe that we will see the effect of the removal of the grace period in a month or so. The minimum wage petition turned in sufficient

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signatures. If the petitioners did not actually validate their own signatures prior to turning them in, however, it will be a miracle if they have sufficient valid signatures to make the ballot. These petitioners will have no time to gather the few additional signatures necessary, and all their prior efforts will have gone for nothing.

In summary, there is no problem which needs to be addressed by Constitutionally-restricting the voters' right of initiative and to try to do so is counter-productive in several ways. This bill should not be enacted.

CHANGES WHICH ARE NEEDED

There are various provisions which do need to be enacted, as follows:

(1) Those provisions of the present law which violate the U.S. Constitution need to be repealed.

(2) The grace period should be reinstated at 30 or 45 days, in order to breathe life back into local volunteer petition efforts. This will decrease the number of signatures that need to be collected initially and decrease the cost and effort that must be put in by local volunteers.

(3) The \$1/signature limit should be removed, and allow the matter to be determined by free enterprise. First, price controls never work and people look for ways to get around them. Second, although a year ago I believed that the \$1/signature limitation was Constitutionally valid, I no longer believe that it is. This limit effectively prevents the exercise of the right of petition. The year 2000 volunteer petitions did not make the ballot. The right of petition is now exercised through the use of paid circulators. People who believe in an issue are generally extremely busy, and would rather contribute money to hire people to gather signatures than stand in the winter cold in front of a large box store in Fairbanks gathering signatures themselves. In addition, it takes a certain type of person who is willing to stand in the cold and ask total strangers to sign a petition. Most people do not have that type of personality or physical constitution.

The economy of Alaska and the United States has changed substantially since a year ago. Unemployment is down. It is no longer possible to hire sufficient competent circulators at \$1/signature in order to mount an effort with paid circulators. This point was made in the Daily News Articles by Rick Arnold of National Voter Outreach, a professional signature-gatherer, who can no longer bid on Alaska petitions because of this limitation. In the lower 48, payments of more than \$1/signature are being made. Alaska is known as a difficult location, justifying higher rates, because many signatures must be collected during the winter months to meet an early

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January turn-in date.

In summary, the \$1/signature limit should be removed because I believe that it unconstitutionally prevents the right to petition.

(4) Another problem exists which circulators have been trying to address on a case-by-case basis which relates to access to public areas for purposes of gathering signatures. Circulators, volunteer and paid, are being evicted from places that they clearly should be allowed to gather signatures. A "guaranteed access" law needs to be enacted in order to protect the right to petition.

If you have any questions, or need further information, please let me know and I will try to help.

Very truly yours,

KENNETH P. JACOBUS, P.C.

By


Kenneth P. Jacobus

KPJ:me



To the office of Senator John Torgerson

Mary,

Thanks for listening to my comments concerning changes which in my opinion will make the initiative process very difficult if not impossible for the average voter. I'm referring to HB 45.

I've worked on a number of issues over the years and look forward to working on even more. I'm sure the Senator recognizes the importance of the initiative process in putting before the voters issues which, for one reason or another, the legislature is reluctant to or unwilling to pass. In the past these issues have included medical marijuana and in the future I expect school choice to be in that category.

It is already very difficult to place issues on the ballot. The biggest obstacle to placing issues on the ballot is finding a location to work. One would think that the First amendment would assure petitioners access to public (government) property. Sadly this is not the case. I and my fellow circulators have been threatened with arrest while petitioning at the post offices, the Sullivan Arena, the 5th Avenue parking garage and even from the sidewalk in front of the Fifth Avenue Mall.

I would ask that if we are going to make it harder to put issues before the voters that we also make two more changes. First, restore the grace period. It used to be that if a petition was submitted with enough signatures but with insufficient distribution that circulators were given another 30 days to correct the deficiency. If we raise the distribution requirement even higher, then the grace period needs to be restored. Imagine the frustration of gathering more than enough signatures in every district but one and having all the hard work and expense go for naught simply because we got one too few signatures in just one district even though we got hundreds extra in every other district.

Second, add an amendment guaranteeing the right to petition the public wherever the public is invited. This would mean that at malls and shopping centers petitioners would be able to gather signatures. That is the law in California, Oregon, Washington, New Jersey, New York and Massachusetts thanks to favorable rulings by state supreme courts regarding the wording in the respective state constitutions regarding the right to petition one's government.

Thanks,
Al Anders
248-2636

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Alaska State Legislature Senator Johnny Ellis

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FOR IMMEDIATE RELEASE: January 28, 2000

Contact: Sen. Johnny Ellis, Member of Senate Judiciary Committee, 1-888-330-3704

Anti-Liberty Bill Tolls for Legislature's Republican SuperMajority – Not for Alaska Citizens



Oppose Rep. Bill Williams' House Bill 45

The Senate Judiciary Committee will take public testimony Wednesday, Feb. 2 at 1:30 p.m. on a bill that would severely limit the public's freedom to put initiatives on the ballot. House Bill 45, sponsored by Republican Rep. Bill Williams of Saxman, is the Republican Supermajority's latest effort to thwart or overturn the will of the people. Please call your Legislative Information Office to testify against this bill.

"The system is not broken and doesn't need to be fixed," said Sen. Johnny Ellis, D-Anchorage. "Anything that interferes with the people's ability to petition the government is highly suspect."

Citizen initiatives are authorized by Title 11 of Alaska's Constitution and have been increasingly effective in enacting laws – bypassing the Alaska Legislature. In the 1960s there were only seven initiatives. Today, applications have grown sixfold. Some elected officials believe the increase stems from dissatisfaction with elected officials.

"Clearly, we're seeing more petitions because people are frustrated with the Republicans' extremist agenda," said Sen. Johnny Ellis, D-Anchorage.

In 1996, former Republican Sen. Bert Sharp was successful in passing legislation to limit citizen initiatives. Similar legislation was struck down by the U.S. Supreme Court and defined as "excessively restrictive of political speech." So what does the Majority do? Sponsor *another* bill to limit citizen initiatives. In recent years, Sen. Loren Leman sponsored a bill changing the highly-popular medicinal marijuana initiative and Sen. Pete Kelly sponsored legislation to overturn the airborne wolf-hunting ban, which was enacted by a majority vote of Alaskans.

Testify against HB 45 – The Anchorage Legislative Information Office is located at 716 W. 4th Ave., Suite 200, (907) 269-0111. You can testify against this bill by teleconference.

Oppose HB 45 – Send a FREE Public Opinion Message to your State Legislator TODAY! The Anchorage Legislative Information Office is located at 716 W. 4th Ave., Suite 200, (907) 269-0111. They can help you locate your legislator and send them your message.

Oppose HB 45 – Send a letter to your Legislator TODAY! (Letters are the most effective)
Address: Representative or Senator (name), State Capitol, Juneau, AK 99801

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Initiative limits

Be careful with the people's rights

Some lawmakers want to make it harder for Alaskans to put initiatives on the ballot.

There are reasons to re-examine the initiative process. Increased use of ballot initiatives, the growth of a for-profit initiative industry and the fear of government by initiative with a host of unforeseen consequences are three good ones.

But companion pieces of legislation in the Senate Judiciary Committee, House' Bill 45 and House Joint Resolution 7, have been introduced basically because some people don't like what's been on the ballot recently.

Wider discussion of statewide issues is a good idea. But it's questionable whether these bills widen the discussion or curtail it by making it harder to have a discussion that matters.

The legislation would make no change in the total number of petition signatures required to put an initiative on the ballot. The Alaska Constitution puts that number at 10 percent of Alaskans who voted in the last general election.

However, petition backers would have to include in that 10 percent voters in at least 30 of the state's 40 House districts and in each of those districts would

need to collect the signatures equal to at least 4 percent of the number of people in that district who voted in the last general election.

Now, the Alaska Constitution requires at least one signature from two-thirds of the state's House districts.

Rep. Bill Williams, D-Saxman, said the legislation will involve more of the state in the initiative process from the beginning, before anything reaches the ballot.

What that means is that initiative backers couldn't deploy signature collectors at prime Anchorage locations and all but ignore the rest of the state — what one observer called "urban imperialism."

Wider discussion of statewide issues is a good idea. But it's questionable whether these bills widen the discussion or curtail it by making it harder to have a discussion that matters.

Let's remember that all Alaskans can participate in the months-long discussion that precedes an election.

Legislation backers like Pete Buist of the Alaska Trappers Association and Dick Bishop of the Alaska Outdoors Council argue that recent anti-trapping and anti-hunting initiatives have been bankrolled by Outside interests that forced Alaskans to spend time and treasure against them.

But initiatives require an investment of time and money. So does opposition to them.

Few organizations here — on either side of any issue — are entirely free of Outside money. In the battle over the wolf-snaring ban voted down in November 1998, backers had tapped Outside groups like Friends of Animals for about \$117,500 by late October. Foes had about \$94,000 in Outside help.

Whatever the arguments about Outside influence, the heart of the matter is that qualified Alaska voters put enough signatures on the petition to put the initiative on the ballot. Those opposed didn't like seeing it there, and the thought of making the ballot a longer reach is tempting.

There are strong reasons to resist that temptation.

- Is it wise to change the Alaska Constitution and make the initiative right harder to exercise for the sake of blocking a few initiatives we don't like or because in recent years we've had an increase in the initiative process? While the constitution isn't writ in stone, neither should we amend it to fit passing shifts in the political landscape.

- The Legislature can amend law enacted by initiative so that it doesn't violate other laws or leave us with unintended consequences. That's a safeguard built into the system.

- People who call for tougher initiative standards now may regret them come the day they're trying to gather signatures for a cause of their own.

- Alaskans in and out of the Legislature decry "ballot-box biology" over fish and game issues, arguing that the voting booth is no place for such decisions. If that's the issue, let's return to legislation seeking to limit initiatives on those questions only. That legislation is debatable, too. But it does not seek to tighten the initiative process for every issue to keep a few off the ballot.

The Senate Judiciary Committee held a short hearing on the bills this week. More hearings are planned. Good. Let's air the issue out. But it would be a mistake to impose tougher initiative requirements only because we don't like the results of a few elections or because we don't want to clutter the ballot. Democracy is messy and imperfect and entails risk.

Rep. Williams' bill would hardly crush democracy if it passed. But whenever we consider tightening constitutional limits on people's rights, we had best go slowly — and err on the side of those rights.