

SB

146

ALASKA STATE HOUSE OF REPRESENTATIVES

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State Capitol
Room 102

REPRESENTATIVE JOHN COGHILL

Date: March 16, 2001
To: Representative Coghill
From: Rynnieva Moss, Legislative Aide *Rynnieva Moss*
Re: AccuVote

I talked with John McLaurin from Global in Florida about the possibility of one ballot. He said he is 95 per cent sure they could do it because the software people have been talking about it, but the software solution would be very expensive. Right now Accuvote has two General Election ballots that use a party declaration.

The first one is the "straight party voting" where you mark the block of your party affiliation and the ballot automatically counts the candidates from that party. This wouldn't work because in a primary a party could have more than one candidate running for the same seat.

The second is the "straight party crossover" where you can vote for any party affiliation on the ballot as long as you only vote for one candidate per seat. This again is only used in the general election.

When I told him we were dealing with a primary election, he said this would be extremely difficult because you are throwing in so many variables. He said it is even more unlikely one ballot programming would be feasible because the party's can determine the method their candidates are selected, those methods could be change by the party requiring the software programming to change the ballots. He said this is problematic from the poll standpoint, from the voter' standpoint and from the programming standpoint. Election workers and voters would have to be educated every time a change was made.

John said one ballot would mean a major software rewrite of Alaska's system. He said without the host computer, proprietary software and accouterments for programming a rewrite could not happen. The system cost \$1.98 million to get running. He said he talked to Randy two weeks ago about this. He has also been talking to Lt. Gov. Ulmer the last couple of weeks.

John's mobile phone is 904-235-6645 and office phone is 904-672-0460.

Representative John_Coghill@LEGIS.state.ak.us

State of Alaska
Office of the Lieutenant Governor

FRAN ULMER
Lieutenant Governor
P.O. Box 110015
Juneau, Alaska 99811-0015



Contact: Glenda Carino
907-465-3557
FAX: 907-465-5400
glenda_carino@gov.state.ak.us

NEWS RELEASE

www.state.ak.us

FOR IMMEDIATE RELEASE: March 15, 2001

0112

**New Primary Election rules recommended
Legislation introduced today**

A bill changing the way Alaska runs its primary elections was sponsored by Governor Tony Knowles and introduced in the Alaska Senate today. Lt. Governor Fran Ulmer requested the bill (Senate Bill 146) be drafted after reviewing the recommendations of the Primary Election Task Force.

"The recommendations were developed after the Task Force reviewed the legal issues on the primary election process and gathered information from the public," Ulmer said. "The next primary election will be held in August of 2002 and it's critical the legislature address this issue as soon as possible so that the Division of Elections can run the next primary consistent with the court decision."

Last year's U.S. Supreme Court ruling that declared California's blanket primary unconstitutional impacted Alaska's blanket primary election system. As a result, Lt. Governor Ulmer held the 2000 Primary Election under temporary regulations that allowed the Republican Party to have a closed ballot while all other parties were on an open ballot. The regulations were temporary and Ulmer, who oversees the Division of Elections, formed the Primary Elections Task Force in February to develop recommendations for legislation to address the issue in time for the 2002 primary. Task Force members included four former lieutenant governors, two former attorneys general, a member of the League of Women Voters and Ulmer.

"The Task Force recommended a system that looks a lot like the old primary," Ulmer said. "People who don't choose a political party and register with the Division of Elections, non-partisan or undeclared voters, will get a blanket primary ballot that has all of the parties on it as long as the parties say someone who isn't registered with another party can vote on their candidate. Any political party that chooses to close its primary will have a separate ballot for voters registered for that party."

-more-

Primary Election bill introduced**Page 2****March 15, 2001**

The provisions of SB 146 are as follows:

1. A political party may choose to close its primary election to exclude voters not registered with that party. A separate primary election ballot listing appropriate candidates will be prepared for that party. The party must submit its rules governing primary elections to the director of elections by September 1 in the year prior to the year in which a primary election is held. These party rules must have been pre-cleared by the United States Department of Justice by this date.
2. If a political party fails to submit its primary preference to the director of elections by September 1, the parties' candidates will appear on a blanket primary ballot. The blanket primary ballot will list all candidates regardless of party affiliation.
3. Voters will be given the ballot prepared for their party affiliation. If a voter desires to be registered as a member of a political party, that registration must be done 30 days prior to the primary election.

Senate Bill 146 was read across this morning and received three Senate committee referrals, to the State Affairs, Judiciary and Finance committees.

Broadcast Advisory: Radio actualities of Lt. Governor Fran Ulmer are available on the Governor's Information line (465-5213 or 1-800-478-5669). A video clip is also available on the Governor's ARCS window at 3:30 p.m. today.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 146
 (S) Publish Date: 3/19/01

Revision Date/Time (Note if correction): _____ Dept. Affect: OOG
 Title: "An Act relating to the primary election;..." BRU: Elective Operations
 Component: Elections
 Sponsor: Rules Committee
 Requester: Governor Component Number: 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual	5.2	210.0	5.2	210.0	5.2	210.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	5.2	210.0	5.2	210.0	5.2	210.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
1002 Federal Receipts						
1003 GF Match						
1004 GF	5.2	210.0	5.2	210.0	5.2	210.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	5.2	210.0	5.2	210.0	5.2	210.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This fiscal note is based on the scenario that all recognized political parties choose to limit who may participate in the selection of their party candidates in a primary election and they all allow unaffiliated voters to participate. This would require the printing of seven different ballots. The cost above is what would be required in addition to the division's annual budgets. These include: additional ballot printing costs (\$90.0); revision and printing of forms (\$5.2); voter education (\$120.0).
 It should be noted for the record that the ballot tabulation system may require programming changes. At this time, the vendor has been unable to determine the cost of such changes. The impact of the cost may be determined by the individual party by-laws.
 If only the two major recognized political parties choose to limit who may participate in the selection of their party candidates in a primary election, the fiscal note would be reduced by \$20.0. This reduction would be in ballot printing costs.

Prepared by: Gail Fenumiai/ MAN Phone 465-3935
 Division: Division of Election Date/Time 3/16/01 1:54 PM
 Approved by: Sally Rue Date 03/16/2001
 Agency: Office of the Lieutenant Governor

For distribution information, call the Governor's Legislative Office

WORK ORDER REQUEST FORM

W.O. [22] LS-0807

KEYWORDS: ELECTIONS ASSIGNED: Kurtz
VOTING

REQUEST FOR: Research/OP TAKEN BY: Kurtz

SUBJECT: Primary Elections

REQUESTED FOR: SEN THERRIALT BY: Joe Balash PHONE: 465-4797

DELIVER TO: Sen Therriault, Attn: Joe, Cap 121

INSTRUCTIONS: Legal opinion as the the effect of
maintaining statutory status quo relating to primary elections.

OBTAIN	SPECIAL DRAFTING INSTRUCTIONS ATTACHED [] AUTHORIZED TO CONFER WITH _____ _____ RETURN _____ _____ TO REQUESTOR APPROVED: <input checked="" type="checkbox"/> DIRECTOR, LEGAL SERVICES
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REVIEWED _____ IN <u>03/21/01</u> DUE _____ TYPED: Draft _____ Date _____ Final _____ Date _____ PROOFED _____ DELIVERED _____	SPECIAL INSTRUCTIONS to TYPING/PROOFING _____ _____ Request for DRAFT
--	--

March 14, 2001

The Honorable Fran Ulmer
Lieutenant Governor
PO Box 110015
Juneau AK 99811-0015

Dear Lieutenant Governor Ulmer:

On January 25, 2001, the Primary Election Task Force was created in which you invited members to discuss and recommend how Alaska should run its primary election. Last June, in California Democratic Party v. Jones, the U.S. Supreme Court ruled that California's blanket primary was unconstitutional. The ruling affected other state's blanket primary election system, including Alaska.

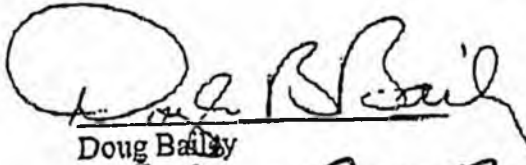
The task force held three meetings. The first was an organizational meeting held on February 9 at which time the purpose of the task force was discussed. Presentations were made by the Division of Elections and the Department of Law which included information concerning the Jones decision, Alaska's primary election and those of other states. On February 27, a hearing to receive statewide public comment was held. Public comments were received from members of both the major and minor political parties, the public, and the League of Women Voters. On March 9, the task force met to formulate a recommendation concerning the conduct of Alaska's primary election system.

We, the members of the Primary Election Task Force, do hereby approve the attached recommendation.

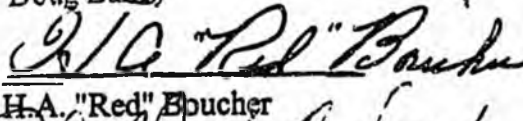
Sincerely,



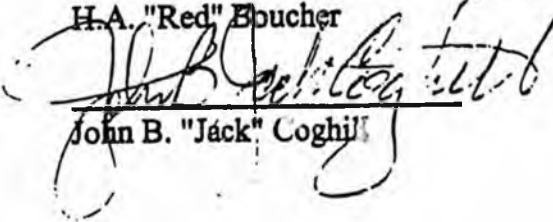
Av Gross, Chairman



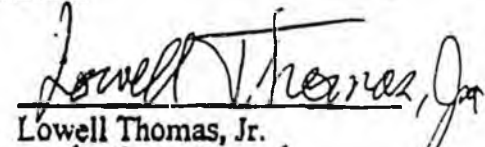
Doug Bailey



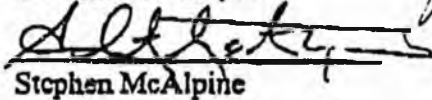
H.A. "Red" Boucher



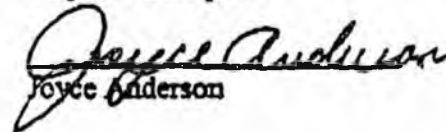
John B. "Jack" Coghill



Lowell Thomas, Jr.



Stephen McAlpine



Joyce Anderson

**PRIMARY ELECTION TASK FORCE
RECOMMENDATION TO
LIEUTENANT GOVERNOR FRAN ULMER**

The Primary Election Task Force has reviewed the U.S. Supreme Court decision in California Democratic Party v. Jones and the state's primary election procedures. We believe it is in the best interests of the voters of Alaska to have legislation introduced and adopted this legislative session to resolve the conflict between Alaska's primary election system and the Jones decision. We recommend that the legislation be formulated around these four points.

1. If a political party chooses not to participate in a blanket primary, the party must submit its party rules governing primary elections to the lieutenant governor not later than September 1 in the year prior to a primary election. These party rules must have received preclearance by the U.S. Department of Justice by this date. If a party fails to submit their party primary preference to the lieutenant governor by this date, the party's candidates will appear on the blanket primary.

For the first election following enactment of this legislation, the parties must notify the Lieutenant Governor of their party primary plans by September 1. In subsequent years, if the party rules governing primary elections have not changed, there is no need to notify the Lieutenant Governor. The party's primary will be conducted in the manner which the Lieutenant Governor was last notified.

2. Voters cannot change their party registration within 30 days of a primary election. Voters should not be allowed to change their political party affiliation at the polling place on election day.
3. The design of the ballot should be centered around a blanket primary ballot. The blanket primary ballot will list all candidates regardless of party affiliation. If a political party chooses to exclude voters not registered with their parties from participating in their primary election, then a ballot listing appropriate candidates shall be prepared for members of that party.
4. The lieutenant governor or director of elections shall have the authority to adopt regulations necessary to implement this legislation.

Note: While this is not a recommendation of the task force, it is noted for the record that there was discussion by members whether political parties should or should not be able to opt out of the primary system and nominate candidates by convention. The task force determined this was beyond the scope of the task force's purpose. It is suggested that the legislature discuss this issue.

Legislative Research Services


Alaska State Legislature
Legislative Affairs Agency
Division of Legal and Research Services

State Capitol
Juneau, AK 99801
Phone: 907-465-3991
Fax: 907-465-3908

March 28, 2001

Memorandum

TO: Senator Randy Phillips

FROM: Cherie Nienhuis 
Legislative Analyst

RE: Election Workers' Pay
Legislative Research Request 01.192

You wished to know when election workers last received a pay increase.

We contacted Janet Kowalski, Director of the Division of Elections, Office of the Lieutenant Governor.¹ Ms. Kowalski told us it had been 20 years since election workers' pay was set by regulation, and the workers have not received a pay raise since that time. Ms. Kowalski believes the current pay is inadequate, and she is very supportive of a wage increase for election workers.

Attached is 6 AAC 25.035 "Payment of Election Workers," that sets the pay for election workers, effective July 11, 1982. This regulation was amended in 1988, 1996, and twice in 1998. However, because of Ms. Kowalski's certainty that the election workers' pay remained constant over 20 years, we have not researched the exact changes made in these amendments.

I hope you find this information useful. If you have questions or need additional information, please do not hesitate to contact us.

¹ Janet Kowalski may be reached at 465-4611.

6 AAC 25.035

PAYMENT OF ELECTION WORKERS.

(a) Election judges, election clerks, election workers, and members of the control and receiving boards will be paid \$7.50 an hour for time spent at their election duties.

(b) Election board chairpersons will be paid \$8 an hour for time spent at their election duties.

(c) Members of the district absentee ballot and questioned ballot counting boards will be paid \$10 an hour for time spent at their election duties.

(d) Members of the state ballot counting review board and the Accu-Vote coordinators will be paid \$12.50 an hour for time spent at their election duties.

(e) Members of the regional Accu-Vote review boards will be paid a fee of \$500 per election for time spent at their election duties.

(f) Repealed 8/13/2000.

(g) Repealed 7/17/88.

(h) Absentee voting officials at absentee sites will be paid \$50 for time spent at their election duties.

(i) Absentee voting officials at absentee stations will be paid \$10 per hour for time spent at their election duties.

(j) An owner of a building used as a polling place will be paid \$30 per election for use of the building.

(k) Municipal employees who provide absentee voting services during the course of their work will not receive compensation from the division.

History -

Eff. 7/11/82, Register 83; am 7/17/88, Register 107; am 8/24/96, Register 139; am 6/22/98, Register 147; am 10/31/98, Register 148; am 8/13/2000, Register 155

Authority -

AS 15.07.100

AS 15.10.110

AS 15.15.010

AS 15.15.030

AS 15.15.380

AS 15.20.190

AS 15.20.220

AS 15.20.590

AS 15.20.900

FISCAL NOTE

revised plus increase for workers

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB 146
() Publish Date: _____

Revision Date/Time (Note if correction): 3/29/01 9:35 AM Dept. Affect: OOG
Title: An Act relating to the primary election BRU: Elective Operations
Component: Elections
Sponsor: Rules Committee
Requester: Governor Component Number: 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual	81.8	733.5	81.8	733.5	81.8	733.5
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	81.8	733.5	81.8	733.5	81.8	733.5

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
1002 Federal Receipts						
1003 GF Match						
1004 GF	81.8	733.5	81.8	733.5	81.8	733.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	81.8	733.5	81.8	733.5	81.8	733.5

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This fiscal note is based on the scenario that all recognized political parties choose to limit who may participate in the selection of their party candidates in a primary election and they all allow unaffiliated voters to participate. This would require the printing of up to seven different ballots. The cost above is what would be required in addition to the division's annual budgets. These include: additional ballot printing costs (\$90.0); revision and printing of forms (\$5.2); voter education (\$150.0); additional election workers (\$29.5).

It should be noted for the record that the ballot tabulation system may require programming changes. At this time, the vendor has been unable to determine the cost of such changes. The impact of the cost may be determined by the individual party by-laws.

If only the two major recognized political parties choose to limit who may participate in the selection of their party candidates in a primary election, the fiscal note would be reduced by \$20.0. This reduction would be in ballot printing costs.

This fiscal note also reflects a pay increase for election workers. Election workers have not had a pay increase since 1982. The increase costs in FY02, FY04 and FY06 for election workers employed for the conduct of the REAA and CRSA elections is \$76.6. The increase costs in FY03, FY05 and FY07 for election workers employed for the conduct of the REAA and CRSA elections is \$29.5.

Prepared by: Gail Fenumiai Phone 465-3935
Division: Division of Election Date/Time 3/29/01 9:35AM
Approved by: _____ Date _____
Agency: Office of the Lieutenant Governor

464.0

*2500 election workers
10-14 hrs/day*

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 146
 () Publish Date: _____

Revision Date/Time (Note if correction): 3/28/01 10:59 AM Dept. Affect: OOG
 Title: An Act relating to the primary election BRU: Elective Operations
 Component: Elections
 Sponsor: Rules Committee
 Requester: Governor Component Number: 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual	5.2	269.5	5.2	269.5	5.2	269.5
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	5.2	269.5	5.2	269.5	5.2	269.5

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
1002 Federal Receipts						
1003 GF Match						
1004 GF	5.2	269.5	5.2	269.5	5.2	269.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	5.2	269.5	5.2	269.5	5.2	269.5

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This fiscal note is based on the scenario that all recognized political parties choose to limit who may participate in the selection of their party candidates in a primary election and they all allow unaffiliated voters to participate. This would require the printing of up to seven different ballots. The cost above is what would be required in addition to the division's annual budgets. These include: additional ballot printing costs (\$90.0); revision and printing of forms (\$5.2); voter education (\$150.0); additional election workers (\$29.5).
 It should be noted for the record that the ballot tabulation system may require programming changes. At this time, the vendor has been unable to determine the cost of such changes. The impact of the cost may be determined by the individual party by-laws.
 If only the two major recognized political parties choose to limit who may participate in the selection of their party candidates in a primary election, the fiscal note would be reduced by \$20.0. This reduction would be in ballot printing costs.

Prepared by: Gail Fenumiai/ man Phone 465-3935
 Division: Division of Election Date/Time 3/28/01 10:59AM
 Approved by: Sally Rue Date 03/28/2001
 Agency: Office of the Lieutenant Governor

For distribution information, call the Governor's Legislative Office

22-GS1089A.1
Kurtz
3/29/01

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR PHILLIPS

TO: SB 146

1 Page 1, line 1, following "election;":

2 Insert "relating to the payment of election workers;"

3

4 Page 1, line 5, following "of":

5 Insert "secs. 3 - 5 of"

6

7 Page 1, following line 14:

8 Insert a new bill section to read:

9 "* Sec. 2. AS 15.10 is amended by adding a new section to article 1 to read:

10 **Sec. 15.10.190. Payment of election workers.** (a) For time spent at election
11 duties, the director shall pay

12 (1) election judges, election clerks, election workers, and members of
13 the control and receiving boards _____ an hour;

14 (2) election board chairpersons _____ an hour;

15 (3) members of the district absentee ballot and questioned ballot
16 counting boards _____ an hour;

17 (4) members of the state ballot counting review board and the
18 coordinators appointed as part of the counting process for optically scanned ballots
19 under AS 15.20.900 _____ an hour;

20 (5) members of the regional review boards established as part of the
21 counting process for optically scanned ballots under AS 15.20.900 _____ an election;

22 (6) absentee voting officials at absentee sites _____;

23 (7) absentee voting officials at absentee stations _____ an hour.

24 (b) The director shall pay an owner of a building used as a polling place

22-GS1089\A.1

1 _____ an election for use of the building.

2 (c) The director may not compensate a municipal employee who provides
3 absentee voting services during the course of the employee's work."

4

5 Renumber the following bill sections accordingly.

#1

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR THERRIAULT

TO: CSSB 146(), Draft Version "C"

- 1 Page 3, line 25, following "primary election.":
- 2 Insert "Each primary election ballot must include any ballot proposition or
- 3 question required to appear on the primary election ballot and the names of all
- 4 candidates nominated by petition under AS 15.25.140 - 15.25.205."

adopted
w/o

CS FOR SENATE BILL NO. 146()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the primary election; and providing for an effective date."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. The uncodified law of the State of Alaska is amended by adding a new section
4 to read:

5 PURPOSE. The purpose of this Act is to

6 (1) comply with the decision of the United States Supreme Court in California
7 Democratic Party v. Jones, 530 U.S. 567 (2000), which required state law to recognize a
8 political party's right to determine with whom it will associate under the First Amendment to
9 the Constitution of the United States to nominate candidates of the party to be placed on the
10 general election ballot; and

11 (2) have a new system in place in time to conduct the next primary election in
12 an orderly and efficient manner consistent with this court decision.

13 * Sec. 2. AS 15.25.010 is repealed and reenacted to read:

14 Sec. 15.25.010. Provisions for primary election; ballots; voter
15 participation. (a) Candidates for the elective state executive and state and national

1 legislative offices shall be nominated in a primary election in the manner prescribed
2 by this chapter.

3 (b) The director shall prepare and provide primary election ballots in
4 accordance with AS 15.25.012 and the other provisions of this chapter.

5 (c) If modified primary election ballots are provided under AS 15.25.012(b)
6 ~~_____~~

7 ~~_____~~ a voter may use only one of the ballots. For the
8 purpose of determining which modified ballot a voter may use, a voter's party
9 affiliation is considered to be the affiliation registered with the director as of the 30th
10 day before the primary election. If a voter changes party affiliation within the 30 days
11 before the primary election, the voter's previous party affiliation shall be used for the
12 determination under this subsection.

13 * Sec. 3. AS 15.25 is amended by adding new sections to read:

14 Sec. 15.25.012. Primary election ballots. (a) Except as provided in (b) of
15 this section, the director shall prepare and provide a primary election ballot that
16 contains all candidates for elective state executive and state and national legislative
17 offices. All voters may use the primary election ballot prepared under this subsection.

18 (b) In place of the primary election ballot under (a) of this section, if a
19 political party notifies the director under AS 15.25.014(a) that the party's bylaws limit
20 who may participate in the primary election for selection of the party's candidates, and
21 otherwise meets the requirements of this chapter and other applicable law, the director
22 shall prepare and provide modified primary election ballots in a manner that carries
23 out those limitations.

24 Sec. 15.25.014. Participation in primary election selection of a political
25 party's candidates. (a) Not later than 5:00 p.m., Alaska time, on September 1 of the
26 calendar year before the calendar year in which a primary election is to be held, a
27 political party must submit a notice in writing to the director stating whether the party
28 bylaws limit who may participate in the primary election for selection of the party's
29 candidates for elective state executive and state and national legislative offices. A
30 copy of the party's bylaws limiting who may participate in the primary election for
31 selection of the party's candidates, documentation required under (d) of this section,

1 and other information required by the director, must be submitted along with the
2 notice. The notice, bylaws, documentation, and other information required by the
3 director must be provided by the party's chairperson or another party official
4 designated by the party's bylaws.

5 (b) If a political party fails to timely provide the notice and information
6 required by (a) of this section or to otherwise meet the requirements of this section and
7 other applicable provisions of law, the director shall place candidates of that party
8 affiliation on a primary election ballot under AS 15.25.012.

9 (c) Once a political party timely submits a notice and bylaws under (a) of this
10 section and the director finds that the party has met the requirements of this chapter
11 and other applicable laws, the primary election ballot for selection of the party's
12 candidates must continue to be consistent with that notice. However, for a subsequent
13 primary election, the party shall timely submit another notice, bylaws, documentation,
14 and other information under (a) of this section if the party's bylaws regarding a
15 limitation on who may participate in the primary election for selection of the party's
16 candidates change.

17 (d) Party bylaws required to be submitted under (a) of this section must be
18 precleared by the United States Department of Justice under 42 U.S.C. 1973c (sec. 5,
19 Voting Rights Act of 1965) before submission. Documentation of the preclearance
20 must accompany the bylaws submitted under (a) of this section.

21 * Sec. 4. AS 15.25.060 is amended to read:

22 Sec. 15.25.060. Preparation and distribution of ballots. Each [THE]
23 primary election ballot shall be prepared and distributed by the director in the manner
24 prescribed for general election ballots except as specifically provided otherwise for the
25 primary election. For the primary election ballot under AS 15.25.012(a), the
26 [THE] director shall print the ballot on white paper and place the names of all
27 candidates who have properly filed in groups according to offices filed for, without
28 regard to party affiliation. For a modified primary election ballot under
29 AS 15.25.012(b), the director shall print the ballot on white paper and place the
30 names of candidates who have properly filed and who may appear on that ballot
31 under AS 15.25.012 and 15.25.014 in groups according to the offices filed for.

1 The order of the placement of the names for each office shall be as provided for the
2 general election ballot. Blank spaces may not be provided on a [THE] ballot for the
3 writing or pasting in of names.

4 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

22-GS1089C
Kurtz
3/28/01

CS FOR SENATE BILL NO. 146()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the primary election; and providing for an effective date."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
4 to read:

5 **PURPOSE.** The purpose of this Act is to

6 (1) comply with the decision of the United States Supreme Court in California
7 Democratic Party v. Jones, 530 U.S. 567 (2000), which required state law to recognize a
8 political party's right to determine with whom it will associate under the First Amendment to
9 the Constitution of the United States to nominate candidates of the party to be placed on the
10 general election ballot; and

11 (2) have a new system in place in time to conduct the next primary election in
12 an orderly and efficient manner consistent with this court decision.

13 *** Sec. 2.** AS 15.25.010 is repealed and reenacted to read:

14 **Sec. 15.25.010. Provisions for primary election; ballots; voter**
15 **participation.** (a) Candidates for the elective state executive and state and national

1 legislative offices shall be nominated in a primary election in the manner prescribed
2 by this chapter.

3 (b) The director shall prepare and provide primary election ballots in
4 accordance with AS 15.25.012 and the other provisions of this chapter.

5 (c) If modified primary election ballots are provided under AS 15.25.012(b) to
6 carry out limitations on who may participate in the selection of a political party's
7 candidates under the party's bylaws, a voter may use only one of the ballots. For the
8 purpose of determining which modified ballot a voter may use, a voter's party
9 affiliation is considered to be the affiliation registered with the director as of the 30th
10 day before the primary election. If a voter changes party affiliation within the 30 days
11 before the primary election, the voter's previous party affiliation shall be used for the
12 determination under this subsection.

13 * **Sec. 3.** AS 15.25 is amended by adding new sections to read:

14 **Sec. 15.25.012. Primary election ballots.** (a) Except as provided in (b) of
15 this section, the director shall prepare and provide a primary election ballot that
16 contains all candidates for elective state executive and state and national legislative
17 offices. All voters may use the primary election ballot prepared under this subsection.

18 (b) In place of the primary election ballot under (a) of this section, if a
19 political party notifies the director under AS 15.25.014(a) that the party's bylaws limit
20 who may participate in the primary election for selection of the party's candidates, and
21 otherwise meets the requirements of this chapter and other applicable law, the director
22 shall prepare and provide modified primary election ballots in a manner that carries
23 out those limitations.

24 **Sec. 15.25.014. Participation in primary election selection of a political**
25 **party's candidates.** (a) Not later than 5:00 p.m., Alaska time, on September 1 of the
26 calendar year before the calendar year in which a primary election is to be held, a
27 political party must submit a notice in writing to the director stating whether the party
28 bylaws limit who may participate in the primary election for selection of the party's
29 candidates for elective state executive and state and national legislative offices. A
30 copy of the party's bylaws limiting who may participate in the primary election for
31 selection of the party's candidates, documentation required under (d) of this section,

1 and other information required by the director, must be submitted along with the
2 notice. The notice, bylaws, documentation, and other information required by the
3 director must be provided by the party's chairperson or another party official
4 designated by the party's bylaws.

5 (b) If a political party fails to timely provide the notice and information
6 required by (a) of this section or to otherwise meet the requirements of this section and
7 other applicable provisions of law, the director shall place candidates of that party
8 affiliation on a primary election ballot under AS 15.25.012.

9 (c) Once a political party timely submits a notice and bylaws under (a) of this
10 section and the director finds that the party has met the requirements of this chapter
11 and other applicable laws, the primary election ballot for selection of the party's
12 candidates must continue to be consistent with that notice. However, for a subsequent
13 primary election, the party shall timely submit another notice, bylaws, documentation,
14 and other information under (a) of this section if the party's bylaws regarding a
15 limitation on who may participate in the primary election for selection of the party's
16 candidates change.

17 (d) Party bylaws required to be submitted under (a) of this section must be
18 precleared by the United States Department of Justice under 42 U.S.C. 1973c (sec. 5,
19 Voting Rights Act of 1965) before submission. Documentation of the preclearance
20 must accompany the bylaws submitted under (a) of this section.

21 * Sec. 4. AS 15.25.060 is amended to read:

22 **Sec. 15.25.060. Preparation and distribution of ballots. Each [THE]**
23 **primary election ballot shall be prepared and distributed by the director in the manner**
24 **prescribed for general election ballots except as specifically provided otherwise for the**
25 **primary election. For the primary election ballot under AS 15.25.012(a), the**
26 **[THE] director shall print the ballot on white paper and place the names of all**
27 **candidates who have properly filed in groups according to offices filed for, without**
28 **regard to party affiliation. For a modified primary election ballot under**
29 **AS 15.25.012(b), the director shall print the ballot on white paper and place the**
30 **names of candidates who have properly filed and who may appear on that ballot**
31 **under A's 15.25.012 and 15.25.014 in groups according to the offices filed for.**

1 The order of the placement of the names for each office shall be as provided for the
2 general election ballot. Blank spaces may not be provided on a [THE] ballot for the
3 writing or pasting in of names.

4 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).

For each of these scenarios, it is important to keep in mind the following rule: *the political parties have a right to choose who has access to their ballot, but cannot prohibit their party members from voting for candidates of another political party, as long as that party allows for this to happen.*

Scenario One

All recognized political parties allow only voters registered with their party to vote for their candidates. All parties would allow Undeclared/Nonpartisan voters to vote for their candidates.

The ballots for each party would appear as follows:

<u>Republican</u> R candidates	<u>Democratic</u> D candidates	<u>AIP</u> AIP candidates	<u>Green</u> G candidates	<u>Rep. Moderate</u> RM candidates	<u>Libertarian</u> L candidates	<u>Undeclared/Nonpartisan</u> R candidates D candidates AIP candidates G candidates RM candidates L candidates
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Scenario Two

The Republican party allows only voters registered with their party to vote for Republican candidates. Undeclared/Nonpartisan voters may vote for Republican candidates.

The Democratic party allows only registered voters from parties that do not restrict Democrats from voting for their candidates to vote for Democratic candidates. Undeclared/Nonpartisan voters may vote for Democratic candidates.

The AIP, Green, Republican Moderate and Libertarian political parties allow any registered voter to vote for their candidates.

The ballots for each party would appear as follows:

<u>Republican</u>	<u>Democratic</u>	<u>AIP</u>	<u>Green</u>	<u>Rep. Moderate</u>	<u>Libertarian</u>	<u>Undeclared/Nonpartisan</u>
R candidates	D candidates	AIP candidates	G candidates	RM candidates	L candidates	R candidates
AIP candidates	AIP candidates	G candidates	AIP candidates	AIP candidates	AIP candidates	D candidates
G candidates	G candidates	RM candidates	RM candidates	G candidates	G candidates	AIP candidates
RM candidates	RM candidates	L candidates	L candidates	L candidates	RM candidates	G candidates
L candidates	L candidates	D candidates	D candidates	D candidates	D candidates	RM candidates
						L candidates

Scenario Three

The Republican party allows only voters registered with their party to vote for Republican candidates. Undeclared/Nonpartisan voters may vote for Republican candidates.

The Democratic party allows only registered voters from parties that do not restrict Democrats from voting for their candidates to vote for Democratic candidates. Undeclared/Nonpartisan voters may vote for Democratic candidates.

The Green party allows only voters registered with their party to vote for Green candidates. Undeclared/Nonpartisan voters may vote for Green candidates.

The AIP, Republican Moderate and Libertarian political parties allow any registered voter to vote for their candidates.

The ballots for each party would appear as follows:

<u>Republican</u>	<u>Democratic</u>	<u>AIP</u>	<u>Green</u>	<u>Rep. Moderate</u>	<u>Libertarian</u>	<u>Undeclared/Nonpartisan</u>
R candidates	D candidates	AIP candidates	G candidates	RM candidates	L candidates	R candidates
AIP candidates	AIP candidates	RM candidates	AIP candidates	AIP candidates	AIP candidates	D candidates
RM candidates	RM candidates	L candidates	RM candidates	L candidates	RM candidates	AIP candidates
L candidates	L candidates	D candidates	L candidates	D candidates	D candidates	G candidates
						RM candidates
						L candidates

Scenario Four

The Republican party allows only voters registered with their party to vote for Republican candidates. Undeclared/Nonpartisan voters may vote for Republican candidates.

The Democratic party allows only registered voters from parties that do not restrict Democrats from voting for their candidates to vote for Democratic candidates. Undeclared/Nonpartisan voters may vote for Democratic candidates.

The Green party allows only voters registered with their party to vote for Green candidates. Undeclared/Nonpartisan voters may vote for Green candidates.

The AIP allows only voters registered with their party to vote for AIP candidates. Undeclared/Nonpartisan voters may vote for AIP candidates.

The Republican Moderate and Libertarian parties allow any registered voter to vote for their candidates.

The ballots for each party would appear as follows:

<u>Republican</u>	<u>Democratic</u>	<u>AIP</u>	<u>Green</u>	<u>Rep. Moderate</u>	<u>Libertarian</u>	<u>Undeclared/Nonpartisan</u>
R candidates	D candidates	AIP candidates	G candidates	RM candidates	L candidates	R candidates
RM candidates	RM candidates	RM candidates	RM candidates	L candidates	RM candidates	D candidates
L candidates	L candidates	L candidates	L candidates	D candidates	D candidates	AIP candidates
						G candidates
						RM candidates
						L candidates

Scenario Five

The Republican party allows only voters registered with their party to vote for Republican candidates. Undeclared/Nonpartisan voters may vote for Republican candidates.

The Democratic party allows only registered voters from parties that do not restrict Democrats from voting for their candidates to vote for Democratic candidates. Undeclared/Nonpartisan voters may vote for Democratic candidates.

The Green party allows only voters registered with their party to vote for Green candidates. Undeclared/Nonpartisan voters may vote for Green candidates.

The AIP allows only voters registered with their party to vote for AIP candidates. Undeclared/Nonpartisan voters may vote for AIP candidates.

The Libertarian party allows only voters registered with their party to vote for Libertarian candidates. Undeclared/Nonpartisan voters may vote for Libertarian candidates.

The Republican Moderate party allows any registered voter to vote for their candidates.

The ballots for each party would appear as follows:

<u>Republican</u>	<u>Democratic</u>	<u>AIP</u>	<u>Green</u>	<u>Rep. Moderate</u>	<u>Libertarian</u>	<u>Undeclared/Nonpartisan</u>
R candidates	D candidates	AIP candidates	G candidates	RM candidates	L candidates	R candidates
RM candidates	RM candidates	RM candidates	RM candidates	D candidates	RM candidates	D candidates
						AIP candidates
						G candidates
						RM candidates
						L candidates

Scenario Six

The Republican party allows only voters registered with their party to vote for Republican candidates. Undeclared/Nonpartisan voters may vote for Republican candidates.

The Democratic party allows only registered voters from parties that do not restrict Democrats from voting for their candidates to vote for Democratic candidates. Undeclared/Nonpartisan voters may vote for Democratic candidates.

The Republican Moderate party allows only voters registered with their party to vote for Republican Moderate candidates.

The AIP, Green and Libertarian parties allow any registered voter to vote for their candidates.

The ballots for each party would appear as follows:

<u>Republican</u>	<u>Democratic</u>	<u>AIP</u>	<u>Green</u>	<u>Rep. Moderate</u>	<u>Libertarian</u>	<u>Undeclared/Nonpartisan</u>
R candidates	D candidates	AIP candidates	G candidates	RM candidates	L candidates	R candidates
G candidates	G candidates	G candidates	AIP candidates	AIP candidates	AIP candidates	D candidates
AIP candidates	AIP candidates	L candidates	L candidates	G candidates	G candidates	AIP candidates
L candidates	L candidates	D candidates	D candidates	L candidates	D candidates	G candidates
						L candidates

Scenario Seven

The Republican party allows only voters registered with their party to vote for Republican candidates. Undeclared/Nonpartisan voters may vote for Republican candidates.

The Democratic party allows any registered voter to vote for their candidates. Undeclared/Nonpartisan voters may vote for Democratic candidates.

The Green party allows voters registered with the Democratic party to vote for their candidates. Undeclared/Nonpartisan voters may vote for Green candidates.

The Libertarian party allows only their party members to vote for their candidates. Undeclared/Nonpartisan voters may vote for Libertarian candidates.

The Republican Moderate party allows only voters registered with the Republican party to vote for their candidates. Undeclared/Nonpartisan voters may vote for Libertarian candidates.

The AIP allow any registered voter to vote for their candidates.

The ballots for each party would appear as follows:

<u>Republican</u>	<u>Democratic</u>	<u>AIP</u>	<u>Green</u>	<u>Rep. Moderate</u>	<u>Libertarian</u>	<u>Undeclared/Nonpartisan</u>
R candidates	D candidates	AIP candidates	G candidates	RM candidates	L candidates	R candidates
D candidates	G candidates	D candidates	AIP candidates	AIP candidates	AIP candidates	D candidates
AIP candidates	AIP candidates		D candidates	D candidates	D candidates	AIP candidates
RM candidates						G candidates
						L candidates

Scenario Eight

The Republican party allows only voters registered with their party to vote for Republican candidates. Undeclared/Nonpartisan voters may vote for Republican candidates.

The Democratic party allows voters registered with the Republican Moderate and Libertarian parties to vote for their candidates. Undeclared/Nonpartisan voters may vote for Democratic candidates.

The Green party allows voters registered with the Democratic party to vote for their candidates. Undeclared/Nonpartisan voters may vote for Green candidates.

The Libertarian party allows only their party members to vote for their candidates. Undeclared/Nonpartisan voters may vote for Libertarian candidates.

The Republican Moderate party allows only voters registered with the Republican party to vote for their candidates. Undeclared/Nonpartisan voters may vote for Libertarian candidates.

The AIP allows voters registered with the Democratic party to vote for their candidates. Undeclared/Nonpartisan voters may vote for Libertarian candidates.

The ballots for each party would appear as follows:

<u>Republican</u>	<u>Democratic</u>	<u>AIP</u>	<u>Green</u>	<u>Rep. Moderate</u>	<u>Libertarian</u>	<u>Undeclared/Nonpartisan</u>
R candidates	D candidates	AIP candidates	G candidates	RM candidates	L candidates	R candidates
RM candidates	G candidates			D candidates	D candidates	D candidates
	AIP candidates					AIP candidates
						G candidates
						RM candidates
						L candidates

Scenario Nine

All parties allow all persons to vote on their candidates.

Blanket Primary Ballot

R candidates
D candidates
AIP candidates
G candidates
RM candidates
L candidates

Scenario Ten

All parties allow only their members to vote on their candidates.

Republican
R candidates

Democratic
D candidates

AIP
AIP candidates

Green
G candidates

Rep. Moderate
RM candidates

Libertarian
L candidates

LEGAL SERVICES

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

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FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM

March 28, 2001

SUBJECT: Primary Elections: Legal Effect of Maintaining the Status Quo
(Work Order No. 22-LS0807)

TO: Senator Gene Therriault
Attn: Joe Balash

FROM: Kathryn L. Kurtz ^{KK}
Legislative Counsel

You asked about the legal status of Alaska's existing primary elections statutes, and what will happen if the statutes are not changed.

Alaska's blanket primary election system was invalidated by the decisions in California Democratic Party v. Jones, 120 S.Ct 2402 (2000) (holding California's blanket primary unconstitutional because it forces political parties to associate with people who do not share their beliefs) and O'Callaghan v. State, 6 P.3d 728 (Alaska 2000) ("we find no constitutionally significant difference between Alaska's primary election law and the California law declared unconstitutional in Jones. Nor do we find any principled basis for concluding that Alaska's blanket primary election statute remains constitutional in light of Jones.")

If the Division of Elections were to attempt to hold the 2002 primary election under the system currently in the statutes, a political party aggrieved by the denial of its associational rights under the system would have a very strong case based on the Jones and O'Callaghan decisions. It is difficult to predict what type of remedy the court might fashion; that would depend to a certain extent on the relief sought by the party bringing the action.

On the other hand, if the Division of Elections were to attempt to address the constitutional problems in the existing statutes by adopting regulations to implement a different primary election system, its authority to do so would likely be questioned. The court in O'Callaghan acknowledged the division's "power to abrogate a clearly unconstitutional statute" and "regulate on a temporary basis in an emergent situation like the situation we face here." *Id.* at 730. However, when that case was decided, upholding the emergency regulations, the Jones decision had just been issued, less than two months remained before the scheduled primary, and the legislature was out of session. The situation is no longer "emergent"; it has arrived. It will be harder for the administration to argue that an emergency regulation was "necessary for the immediate preservation of

Senator Gene Therriault
March 28, 2001
Page 2

the public peace, health, safety, or general welfare" under AS 44.62.250 if the legislature has been aware of the situation for two years and not acted. On the other hand, one could argue that the legislature's inaction has created a new state of emergency.

The O'Callaghan decision specifically held that "AS 15.25.060, regarding the preparation and distribution of primary election ballots, is clearly unconstitutional." *Id.* at 730. So, the Division of Elections has been relieved by the court of the burden of determining whether that statute should be "abrogated." At a minimum, that statute should be repealed. If it is not, the O'Callaghan decision provides the Division of Elections with grounds to ignore it, but it will remain on the books to confuse those attempting to read the statutes. Either way, if that statute is not replaced with something else, there will be no clear statutory direction to the Division of Elections as to how the primary ballot should be prepared and distributed.

Arguably, the director has authority to adopt regulations to fill the gap under AS 15.15.010 ("[t]he director ... may adopt regulations ... necessary for the administration of state elections"). The statutes also provide that all provisions governing the conduct of the general election shall govern the conduct of the primary election, unless specifically provided otherwise. AS 15.25.090. AS 15.15.030(a)(1) gives the director authority to determine the size of the ballot, type of print, and other "similar matters of form not provided by law." Still, this point might be subject to a court challenge.

I hope this is helpful. If you have questions, please call.

KLK:glc
01-283.glc