

HB

438

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House District 10

House of Representatives

Sponsor Statement **House Bill 438**

“An Act relating to initiative, referendum, and recall petitions; and providing for an effective date”

Using his experience from this past summer, Representative Jay Ramras has introduced legislation to reform the initiative, referendum, and recall process. House Bill 438 adds language to existing statutes, which would tighten the requirements for circulators, ensuring that they not be registered to vote in any other states. HB 438 will put into law that petition circulators can only be paid those monies authorized under statute, and that circulators cannot “double dip” at the trough by also collecting administrative fees.

Having spent a lot of time working on the 90 Day Legislative Session Initiative, including working with circulators, the Division of Elections, and the citizens of Alaska, Representative Ramras found that the newly instigated statues remain vague on specific issues that are addressed in this bill.

HB 438 will establish penalties for both sponsors who pay circulators and circulators who receive compensation, which are not permitted under statute. Optional training offered by the Division of Elections will become mandatory for sponsors. Sponsors will then become responsible for instructing their circulators as to the law. Sponsors will also be allowed to submit up to 2000 signatures for pre-qualification prior to filing the petition, which will help assure that rural Alaska is as relevant to the process as urban Alaska.

HB 438 will also serve to amend the recall process; by stating that a recall petition cannot be filed within 270 days from the termination date of the official's term of office. Additionally, a sponsor may file the petition only if signed by qualified voters equal in number to 30 percent of those who voted in the previous general election in the official's district.

This bill will serve as an excellent vehicle to improve the petition process in Alaska.

24-LS1344U
Kurtz
4/7/06

CS FOR HOUSE BILL NO. 438()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE RAMRAS

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to initiative, referendum, and recall petitions; and providing for an**
2 **effective date."**

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

4 *** Section 1.** AS 15.45 is amended by adding new sections to read:

5 **Article 1. General Provisions Relating to Petitions.**

6 **Sec. 15.45.001. Qualifications of circulator.** To circulate a petition booklet, a
7 person shall be

- 8 (1) a citizen of the United States;
- 9 (2) 18 years of age or older; and
- 10 (3) a resident of the state as determined under AS 15.05.020.

11 **Sec. 15.45.003. Circulation; prohibitions.** (a) A petition may be circulated
12 only in person in the state.

13 (b) A circulator may not receive payment or agree to receive payment that is
14 greater than \$1 a signature, and a person or an organization may not pay or agree to

L

1 pay an amount that is greater than \$1 a signature, for the collection of signatures on a
2 petition. However, a person or organization may reimburse a circulator for itemized,
3 direct expenses for travel, food, and lodging, and other reimbursable costs specified in
4 regulation incurred by the circulator while circulating a petition.

5 (c) A person or organization may not knowingly pay, offer to pay, or cause to
6 be paid money or other valuable thing to a person to sign or refrain from signing a
7 petition.

8 (d) A person or organization that violates (b) or (c) of this section is guilty of a
9 class B misdemeanor.

10 (e) A person who pays a circulator and a circulator who receives
11 compensation other than that permitted under (b) of this section are liable to the state
12 for a civil fine of \$1 for each signature gathered by the circulator on a petition.

13 (f) In determining the sufficiency of a petition, the lieutenant governor, or in
14 the case of a recall petition, the director, may not count subscriptions on a petition

15 (1) circulated by a circulator who is not in compliance with (b) of this
16 section; or

17 (2) by an initiative, referendum, or recall committee that is not in
18 compliance with the requirements of AS 15.13.

19 (g) In this section,

20 (1) "organization" has the meaning given in AS 11.81.900;

21 (2) "other valuable thing" has the meaning given in AS 15.56.030;

22 (3) "person" has the meaning given in AS 11.81.900.

23 **Sec. 15.45.005. Mandatory training.** (a) Before circulating a petition, each
24 committee shall participate in training offered by the division of elections explaining
25 the legal requirements for petitions.

26 (b) Before giving a petition to a circulator, the sponsors shall instruct the
27 circulator on the legal requirements for petitions.

28 **Sec. 15.45.007. Certification of circulator.** Before being filed, each petition
29 shall be certified by an affidavit by the person who personally circulated the petition.
30 In determining the sufficiency of the petition, the lieutenant governor, or, in the case
31 of a recall petition, the director, may not count subscriptions on petitions not properly

1 certified at the time of filing or, in the case of a recall petition, corrected before the
2 subscriptions are counted. The affidavit must state in substance

3 (1) that the person signing the affidavit meets the residency, age, and
4 citizenship qualifications for circulating a petition under AS 15.45.001;

5 (2) that the person is the only circulator of that petition;

6 (3) that the signatures were made in the circulator's actual presence;

7 (4) that, to the best of the circulator's knowledge, the signatures are the
8 signatures of the persons whose names they purport to be;

9 (5) that, to the best of the circulator's knowledge, the signatures are of
10 persons who were qualified voters on the date of signature;

11 (6) that the circulator has not entered into an agreement with a person
12 or organization in violation of AS 15.45.003(b);

13 (7) that the circulator has not violated AS 15.45.003(c) with respect to
14 that petition;

15 (8) whether the circulator has received payment or agreed to receive
16 payment for the collection of signatures on the petition, and, if so, the name of each
17 person or organization that has paid or agreed to pay the circulator for collection of
18 signatures on the petition; and

19 (9) that the circulator was instructed by the sponsors on the legal
20 requirements for circulating and filing the petition.

21 **Sec. 15.45.008. Advance verification of subscriptions.** The sponsors may,
22 before filing a petition, submit individual numbered petitions containing up to a total
23 of 2,000 subscriptions to the director for review. The director shall, within 45 days,
24 determine whether each subscription submitted for review is that of a qualified voter
25 and notify the sponsors of the number of signatures of qualified voters from each
26 district in the petitions submitted. The director shall assess and the sponsors shall pay
27 a fee of \$1 for each subscription submitted under this section.

28 **Sec. 15.45.009. Cost estimates.** (a) The lieutenant governor shall prepare the
29 cost estimate required under AS 15.45.090(a) based on a fiscal note prepared by the
30 department or departments affected, that sets out the information required by
31 AS 24.08.035(c).

1 (b) The lieutenant governor shall prepare the cost estimate required under
2 AS 15.45.320(a)(4).

3 (c) The director shall prepare the cost estimate required under
4 AS 15.45.560(a)(4).

5 (d) The department shall, by regulation, establish a process for initiative,
6 referendum, and recall committees to dispute the cost estimates prepared under this
7 section, allowing committees to prepare a statement of dispute for publication on the
8 division's Internet website. If a committee disputes a cost estimate prepared under this
9 section, a statement to that effect shall be included in each petition booklet, along with
10 a notice that a copy of the committee's statement of dispute, if any, is available for
11 review on the division's Internet website.

12 (e) A committee aggrieved by a cost estimate prepared under this section may
13 bring an action in the superior court to have the cost estimate reviewed within 30 days
14 after the date on which the lieutenant governor, or, in the case of a recall petition, the
15 director notifies the committee of the completion of the cost estimate.

16 * Sec. 2. AS 15.45.500 is amended to read:

17 **Sec. 15.45.500. Form of application.** The application must include

18 (1) the name and office of the person to be recalled;

19 (2) the grounds for recall described in particular in not more than 200
20 words;

21 (3) the printed name, the signature, the address, and a numerical
22 identifier of qualified voters equal in number to 10 percent of those who voted in the
23 preceding general election in the state or in the senate or house district of the official
24 sought to be recalled, 100 of whom will serve as sponsors; each signature page must
25 include a statement that the qualified voters signed the application with the name and
26 office of the person to be recalled and the statement of grounds for recall attached;
27 [AND]

28 (4) the designation of a recall committee consisting of three of the
29 qualified voters who subscribed to the application and shall represent all sponsors and
30 subscribers in matters relating to the recall; the designation must include the name,
31 mailing address and signature of each committee member; and

1 **(5) a certification by each member of the recall committee, under**
2 **penalty of perjury, that the facts alleged in the application are true to the best of**
3 **the member's knowledge.**

4 * **Sec. 3.** AS 15.45.510 is amended by adding a new subsection to read:

5 (b) In this section,

6 (1) "corruption" means an act done by a person who is subject to recall
7 under AS 15.45.470 with an intent to give some advantage inconsistent with official
8 duty and the rights of others;

9 (2) "incompetence" means the lack of ability to perform the official's
10 required duties;

11 (3) "lack of fitness" means the existence of a long-term physical or
12 mental disability that seriously impairs the official's ability to perform the duties of the
13 office;

14 (4) "neglect of duties" means failure to perform a duty of office
15 established by law.

16 * **Sec. 4.** AS 15.45.105, 15.45.110, 15.45.130, 15.45.335, 15.45.340, 15.45.360, 15.45.575,
17 15.45.580, and 15.45.600 are repealed.

18 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

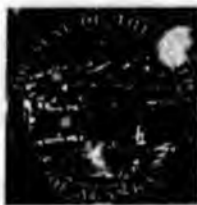
20 **TRANSITION.** A proposed initiative, referendum, or recall for which an application
21 was filed with the lieutenant governor or the director before the effective date of the Act is
22 subject to the provisions of AS 15.45 as they existed on the day before the effective date of
23 this Act.

24 * **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).

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House District 10

House of Representatives

House Bill 438 (version 24-LS1344L)

Sectional Summary

"An Act relating to initiative, referendum, and recall petitions; and providing for an effective date."

Section 1. AS 15.45.105 Qualifications of circulator. This section is amended to read that in order to circulate a petition a person shall not be registered to vote in any other state.

Section 2. AS 15.45.110(c) Circulation of petition; prohibitions and penalty. This section is amended to add that a circulator may receive up to \$15 a day to cover the cost of meals for each day the circulator travels more than 100 miles from their home in the course of circulating the petition. Also, states that a initiative petition circulator may not receive payment for any work other than those stated in subsection (c), including administrative work

Section 3. AS 15.45.110 Circulation of petition; prohibitions and penalty. New subsections are added to state as follows:

(g) States that a person who pays a circulator and a circulator who receives compensation other than those permitted under (c) of this section are both liable to the state for a civil fine of \$1 for each signature gathered by the circulator.

(h) States that in determining the sufficiency of a petition, the lieutenant governor may not count subscriptions on a petition circulated by a circulator who violated (c) of this section.

Section 4. AS 15.45.115 Mandatory training. This section makes it mandatory for every committee applying for or circulating a petition to attend training on the legal requirements for initiative petitions, offered by the division of elections, and that sponsors are responsible for instructing circulators as to the legal requirements.

Section 5. AS 45.130 Certification of circulator. Adds to the certifying affidavit on the petition that, the circulator of an initiative petition is not registered to vote in any other state and that the circulator was instructed by the sponsors on the legal requirements of AS 15.45.010 – 15.45.245.

Section 6. Adds Section 15.45.135 Advance verification of subscriptions. This section allows the sponsors to get up to 2,000 subscriptions qualified by the director prior to the

initiative petition being filed under AS 15.45.140. The sponsors shall pay a fee of \$1 for each subscription submitted under this section.

Section 7. AS 15.45.335 **Qualifications of circulator of a referendum.** Adds that a person who circulates a petition booklet shall not be registered to vote in any other state.

Section 8. AS 15.45.340(b) **Circulation of petition; prohibitions and penalty.** This section is amended to add that a circulator may receive up to \$15 a day to cover the cost of meals for each day the circulator travels more than 100 miles from their home in the course of circulating the petition. Also, states that a initiative petition circulator may not receive payment for any work other than those stated in subsection (c), including administrative work

Section 9. AS 15.45.340 **Circulation of petition; prohibitions and penalty.** New subsections are added to state as follows:

(g) States that a person who pays a circulator and a circulator who receives compensation other than those permitted under (c) of this section are both liable to the state for a civil fine of \$1 for each signature gathered by the circulator.

(h) States that in determining the sufficiency of a petition, the lieutenant governor may not count subscriptions on a petition circulated by a circulator who violated (c) of this section.

Section 10. AS 15.45.345 **Mandatory training.** This section makes it mandatory for every committee applying for or circulating a referendum petition to attend training on the legal requirements for initiative petitions, offered by the division of elections, and that sponsors are responsible for instructing circulators as to the legal requirements.

Section 11. AS 15.45.360 **Certification of circulator.** Adds to the certifying affidavit on the petition that, the circulator of a referendum petition is not registered to vote in another state and that the circulator was instructed by the sponsors on the legal requirements of AS 15.45.250 – 15.45.465.

Section 12. AS 15.45.365 **Advance verification of subscriptions.** This section allows the sponsors to get up to 2,000 subscriptions qualified by the director prior to the referendum petition being filed under AS 15.45.140. The sponsors shall pay a fee of \$1 for each subscription submitted under this section.

Section 13. AS 15.45.490 **Time of filing application.** Adds that an application for recall may not be filed during last 270 days of the term of office of a state public official.

Section 14. AS 15.45.500 **Form of application.** Changes the number of qualified voters that must sign the petition from 10 to 20 percent of those who voted in the preceding general election in the district of the official sought to be recalled. Each member of the recall committee, under penalty of perjury, must also make a certification that the facts alleged in the application are true to the best of their knowledge.

Section 15. AS 15.45.510 **Grounds for recall.** A new subsection is added defining "corruption", "incompetence", "lack of fitness", and "neglect of duties".

Section 16. AS 15.45.550 **Bases of denial of certification.** Adds that the director shall deny certification of a recall upon determining that the application was filed within less than 270 days of the termination of the official's term of office.

Section 17. AS 15.45.575 **Qualifications of circulator.** Adds that person who circulates a recall petition may not be registered to vote in any other state.

Section 18. AS 15.45.580(b) **Circulation; prohibitions.** is amended to add that a circulator may receive up to \$15 to cover the cost of meals for each day the circulator travels more than 100 miles from their home in the course of circulating the petition. Also, states that a initiative petition circulator may not receive payment for work other than collecting signatures, including administrative work

Section 19 AS 15.45.580 **Circulation; prohibitions.** new subsections are added as follows:
(f) States that a person who pays a circulator and a circulator who receives compensation other than those permitted under (b) of this section are both liable to the state for a civil fine of \$1 for each signature gathered by the circulator.

(g) States that in determining the sufficiency of a petition, the lieutenant governor may not count subscriptions on a petition circulated by a circulator who violated (b) of this section.

Section 20. AS 15.45.585 **Mandatory training.** a new section is added making it mandatory for every committee applying for or circulating a recall petition shall attend training on the legal requirements for petitions, offered by the division of elections, and that sponsors are responsible for instructing circulators as to the legal requirements.

Section 21. AS 15.45.600 **Certification of circulator** Adds to the certifying affidavit on the petition that, the circulator of a recall petition is not registered to vote in another state and that the circulator was instructed by the sponsors on the legal requirements of AS 15.45.470 – 15.45.720.

Section 22. AS 15.45.605 **Advance verification of subscriptions.** This section allows the sponsors to get up to 2,000 subscriptions qualified by the director prior to the recall petition being filed under AS 15.45.140. The sponsors shall pay a fee of \$1 for each subscription submitted under this section.

Section 23. AS 15.45.610 **Filing of Petition.** Amends that a recall petition cannot be filed within less than 270 days from the termination of the state official's term of office and that the sponsor may file the petition only if signed by qualified voters equal in number to 30 percent of those who voted in the previous general election in the official's district.

Section 24. AS 15.45.630 **Bases for determining the petition was improperly filed.** Conforming language to Section 23. States that the petition was improperly filed upon determining that the petition was filed within less than 270 days of the termination of the office of the official subject to recall.

Section 25. AS 15.45.640 Submission of supplementary petition. States that a supplementary petition may not be filed later than 270 days before the official's office termination date.

Section 26. Uncodified law is amended to say that an application filed prior to the effective date of this Act is subject to AS 15.45 as it existed on the day before the effective date of this Act.

Section 27. States that this Act takes effect immediately.

COMPARISON OF BILL VERSIONS CSHB 438\R AND HB 438\L

CSHB 438\R	HB 438\L
<p>Sec. 1. AS 15.13.030 Duties of the commission. This section is amended to have APOC enforce the provisions of AS 15.45.003 and collect civil fines due under AS 15.45.003(e).</p>	
<p>Sec. 2. AS 15.45.001 Qualifications of circulator. This section is amended to read that in order to circulate a petition a person shall not be registered to vote in any other state.</p>	<p>Section 1. AS 15.45.105 Qualifications of circulator. This section is amended to read that in order to circulate a petition a person shall not be registered to vote in any other state.</p>
<p>AS 15.45.003 Circulation; prohibitions. This section is added to state that a circulator may receive up to \$15 a day to cover the cost of meals for each day the circulator travels more than 100 miles from their home in the course of circulating the petition. States that an initiative petition circulator may not receive payment for any work other than those stated in subsection (b), including administrative work. A person or organization that violates this section is guilty of a class B misdemeanor. A person who pays a circulator and a circulator who receives compensation other than those permitted are both liable for a civil fine of \$1 per signature on a petition filed with the lieutenant governor, or in the case of a recall petition, the director. Also, states that in determining the sufficiency of a petition, the lieutenant governor, or in the case of a recall petition, the director, may not count subscriptions on a petition circulated by a circulator who violated this section.</p>	<p>Section 2. AS 15.45.110(c) Circulation of petition; prohibitions and penalty. This section is amended to add that a circulator may receive up to \$15 a day to cover the cost of meals for each day the circulator travels more than 100 miles from their home in the course of circulating the petition. Also, states that a initiative petition circulator may not receive payment for any work other than those stated in subsection (c), including administrative work</p>
<p>AS 15.45.005 Mandatory training. This section makes it mandatory for every committee circulating a petition to participate in training offered by the division of elections, and that sponsors are responsible for instructing circulators as to the legal requirements.</p>	<p>Section 4. AS 15.45.115 Mandatory training. Consolidated under AS 15.45.005 in version\R.</p>

COMPARISON OF BILL VERSIONS CSHB 438\R AND HB 438\L

CSHB 438\R	HB 438\L
<p>AS 15.45.007 Certification of circulator. Adds to the certifying affidavit on petition booklets that the circulator was instructed by the sponsors as to the legal requirements of AS 15.45.001 – 15.45.003, and that the circulator of a petition is not registered to vote in any other state, and that the circulator was instructed by the sponsors on the legal requirements for circulating and filing the petition.</p>	<p>Section 3. AS 15.45.110 Circulation of petition; prohibitions and penalty. New subsections are added to state as follows: (g) States that a person who pays a circulator and a circulator who receives compensation other than those permitted under (c) of this section are both liable to the state for a civil fine of \$1 for each signature gathered by the circulator. (h) States that in determining the sufficiency of a petition, the lieutenant governor may not count subscriptions on a petition circulated by a circulator who violated (c) of this section.</p>
<p>AS 15.45.008 Advance verification of subscriptions. This section allows the sponsors to get up to 2,000 subscriptions qualified by the director prior to the initiative petition being filed. The sponsors shall pay a fee of \$1 for each subscription submitted under this section.</p>	<p>Section 6. Add's Section 15.45.135 Advance verification of subscriptions. This section allows the sponsors to get up to 2,000 subscriptions qualified by the director prior to the initiative petition being filed under AS 15.45.140. The sponsors shall pay a fee of \$1 for each subscription submitted under this section.</p>
<p>AS 15.45.009 Cost Estimates. Adds that the department shall, by regulation, establish a process to dispute the cost estimates prepared under this section, allowing committees to prepare a statement of dispute for publication on the division's website. If a committee disputes the cost estimate, a statement to that effect shall be included in the petition booklet, along with a notice that a copy of the dispute is available on the department's website. This section also adds that a committee aggrieved by a cost estimate prepared under this section may bring an action in superior court to have the cost estimate reviewed within 30 days after the date on which the director notifies the committee of completion of the estimate.</p>	<p>Not included in version\L</p>

COMPARISON OF BILL VERSIONS CSHB 438\R AND HB 438\L

CSHB 438 \R	HB 438 \L
Section 3. AS 15.45.500(5) states that each member of a recall committee, under penalty of perjury, must state on their application that the facts alleged in the application are true to the best of the member's knowledge.	Section 16 AS 15.45.550 Bases of denial of certification removed.
Section 4. AS 15.45.510 defines in this section the four grounds for recalls, "corruption", "incompetence", "lack of fitness", and "neglect of duties".	Section 17 AS 15.45.575 Qualifications of Circulator. Consolidated under AS 15.45.007
Section 5. Repeals AS 15.45.105, 15.45.110, 15.45.130, 15.45.335, 15.45.340, 15.45.360, 15.45.575, 15.45.580, and 15.45.600. Due to the fact that these sections are now consolidated under Article 1.	Section 18 AS 15.45.580(b) Circulation; prohibitions. Consolidated under AS 15.45.003.
Section 6. This section is a transition section amending the Uncodified law to say that an application filed prior to the effective date of this Act is subject to AS 15.45 as they existed on the day before the effective date of this Act.	Section 19 AS 15.45.580 Not used. This section was somewhat encompassed but stated differently in Section 1 of version\R
Section 7. States that this Act takes effect immediately.	Section 20 Mandatory training. Consolidated under AS 15.45.005 in version\R
	Section 21 Certification of Circulator. Is consolidated under AS 15.45.001
	Section 22 Advance verification of subscriptions. Consolidated under AS 15.45.008
	Section 23 Filing of Petition. Deleted from HB438 \R
	Section 24 Bases for determining the petition was improperly filed. Deleted from HB438 \R
	Section 25 Submission of supplementary petition. Deleted from HB 438 \R
	Section 16. Same as Section 6 of HB 438 \R
	Section 17. Same as Section 7 of HB 438 \R

24-LS1344R
Kurtz
4/3/06

CS FOR HOUSE BILL NO. 438()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE RAMRAS

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to initiative, referendum, and recall petitions; and providing for an**
2 **effective date."**

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

4 *** Section 1. AS 15.13.030 is amended to read:**

5 **Sec. 15.13.030. Duties of the commission.** The commission shall

6 (1) develop and provide all forms for the reports and statements
7 required to be made under this chapter, AS 24.45, and AS 39.50;

8 (2) prepare and publish a manual setting out uniform methods of
9 bookkeeping and reporting for use by persons required to make reports and statements
10 under this chapter and otherwise assist candidates, groups, and individuals in
11 complying with the requirements of this chapter;

12 (3) receive and hold open for public inspection reports and statements
13 required to be made under this chapter and, upon request, furnish copies at cost to
14 interested persons;

(4) compile and maintain a current list of all filed reports and statements;

(5) prepare a summary of each report filed under AS 15.13.110 and make copies of this summary available to interested persons at their actual cost;

(6) notify, by registered or certified mail, all persons who are delinquent in filing reports and statements required to be made under this chapter;

(7) examine, investigate, and compare all reports, statements, and actions required by this chapter, AS 24.45, and AS 39.50;

(8) prepare and publish a biennial report concerning the activities of the commission, the effectiveness of this chapter, its enforcement by the attorney general's office, and recommendations and proposals for change; the commission shall notify the legislature that the report is available;

(9) adopt regulations necessary to implement and clarify the provisions of AS 24.45, AS 39.50, and this chapter, subject to the provisions of AS 44.62 (Administrative Procedure Act); [AND]

(10) consider a written request for an advisory opinion concerning the application of this chapter, AS 24.45, AS 24.60.200 - 24.60.260, or AS 39.50; and

(11) enforce the provisions of AS 15.45.003(b) and collect civil fines due under AS 15.45.003(e).

* Sec. 2. AS 15.45 is amended by adding new sections to read:

Article 1. General Provisions Relating to Petitions.

Sec. 15.45.001. Qualifications of circulator. To circulate a petition booklet, a person shall be

(1) a citizen of the United States;

(2) 18 years of age or older;

(3) a resident of the state as determined under AS 15.05.020; and

~~(4) not registered to vote in any other state~~

Sec. 15.45.003. Circulation; prohibitions. (a) A petition may be circulated only in person in the state.

(b) A circulator may not receive payment or agree to receive payment that is greater than \$1 a signature, and a person or an organization may not pay or agree to

#4

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deletes lines 26 + 27

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Does APOC have
the administrative
structure to
collect fines

Do fines go to BF
or stay with APOC

1 pay an amount that is greater than \$1 a signature, for the collection of signatures on a
 2 petition. In addition to \$1 a signature, a person or organization may pay a circulator
 3 and a circulator may receive up to \$15 to cover the cost of ^{only reimbursement for ~~that~~ itemized direct expenses} meals for each day that the
 4 circulator travels ^{as determined appropriate by the regulation} more than 100 miles from the circulator's home in the course of
 5 circulating the petition if the circulator certifies, on a form prescribed by and filed with
 6 the Alaska Public Offices Commission, that the circulator has traveled more than 100
 7 miles from the circulator's home on the day for which the payment is received. A
 8 person or organization may not pay a circulator and a circulator may not receive any
 9 payment

- 10 (1) other than that specified in this subsection for circulating a petition;
- 11 (2) for any work other than collecting signatures, including
- 12 administrative work, relating to the petition for which the circulator is collecting
- 13 signatures.

14 (c) A person or organization may not knowingly pay, offer to pay, or cause to
 15 be paid money or another valuable thing to a person to sign or refrain from signing a
 16 petition.

17 (d) A person or organization that violates (b) or (c) of this section is guilty of a
 18 class B misdemeanor.

19 (e) A person who ^{knowingly} pays a circulator and a circulator who ^{knowingly} receives
 20 compensation other than that permitted under (b) of this section are liable to the state
 21 for a civil fine of \$1 for each signature gathered by the circulator on a petition.

22 (f) In determining the sufficiency of a petition, the lieutenant governor, or in
 23 the case of a recall petition, the director, may not count subscriptions on a petition

24 (1) circulated by a circulator who is not in compliance with (b) of this
 25 section; or

26 (2) by an initiative, referendum, or recall committee that is not in
 27 compliance with the requirements of AS 15.13.

28 (g) In this section,

- 29 (1) "organization" has the meaning given in AS 11.81.900;
- 30 (2) "other valuable thing" has the meaning given in AS 15.56.030;
- 31 (3) "person" has the meaning given in AS 11.81.900.

Can we
legally do this?

Judicially

= 2

conceptual
Amendment
Delete line 22 to 26

2

1

1 **Sec. 15.45.005. Mandatory training.** (a) Before circulating a petition, each
2 committee shall participate in training offered by the division of elections explaining
3 the legal requirements for petitions.

4 (b) Before giving a petition to a circulator, the sponsors shall instruct the
5 circulator on the legal requirements for petitions.

6 **Sec. 15.45.007. Certification of circulator.** Before being filed, each petition
7 shall be certified by an affidavit by the person who personally circulated the petition.
8 In determining the sufficiency of the petition, the lieutenant governor, or, in the case
9 of a recall petition, the director, may not count subscriptions on petitions not properly
10 certified at the time of filing or, in the case of a recall petition, corrected before the
11 subscriptions are counted. The affidavit must state in substance

12 (1) that the person signing the affidavit meets the residency, age, and
13 citizenship qualifications for circulating a petition under AS 15.45.001;

14 (2) that the person is the only circulator of that petition;

15 (3) that the signatures were made in the circulator's actual presence;

16 (4) that, to the best of the circulator's knowledge, the signatures are the
17 signatures of the persons whose names they purport to be;

18 (5) that, to the best of the circulator's knowledge, the signatures are of
19 persons who were qualified voters on the date of signature;

20 (6) that the circulator has not entered into an agreement with a person
21 or organization in violation of AS 15.45.003(b); ←

22 (7) that the circulator has not violated AS 15.45.003(c) with respect to
23 that petition.

24 (8) whether the circulator has received payment or agreed to receive
25 payment for the collection of signatures on the petition, and, if so, the name of each
26 person or organization that has paid or agreed to pay the circulator for collection of
27 signatures on the petition;

28 (9) that the circulator is not registered to vote in another state; and

29 (10) that the circulator was instructed by the sponsors on the legal
30 requirements for circulating and filing the petition.

31 **Sec. 15.45.008. Advance verification of subscriptions.** The sponsors may,

1 before filing a petition, submit individual numbered petitions containing up to a total
2 of 2,000 subscriptions to the director for review. The director shall, within 45 days,
3 determine whether each subscription submitted for review is that of a qualified voter
4 and notify the sponsors of the number of signatures of qualified voters from each
5 district in the petitions submitted. The director shall assess and the sponsors shall pay
6 a fee of \$1 for each subscription submitted under this section.

7 **Sec. 15.45.009. Cost estimates.** (a) The lieutenant governor shall prepare the
8 cost estimate required under AS 15.45.090(a) based on a fiscal note prepared by the
9 department or departments affected, that sets out the information required by
10 AS 24.08.035(c).

11 (b) The lieutenant governor shall prepare the cost estimate required under
12 AS 15.45.320(a)(4).

13 (c) The director shall prepare the cost estimate required under
14 AS 15.45.560(a)(4).

15 (d) The department shall, by regulation, establish a process for initiative,
16 referendum, and recall committees to dispute the cost estimates prepared under this
17 section, allowing committees to prepare a statement of dispute for publication on the
18 division's Internet website. If a committee disputes a cost estimate prepared under this
19 section, a statement to that effect shall be included in each petition booklet, along with
20 a notice that a copy of the committee's statement of dispute, if any, is available for
21 review on the division's Internet website.

22 (e) A committee aggrieved by a cost estimate prepared under this section may
23 bring an action in the superior court to have the cost estimate reviewed within 30 days
24 after the date on which the lieutenant governor, or, in the case of a recall petition, the
25 director notifies the committee of the completion of the cost estimate.

26 * **Sec. 3.** AS 15.45.500 is amended to read:

27 **Sec. 15.45.500. Form of application.** The application must include

- 28 (1) the name and office of the person to be recalled;
- 29 (2) the grounds for recall described in particular in not more than 200
30 words;
- 31 (3) the printed name, the signature, the address, and a numerical

Judiciary 10

1 identifier of qualified voters equal in number to 10 percent of those who voted in the
2 preceding general election in the state or in the senate or house district of the official
3 sought to be recalled, 100 of whom will serve as sponsors; each signature page must
4 include a statement that the qualified voters signed the application with the name and
5 office of the person to be recalled and the statement of grounds for recall attached;
6 [AND]

7 (4) the designation of a recall committee consisting of three of the
8 qualified voters who subscribed to the application and shall represent all sponsors and
9 subscribers in matters relating to the recall; the designation must include the name,
10 mailing address, and signature of each committee member; and

11 (5) a certification by each member of the recall committee, under
12 penalty of perjury, that the facts alleged in the application are true to the best of
13 the member's knowledge.

14 * Sec. 4. AS 15.45.510 is amended by adding a new subsection to read:

15 (b) In this section,

16 (1) "corruption" means an act done by a person who is subject to recall
17 under AS 15.45.470 with an intent to give some advantage inconsistent with official
18 duty and the rights of others;

19 (2) "incompetence" means the lack of ability to perform the official's
20 required duties;

21 (3) "lack of fitness" means the existence of a long-term physical or
22 mental disability that seriously impairs the official's ability to perform the duties of the
23 office;

24 (4) "neglect of duties" means failure to perform a duty of office
25 established by law.

26 * Sec. 5. AS 15.45.105, 15.45.110, 15.45.130, 15.45.335, 15.45.340, 15.45.360, 15.45.575,
27 15.45.580, and 15.45.600 are repealed.

28 * Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 TRANSITION. A proposed initiative, referendum, or recall for which an application
31 was filed with the lieutenant governor or the director before the effective date of the Act is

1 subject to the provisions of AS 15.45 as they existed on the day before the effective date of
2 this Act.

3 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c)

Conceptual Amendment on HB 433\R #[#]5
By Ramras
4/6/06

- Page 5, Line 7. Delete "prepare" and insert "provide to the committee"
- Page 5, Line 11. Delete "prepare" and insert "provide to the committee"
- Page 5, Line 13. Delete "prepare" and insert "provide to the committee"

6 page 3 line 22 -27
delete see if.

Gardner
Catto

Conceptual Amendment to HB 438 \R
By Seaton
4/5/06

1

Page 2 line 26 and line 27
Delete all material in (3) and (4)

Adopted

#2 Adopt

Conceptual Amendment Number 2 to HB 438 \R
By Seaton
4/5/06

Page 3 line 3

Delete all material beginning with "recieve" through page 3 line 13

Insert:

... only receive additional reimbursement for itemized, direct expenses incurred while circulating a petition as delineated by regulation."

set forth in

~~Rauvas~~
~~Greenberg~~
~~Gardner.~~

Conceptual Amendment Number # 3 to HB 438 VR
By Seaton
4/5/06

Page 4 line 28
Delete all material in section (9)

Annech

Representative Jay Ramras
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Alaska State Legislature



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House District 10

House of Representatives

House Bill 438 (version 24-LS1344\R) Sectional Summary

“An Act relating to initiative, referendum, and recall petitions; and providing for an effective date.”

Section 1. AS 15.13.030 **Duties of the commission.** This section is amended to have APOC enforce the provisions of AS 15.45.003 and collect civil fines due under AS 15.45.003(e).

Section 2. AS 15.45 is amended by adding a new section to read:

Article 1. General Provisions Relating to Petitions

AS 15.45.001 Qualifications of circulator. This section is amended to read that in order to circulate a petition a person shall not be registered to vote in any other state.

AS 15.45.003 Circulation; prohibitions. This section is added to state that a circulator may receive up to \$15 a day to cover the cost of meals for each day the circulator travels more than 100 miles from their home in the course of circulating the petition. States that an initiative petition circulator may not receive payment for any work other than those stated in subsection (b), including administrative work. A person or organization that violates this section is guilty of a class B misdemeanor. A person who pays a circulator and a circulator who receives compensation other than those permitted are both liable for a civil fine of \$1 per signature on a petition filed with the lieutenant governor, or in the case of a recall petition, the director. Also, states that in determining the sufficiency of a petition, the lieutenant governor, or in the case of a recall petition, the director, may not count subscriptions on a petition circulated by a circulator who violated this section.

AS 15.45.005 Mandatory training. This section makes it mandatory for every committee circulating a petition to participate in training offered by the division of elections, and that sponsors are responsible for instructing circulators as to the legal requirements.

AS 15.45.007 Certification of circulator. Adds to the certifying affidavit on petition booklets that the circulator was instructed by the sponsors as to the legal requirements of AS 15.45.001 – 15.45.003, and that the circulator of a petition is not registered to vote in any other state, and that

the circulator was instructed by the sponsors on the legal requirements for circulating and filing the petition.

AS 15.45.008 Advance verification of subscriptions. This section allows the sponsors to get up to 2,000 subscriptions qualified by the director prior to the initiative petition being filed. The sponsors shall pay a fee of \$1 for each subscription submitted under this section.

AS 15.45.009 Cost Estimates. Adds that the department shall, by regulation, establish a process to dispute the cost estimates prepared under this section, allowing committees to prepare a statement of dispute for publication on the division's website. If a committee disputes the cost estimate, a statement to that effect shall be included in the petition booklet, along with a notice that a copy of the dispute is available on the department's website. This section also adds that a committee aggrieved by a cost estimate prepared under this section may bring an action in superior court to have the cost estimate reviewed within 30 days after the date on which the director notifies the committee of completion of the estimate.

Section 3. AS 15.45.500(5) states that each member of a recall committee, under penalty of perjury, must state on their application that the facts alleged in the application are true to the best of the member's knowledge.

Section 4. AS 15.45.510 defines in this section the four grounds for recalls, "corruption", "incompetence", "lack of fitness", and "neglect of duties".

Section 5. Repeals AS 15.45.105, 15.45.110, 15.45.130, 15.45.335, 15.45.340, 15.45.360, 15.45.575, 15.45.580, and 15.45.600. Due to the fact that these sections are now consolidated under Article 1.

Section 6. This section is a transition section amending the uncodified law to say that an application filed prior to the effective date of this Act is subject to AS 15.45 as they existed on the day before the effective date of this Act.

Section 13. States that this Act takes effect immediately.

24-LS1344P
Kurtz
3/24/06

CS FOR HOUSE BILL NO. 438()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE RAMRAS

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to initiative, referendum, and recall petitions; and providing for an**
2 **effective date."**

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

4 *** Section 1.** AS 15.13.030 is amended to read:

5 **Sec. 15.13.030. Duties of the commission.** The commission shall

6 (1) develop and provide all forms for the reports and statements
7 required to be made under this chapter, AS 24.45, and AS 39.50;

8 (2) prepare and publish a manual setting out uniform methods of
9 bookkeeping and reporting for use by persons required to make reports and statements
10 under this chapter and otherwise assist candidates, groups, and individuals in
11 complying with the requirements of this chapter;

12 (3) receive and hold open for public inspection reports and statements
13 required to be made under this chapter and, upon request, furnish copies at cost to
14 interested persons;

1 (4) compile and maintain a current list of all filed reports and
2 statements;

3 (5) prepare a summary of each report filed under AS 15.13.110 and
4 make copies of this summary available to interested persons at their actual cost;

5 (6) notify, by registered or certified mail, all persons who are
6 delinquent in filing reports and statements required to be made under this chapter;

7 (7) examine, investigate, and compare all reports, statements, and
8 actions required by this chapter, AS 24.45, and AS 39.50;

9 (8) prepare and publish a biennial report concerning the activities of
10 the commission, the effectiveness of this chapter, its enforcement by the attorney
11 general's office, and recommendations and proposals for change; the commission shall
12 notify the legislature that the report is available;

13 (9) adopt regulations necessary to implement and clarify the provisions
14 of AS 24.45, AS 39.50, and this chapter, subject to the provisions of AS 44.62
15 (Administrative Procedure Act); [AND]

16 (10) consider a written request for an advisory opinion concerning the
17 application of this chapter, AS 24.45, AS 24.60.200 - 24.60.260, or AS 39.50; and

18 (11) enforce the provisions of AS 15.45.003(b) and collect civil fines
19 due under AS 15.45.003(e).

20 * Sec. 2. AS 15.45 is amended by adding new sections to read:

21 **Article 1. General Provisions Relating to Petitions.**

22 **Sec. 15.45.001. Qualifications of circulator.** To circulate a petition booklet, a
23 person shall be

24 (1) a citizen of the United States;

25 (2) 18 years of age or older;

26 (3) a resident of the state as determined under AS 15.05.020; and

27 (4) not registered to vote in any other state.

28 **Sec. 15.45.003. Circulation; prohibitions.** (a) A petition may be circulated
29 only in person in the state.

30 (b) A circulator may not receive payment or agree to receive payment that is
31 greater than \$1 a signature, and a person or an organization may not pay or agree to

1 pay an amount that is greater than \$1 a signature, for the collection of signatures on a
2 petition. In addition to \$1 a signature, a person or organization may pay a circulator
3 and a circulator may receive up to \$15 to cover the cost of meals for each day that the
4 circulator travels more than 100 miles from the circulator's home in the course of
5 circulating the petition if the circulator certifies, on a form prescribed by and filed with
6 the Alaska Public Offices Commission, that the circulator has traveled more than 100
7 miles from the circulator's home on the day for which the payment is received. A
8 person or organization may not pay a circulator and a circulator may not receive any
9 payment

10 (1) other than that specified in this subsection for circulating a petition;

11 (2) for any work other than collecting signatures, including
12 administrative work, relating to the petition for which the circulator is collecting
13 signatures.

14 (c) A person or organization may not knowingly pay, offer to pay, or cause to
15 be paid money or another valuable thing to a person to sign or refrain from signing a
16 petition.

17 (d) A person or organization that violates (b) or (c) of this section is guilty of a
18 class B misdemeanor.

19 (e) A person who pays a circulator and a circulator who receives
20 compensation other than that permitted under (b) of this section are liable to the state
21 for a civil fine of \$1 for each signature gathered by the circulator on a petition.

22 (f) In determining the sufficiency of a petition, the lieutenant governor, or in
23 the case of a recall petition, the director, may not count subscriptions on a petition

24 (1) circulated by a circulator who is not in compliance with (b) of this
25 section; or

26 (2) by an initiative, referendum, or recall committee that is not in
27 compliance with the requirements of AS 15.13.

28 (g) In this section,

29 (1) "organization" has the meaning given in AS 11.81.900;

30 (2) "other valuable thing" has the meaning given in AS 15.56.030;

31 (3) "person" has the meaning given in AS 11.81.900.

1 **Sec. 15.45.005. Mandatory training.** (a) At least once during each two-year
2 period between general elections, each committee applying for or circulating a petition
3 during that period shall attend training offered by the division of elections explaining
4 the legal requirements for petitions.

5 (b) Before giving a petition to a circulator, the sponsors shall instruct the
6 circulator on the legal requirements for petitions.

7 **Sec. 15.45.007. Certification of circulator.** Before being filed, each petition
8 shall be certified by an affidavit by the person who personally circulated the petition.
9 In determining the sufficiency of the petition, the lieutenant governor, or, in the case
10 of a recall petition, the director, may not count subscriptions on petitions not properly
11 certified at the time of filing or corrected before the subscriptions are counted. The
12 affidavit must state in substance

13 (1) that the person signing the affidavit meets the residency, age, and
14 citizenship qualifications for circulating a petition under AS 15.45.001;

15 (2) that the person is the only circulator of that petition;

16 (3) that the signatures were made in the circulator's actual presence;

17 (4) that, to the best of the circulator's knowledge the signatures are the
18 signatures of the persons whose names they purport to be;

19 (5) that, to the best of the circulator's knowledge, the signatures are of
20 persons who were qualified voters on the date of signature;

21 (6) that the circulator has not entered into an agreement with a person
22 or organization in violation of AS 15.45.003(b);

23 (7) that the circulator has not violated AS 15.45.003(c) with respect to
24 that petition;

25 (8) whether the circulator has received payment or agreed to receive
26 payment for the collection of signatures on the petition, and, if so, the name of each
27 person or organization that has paid or agreed to pay the circulator for collection of
28 signatures on the petition;

29 (9) that the circulator is not registered to vote in another state; and

30 (10) that the circulator was instructed by the sponsors on the legal
31 requirements for circulating and filing the petition.

1 **Sec. 15.45.009. Advance verification of subscriptions.** The sponsors may,
2 before filing a petition, submit individual numbered petitions containing up to a total
3 of 2,000 subscriptions to the director for review. The director shall, within 45 days,
4 determine whether each subscription submitted for review is that of a qualified voter
5 and notify the sponsors of the number of signatures of qualified voters from each
6 district in the petitions submitted. The director shall assess and the sponsors shall pay
7 a fee of \$1 for each subscription submitted under this section.

8 * **Sec. 3.** AS 15.45.090(a) is amended to read:

9 (a) If the application is certified, the lieutenant governor shall prepare a
10 sufficient number of sequentially numbered petitions to allow full circulation
11 throughout the state. Each petition must contain

12 (1) a copy of the proposed bill if the number of words included in both
13 the formal and substantive provisions of the bill is 500 or less;

14 (2) an impartial summary of the subject matter of the bill;

15 (3) a statement of minimum costs to the state associated with
16 certification of the initiative application and review of the initiative petition, excluding
17 legal costs to the state and the costs to the state of any challenge to the validity of the
18 petition;

19 (4) an estimate of the cost to the state of implementing the proposed
20 law, based on a fiscal note, prepared by the department or departments affected,
21 that sets out the information required by AS 24.08.035(c); and, if the initiative
22 committee disputes the estimate, a statement to that effect as well as a notice that
23 a copy of the committee's statement of dispute, if any, is available from the
24 division for review;

25 (5) the statement of warning prescribed in AS 15.45.100;

26 (6) sufficient space for the printed name, a numerical identifier, the
27 signature, the date of signature, and the address of each person signing the petition;
28 and

29 (7) other specifications prescribed by the lieutenant governor to ensure
30 proper handling and control.

31 * **Sec. 4.** AS 15.45.240 is amended by adding a new subsection to read:

1 (b) Any person aggrieved by a cost estimate prepared for purposes of
2 AS 15.45.090(a)(4) may bring an action in the superior court to have the cost estimate
3 reviewed within 30 days after the date on which notice of the written cost estimate
4 prepared under AS 15.45.090(a)(4) is delivered to the director.

5 * Sec. 5. AS 15.45.320(a) is amended to read:

6 (a) The lieutenant governor shall prepare a sufficient number of sequentially
7 numbered petitions to allow full circulation throughout the state. Each petition must
8 contain

9 (1) a copy of the act to be referred if the number of words included in
10 both the formal and substantive provisions of the act is 500 or less;

11 (2) the statement of approval or rejection;

12 (3) a statement of minimum costs to the state associated with
13 certification of the referendum application and review of the referendum petition,
14 excluding legal costs to the state and the costs to the state of any challenge to the
15 validity of the petition;

16 (4) an estimate of the cost to the state of voter approval or rejection of
17 the act, and, if the referendum committee disputes the estimate, a statement to
18 that effect as well as a notice that a copy of the committee's statement of dispute,
19 if any, is available from the division for review;

20 (5) an impartial summary of the subject matter of the act;

21 (6) the statement of warning prescribed in AS 15.45.330;

22 (7) sufficient space for the printed name, a numerical identifier, the
23 signature, the date of signature, and the address of each person signing the petition;
24 and

25 (8) other specifications prescribed by the lieutenant governor to ensure
26 proper handling and control.

27 * Sec. 6. AS 15.45.460 is amended by adding a new subsection to read:

28 (b) Any person aggrieved by a cost estimate prepared for purposes of
29 AS 15.45.320(a)(4) may bring an action in the superior court to have the cost estimate
30 reviewed within 30 days after the date on which notice of the written cost estimate
31 prepared under AS 15.45.320(a)(4) is delivered to the director.

1 * Sec. 7. AS 15.45.500 is amended to read:

2 **Sec. 15.45.500. Form of application.** The application must include

3 (1) the name and office of the person to be recalled;

4 (2) the grounds for recall described in particular in not more than 200
5 words;

6 (3) the printed name, the signature, the address, and a numerical
7 identifier of qualified voters equal in number to 10 percent of those who voted in the
8 preceding general election in the state or in the senate or house district of the official
9 sought to be recalled, 100 of whom will serve as sponsors; each signature page must
10 include a statement that the qualified voters signed the application with the name and
11 office of the person to be recalled and the statement of grounds for recall attached;

12 [AND]

13 (4) the designation of a recall committee consisting of three of the
14 qualified voters who subscribed to the application and shall represent all sponsors and
15 subscribers in matters relating to the recall; the designation must include the name,
16 mailing address, and signature of each committee member; and

17 (5) a certification by each member of the recall committee, under
18 penalty of perjury, that the facts alleged in the application are true to the best of
19 the member's knowledge.

20 * Sec. 8. AS 15.45.510 is amended by adding a new subsection to read:

21 (b) In this section,

22 (1) "corruption" means an act done by a person who is subject to recall
23 under AS 15.45.470 with an intent to give some advantage inconsistent with official
24 duty and the rights of others;

25 (2) "incompetence" means the lack of ability to perform the official's
26 required duties;

27 (3) "lack of fitness" means the existence of a long-term physical or
28 mental disability that seriously impairs the official's ability to perform the duties of the
29 office;

30 (4) "neglect of duties" means failure to perform a duty of office
31 established by law.

1 * Sec. 9. AS 15.45.560(a) is amended to read:

2 (a) The director shall prepare a sufficient number of sequentially numbered
3 petitions to allow full circulation throughout the state or throughout the senate or
4 house district of the official sought to be recalled. Each petition must contain

5 (1) the name and office of the person to be recalled;

6 (2) the statement of the grounds for recall included in the application;

7 (3) a statement of minimum costs to the state associated with
8 certification of the recall application, review of the recall petition, and conduct of a
9 special election, excluding legal costs to the state and the costs to the state of any
10 challenge to the validity of the petition;

11 (4) an estimate of the cost to the state of recalling the official; and, if
12 the recall committee disputes the estimate, a statement to that effect as well as a
13 notice that a copy of the committee's statement of dispute, if any, is available
14 from the division for review;

15 (5) the statement of warning required in AS 15.45.570;

16 (6) sufficient space for the printed name, a numerical identifier, the
17 signature, the date of signature, and the address of each person signing the petition;
18 and

19 (7) other specifications prescribed by the director to ensure proper
20 handling and control.

21 * Sec. 10. AS 15.45.720 is amended by adding a new subsection to read:

22 (b) Any person aggrieved by a cost estimate prepared for purposes of
23 AS 15.45.560(a)(4) may bring an action in the superior court to have the cost estimate
24 reviewed within 30 days after the date on which notice of the written cost estimate
25 prepared under AS 15.45.460(a)(4) is delivered to the director.

26 * Sec. 11. AS 15.45.105, 15.45.110, 15.45.130, 15.45.335, 15.45.340, 15.45.360, 15.45.575,
27 15.45.580, and 15.45.600 are repealed.

28 * Sec. 12. The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 TRANSITION. A proposed initiative, referendum, or recall for which an application
31 was filed with the lieutenant governor or the director before the effective date of the Act is

1 subject to the provisions of AS 15.45 as they existed on the day before the effective date of
2 this Act.

3 * **Sec. 13.** This Act takes effect immediately under AS 01.10.070(c).

Representative Jay Ramras
Co-Chair, House Resources
Co-Chair, Economic Develop.
Tourism & Trade

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Alaska State Legislature



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House District 10

House of Representatives

House Bill 438 (version 24-LS1344\A)

Sectional Summary

"An Act relating to initiative, referendum, and recall petitions; and providing for an effective date."

Section 1. AS 15.13.030 Duties of the commission. This section is amended to have APOC enforce the provisions of AS 15.45.003 and collect civil fines due under AS 15.45.003(e).

Section 2. AS 15.45 is amended by adding a new section to read:

Article 1. General Provisions Relating to Petitions

AS 15.45.001 Qualifications of circulator. This section is amended to read that in order to circulate a petition a person shall not be registered to vote in any other state.

AS 15.45.003 Circulation; prohibitions. This section is added to state that a circulator may receive up to \$15 a day to cover the cost of meals for each day the circulator travels more than 100 miles from their home in the course of circulating the petition. States that an initiative petition circulator may not receive payment for any work other than those stated in subsection (b), including administrative work. A person or organization that violates this section is guilty of a class B misdemeanor. A person who pays a circulator and a circulator who receives compensation other than those permitted are both liable for a civil fine of \$1 per signature on a petition filed with the lieutenant governor, or in the case of a recall petition, the director. Also, states that in determining the sufficiency of a petition, the lieutenant governor, or in the case of a recall petition, the director, may not count subscriptions on a petition circulated by a circulator who violated this section.

AS 15.45.005 Mandatory training. This section makes it mandatory for every committee applying for or circulating a petition to attend training offered by the division of elections on the legal requirements for petitions, and that sponsors are responsible for instructing circulators as to the legal requirements.

AS 15.45.007 Certification of circulator. Adds to the certifying affidavit on the petition that the circulator was instructed by the sponsors as to the legal requirements of AS 15.45.001 – 15.45.003, that the circulator of a petition is not registered to vote in any other state, and that the

circulator was instructed by the sponsors on the legal requirements for circulating and filing the petition.

AS 15.45.009 Advance verification of subscriptions. This section allows the sponsors to get up to 2,000 subscriptions qualified by the director prior to the initiative petition being filed. The sponsors shall pay a fee of \$1 for each subscription submitted under this section.

Section 3. AS 15.45.090(a)(4) allows the initiative committee to dispute the fiscal note by providing the department with a statement to that effect, which will be available from the department for review.

Section 4. AS 15.45.240 is amended by adding a new subsection: Allowing any person that is aggrieved by a cost estimate prepared for the purposes of AS 15.45.090(a)(4) may bring an action in the superior court to have the cost estimate reviewed within 30 days.

Section 5. AS 15.45.320(a) is amended to add that the petition will state that the fiscal note is in dispute and that a copy of the committee's statement of dispute is available from the department.

Section 6. AS 15.45.320(a)(4) is amended to allow any person that is aggrieved by a cost estimate of a referendum prepared for the purposes of AS 15.45.090(a)(4) to bring an action in the superior court and to have the cost estimate reviewed within 30 days.

Section 7. AS 15.45.500(5) states that each member of a recall committee, under penalty of perjury, must state on their application that the facts alleged in the application are true to the best of the member's knowledge.

Section 8. AS 15.45.510 defines in this section the four grounds for recalls, "corruption", "incompetence", "lack of fitness", and "neglect of duties".

Section 9. AS 15.45.560(a)(4) is amended to add that the petition will state that the fiscal note is in dispute and that a copy of the committee's statement of dispute is available from the department.

Section 10. AS 15.45.720 is amended to allow any person that is aggrieved by a cost estimate of a recall prepared for the purposes of AS 15.45.090(a)(4) to bring an action in the superior court to have the cost estimate reviewed within 30 days.

Section 11. Repeals AS 15.45.105, 15.45.110, 15.45.130, 15.45.335, 15.45.340, 15.45.360, 15.45.575, 15.45.580, and 15.45.600. Due to the fact that these sections are now consolidated under Article 1.

Section 12. Uncodified law is amended to say that an application filed prior to the effective date of this Act is subject to AS 15.45 as it existed on the day before the effective date of this Act.

Section 13. States that this Act takes effect immediately.

*No time left
on discussion to
verify signature*

24-LS1344\X
Kurtz
2/22/06

CS FOR HOUSE BILL NO. 438()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE RAMRAS

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to initiative, referendum, and recall petitions; and providing for an**
2 **effective date."**

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

4 *** Section 1. AS 15.45 is amended by adding new sections to read:**

5 **Article 1. General Provisions Relating to Petitions.**

6 **Sec. 15.45.001. Qualifications of circulator.** To circulate a petition booklet, a
7 person shall be

- 8 (1) a citizen of the United States;
- 9 (2) 18 years of age or older;
- 10 (3) a resident of the state as determined under AS 15.05.020; and
- 11 (4) not registered to vote in any other state.

12 **Sec. 15.45.003. Circulation; prohibitions.** (a) A petition may be circulated
13 only in person throughout the state. However, in the case of a petition to recall a
14 member of the state legislature, a petition may be circulated only in person in the

senate or house district represented by the official sought to be recalled.

(b) A circulator may not receive payment or agree to receive payment that is greater than \$1 a signature, and a person or an organization may not pay or agree to pay an amount that is greater than \$1 a signature, for the collection of signatures on a petition. In addition to \$1 a signature, a person or organization may pay a circulator and a circulator may receive up to \$15 to cover the cost of meals for each day that the circulator travels more than 100 miles from the circulator's home in the course of circulating the petition if the circulator certifies, on a form prescribed by the division of elections, that the circulator has traveled more than 100 miles from the circulator's home on the day for which the payment is received. A person or organization may not pay a circulator and a circulator may not receive any payment

- (1) other than that specified in this subsection for circulating a petition;
- (2) for any work other than collecting signatures, including administrative work, relating to the petition for which the circulator is collecting signatures.

(c) A person or organization may not knowingly pay, offer to pay, or cause to be paid money or other valuable thing to a person to sign or refrain from signing a petition.

(d) A person or organization that violates (b) or (c) of this section is guilty of a class B misdemeanor.

(e) A person who pays a circulator and a circulator who receives compensation other than that permitted under (b) of this section are liable to the state for a civil fine of \$1 for each signature gathered by the circulator on a petition filed with the lieutenant governor.

(f) In determining the sufficiency of a petition, the lieutenant governor may not count subscriptions on a petition circulated by a circulator who violated (b) of this section.

(g) In this section,

- (1) "organization" has the meaning given in AS 11.81.900;
- (2) "other valuable thing" has the meaning given in AS 15.56.030;
- (3) "person" has the meaning given in AS 11.81.900.

could be covered in 07 (6)

who will assess & collect HOC?

1 **Sec. 15.45.005. Mandatory training.** (a) At least once during each two-year
2 period between general elections, the division of elections shall offer training
3 explaining the legal requirements for petitions. Each committee applying for or
4 circulating a petition during that period shall attend the training.

5 (b) Before giving a petition to a circulator, the sponsors shall instruct the
6 circulator on the legal requirements for petitions.

7 **Sec. 15.45.007. Certification of circulator.** Before being filed, each petition
8 shall be certified by an affidavit by the person who personally circulated the petition.
9 In determining the sufficiency of the petition, the lieutenant governor may not count
10 subscriptions on petitions not properly certified at the time of filing or corrected before
11 the subscriptions are counted. The affidavit must state in substance

12 (1) that the person signing the affidavit meets the residency, age, and
13 citizenship qualifications for circulating a petition under AS 15.45.001;

14 (2) that the person is the only circulator of that petition;

15 (3) that the signatures were made in the circulator's actual presence;

16 (4) that, to the best of the circulator's knowledge, the signatures are their
17 signatures of the persons whose names they purport to be;

18 (5) that, to the best of the circulator's knowledge, the signatures are of
19 persons who were qualified voters on the date of signature;

20 (6) that the circulator has not entered into an agreement with a person
21 or organization in violation of AS 15.45.003(b);

22 (7) that the circulator has not violated AS 15.45.003(c) with respect to
23 that petition;

24 (8) whether the circulator has received payment or agreed to receive
25 payment for the collection of signatures on the petition, and, if so, the name of each
26 person or organization that has paid or agreed to pay the circulator for collection of
27 signatures on the petition;

28 (9) that the circulator is not registered to vote in another state; and

29 (10) that the circulator was instructed by the sponsors on the legal
30 requirements for circulating and filing the petition.

31 **Sec. 15.45.009. Advance verification of subscriptions.** The sponsors may,

1 before filing a petition, submit individual numbered petitions containing up to a total
2 of 2,000 subscriptions to the director for review. The director shall, within 45 days,
3 determine whether each subscription submitted for review is that of a qualified voter
4 and notify the sponsors of the number of signatures of qualified voters from each
5 district in the petitions submitted. The director shall assess and the sponsors shall pay
6 a fee of \$1 for each subscription submitted under this section.

7 * Sec. 2. AS 15.45.490 is amended to read:

8 **Sec. 15.45.490. Time of filing application.** An application may not be filed
9 during the first 120 days or the last 270 days of the term of office of any state public
10 official subject to recall.

11 * Sec. 3. AS 15.45.500 is amended to read:

12 **Sec. 15.45.500. Form of application.** The application must include

13 (1) the name and office of the person to be recalled;

14 (2) the grounds for recall described in particular in not more than 200
15 words;

16 (3) the printed name, the signature, the address, and a numerical
17 identifier of qualified voters equal in number to 20 [10] percent of those who voted in
18 the preceding general election in the state or in the senate or house district of the
19 official sought to be recalled, 100 of whom will serve as sponsors; each signature page
20 must include a statement that the qualified voters signed the application with the name
21 and office of the person to be recalled and the statement of grounds for recall attached;
22 [AND]

23 (4) the designation of a recall committee consisting of three of the
24 qualified voters who subscribed to the application and shall represent all sponsors and
25 subscribers in matters relating to the recall; the designation must include the name,
26 mailing address, and signature of each committee member; and

27 (5) a certification by each member of the recall committee, under
28 penalty of perjury, that the facts alleged in the application are true to the best of
29 the member's knowledge.

30 * Sec. 4. AS 15.45.510 is amended by adding a new subsection to read:

31 (b) In this section,

1 (1) "corruption" means an act done by a person who is subject to recall
2 under AS 15.45.470 with an intent to give some advantage inconsistent with official
3 duty and the rights of others;

4 (2) "incompetence" means substantial inability to perform the duties of
5 office;

6 (3) "lack of fitness" means the existence of a long-term physical or
7 mental disability that seriously impairs the official's ability to perform the duties of the
8 office;

9 (4) "neglect of duties" means failure to perform a duty of office
10 established by law.

11 * Sec. 5. AS 15.45.550 is amended to read:

12 **Sec. 15.45.550. Bases of denial of certification.** The director shall deny
13 certification upon determining that

14 (1) the application is not substantially in the required form;

15 (2) the application was filed during the first 120 days of the term of
16 office of the official subject to recall or within less than 270 [180] days of the
17 termination of the term of office of any official subject to recall;

18 (3) the person named in the application is not subject to recall; or

19 (4) there is an insufficient number of qualified subscribers.

20 * Sec. 6. AS 15.45.610 is amended to read:

21 **Sec. 15.45.610. Filing of petition.** A petition may not be filed within less than
22 270 [180] days of the termination of the term of office of a state public official subject
23 to recall. The sponsor may file the petition only if signed by qualified voters equal in
24 number to 30 [25] percent of those who voted in the preceding general election in the
25 state or in the senate or house district of the official sought to be recalled.

26 * Sec. 7. AS 15.45.630 is amended to read:

27 **Sec. 15.45.630. Bases for determining the petition was improperly filed.**
28 The director shall notify the committee that the petition was improperly filed upon
29 determining that

30 (1) there is an insufficient number of qualified subscribers; or

31 (2) the petition was filed within less than 270 [180] days of the

1 termination of the term of office of the official subject to recall.

2 * Sec. 8. AS 15.45.640 is amended to read:

3 **Sec. 15.45.640. Submission of supplementary petition.** Upon receipt of
4 notice that the filing of the petition was improper, the committee may amend and
5 correct the petition by circulating and filing a supplementary petition. The
6 supplementary petition must be filed not later than 270 days before [WITHIN 20
7 DAYS OF THE DATE THAT NOTICE WAS GIVEN, IF FILED WITHIN LESS
8 THAN 180 DAYS OF] the termination of the term of office of the person subject to
9 recall.

10 * Sec. 9. AS 15.45.105, 15.45.110, 15.45.130, 15.45.335, 15.45.340, 15.45.360, 15.45.575,
11 15.45.580, and 15.45.600 are repealed.

12 * Sec. 10. The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 **TRANSITION.** A proposed initiative, referendum, or recall for which an application
15 was filed with the lieutenant governor before the effective date of the Act is subject to the
16 provisions of AS 15.45 as they existed on the day before the effective date of this Act.

17 * Sec. 11. This Act takes effect immediately under AS 01.10.070(c).

LEGAL SERVICES

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

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

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

MEMORANDUM

March 15, 2006

SUBJECT: Issues relating to HB 438
(CSHB 438(), (Work Order No. 24-LS1344X))

TO: Representative Jay Ramras
Attn: Jim Pound

FROM: Kathryn L. Kurtz *KLK*
Assistant Revisor

You have asked several questions about the above noted draft.

Constitutionality

I have not noted any constitutional issues with this draft other than those discussed below. Please note that the potential for legal challenge is always present, and there may be constitutional issues I have not anticipated.

Page 4, line 9

You noted that page 4, line 9 only inserts a reference to 270 days, and does not delete text referring to 180 days. That is because there is no language in the current AS 15.45.490 relating to the end of the term of office, in contrast to subsequent statutory sections.

Gathering signatures in the district

Under the proposed AS 15.45.003, yes, it would be a class B misdemeanor to gather signatures on a recall petition at a location across the street from but not within the district represented by the official sought to be recalled. This is consistent with the language of the current AS 15.45.580.

Constitutional rights of signers

Yes, potentially the constitutional right of voters to enact laws by initiative, established in Article XI, sec. 1, Constitution of the State of Alaska, may be infringed by the provision at page 2, lines 25 - 27 (instructing the lieutenant governor not to count signatures collected by a circulator who has violated the compensation rules).

Courts have been sympathetic to states refusing to count signatures on a petition based on a violation of certification requirements similar to Alaska's, and have found that certification requirements are important to prevent fraud and preserve the integrity of the initiative process. *See for example Loontjer v. Robinson*, 670 N.W.2d 301 (Neb. 2003) (where sponsors failed to submit a sworn statement including the addresses of the

Representative Jay Ramras
March 15, 2006
Page 2

sponsors, the initiative petition was held to be legally insufficient); *Maine Taxpayers Action Network v. Secretary of State*, 795 A.2d 75 (Me. 2002) (where a circulator lied about his identity, the veracity of other statements on his affidavit was called into question and invalidation of the signatures he collected was upheld).

However, this new provision may be more susceptible to a court challenge than the existing language, as it may be less central to safeguarding the initiative process against fraud and deception than the certification requirement. What is at stake here is the constitutional right of the voters to enact laws by the initiative, established in Article XI, sec. 1 of the Constitution of the State of Alaska. The Alaska Supreme Court has held that the right of initiative should be liberally construed to permit exercise of that right. *Thomas v. Bailey*, 595 P.2d 1, 3 (Alaska 1979). I cannot predict the outcome of a legal challenge to this new provision on this basis.

Raising the recall bar

You are correct that Article XII, sec. 8 provides that "[p]rocedures and grounds for recall shall be prescribed by the legislature."

KLK:med
06-218.med

Representative Jay Ramras
Co-Chair, House Resources
V-Chair, Economic Develop.
Tourism & Trade

House State Affairs
119 N. Cushman St. Suite 207
Fairbanks, Alaska 99701
Phone: (907) 452-1088
Fax: (907) 452-1146

Alaska State Legislature



While in Session
State Capitol, Room 104
Juneau, Alaska 99801-1182
(907) 465-3004
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Toll Free: (877) 465-3004

House District 10

House of Representatives

House Bill 438 (version 24-LS1344\X)

Sectional Summary

“An Act relating to initiative, referendum, and recall petitions; and providing for an effective date.”

Section 1. AS 15.45

Article 1. General Provisions Relating to Petitions

AS 15.45.001 Qualifications of circulator. This section is amended to read that in order to circulate a petition a person shall not be registered to vote in any other state.

AS 15.45.003 Circulation; prohibitions. This section is added to state that a circulator may receive up to \$15 a day to cover the cost of meals for each day the circulator travels more than 100 miles from their home in the course of circulating the petition. States that an initiative petition circulator may not receive payment for any work other than those stated in subsection (b) including administrative work. A person or organization that violates this section is guilty of a class B misdemeanor. A person who pays a circulator and a circulator who receives compensation other than those permitted are both liable for a civil fine of \$1 per signature on a petition filed with the lieutenant governor. Also, states that in determining the sufficiency of a petition, the lieutenant governor may not count subscriptions on a petition circulated by a circulator who violated this section.

AS 15.45.005 Mandatory training. This section makes it mandatory for every committee applying for or circulating a petition to attend training on the legal requirements for petitions, offered by the division of elections, and that sponsors are responsible for instructing circulators as to the legal requirements.

AS 15.45.007 Certification of circulator. Adds to the certifying affidavit on the petition that, the circulator of a petition is not registered to vote in any other state, that the circulator was instructed by the sponsors on the legal requirements of AS 15.45.001 – 15.45.003.

AS 15.45.009 Advance verification of subscriptions. This section allows the sponsors to get up to 2,000 subscriptions qualified by the director prior to the initiative petition being filed. The sponsors shall pay a fee of \$1 for each subscription submitted under this section.

Section 2. AS 15.45.490 **Time of filing application.** Adds that an application for recall may not be filed during last 270 days of the term of office of a state public official.

Section 3. AS 15.45.500 **Form of application.** Changes the number of qualified voters that must sign the petition from 10 to 20 percent of those who voted in the preceding general election in the district of the official sought to be recalled. Each member of the recall committee, under penalty of perjury, must certify that the facts alleged in the application are true to the best of their knowledge.

Section 4. AS 15.45.510 **Grounds for recall.** A new subsection is added defining "corruption", "incompetence", "lack of fitness", and "neglect of duties".

Section 5. AS 15.45.550 **Bases of denial of certification.** Adds that the director shall deny certification of a recall upon determining that the application was filed within less than 270 days of the termination of the official's term of office.

Section 6. AS 15.45.610 **Filing of Petition.** Amends that a recall petition cannot be filed within less than 270 days from the termination of the official's term of office and that the sponsor may file the petition only if signed by qualified voters equal in number to 30 percent of those who voted in the previous general election in the official's district.

Section 7. AS 15.45.630 **Bases for determining the petition was improperly filed.** Conforming language to Section 23. States that the petition was improperly filed upon determining that the petition was filed within less than 270 days of the termination of the office of the official subject to recall.

Section 8. AS 15.45.640 **Submission of supplementary petition.** States that a supplementary petition may not be filed later than 270 days before the official's office termination date.

Section 9. Repeals AS 15.45.105, 15.45.110, 15.45.130, 15.45.335, 15.45.340, 15.45.360, 15.45.575, 15.45.580, and 15.45.600. Due to the fact that these sections are now consolidated under Article 1. **General Provisions Relating to Petitions.**

Section 10. Uncodified law is amended to say that an application filed prior to the effective date of this Act is subject to AS 15.45 as it existed on the day before the effective date of this Act.

Section 11. States that this Act takes effect immediately.

Jane Pierson

From: Whitney Brewster [whitney_brewster@gov.state.ak.us]
Sent: Wednesday, March 08, 2006 5:01 PM
To: Jane Pierson
Cc: Annette Kreitzer
Subject: Re: HB 438

Hi Jane,

I just wanted to get you my comments on this latest draft of HB 438. Once you've had a chance to review them, I'd be happy to meet with you, Annette and the attorneys to talk through the bill. My comments are as follows:

1. Page 1, line 11 - This requirement may run afoul of the Buckley decision.
2. Page 1, line 13 - I know this is already current law, but I want to make sure everyone is aware that this essentially confines a circulator strictly to the boundaries of the district and would prevent the circulator from collecting signatures at the local supermarket (although many residents of a district may frequent it) if it is not exactly within the district boundaries.
3. Page 2, line 8 - "On a form prescribed by the division" - The Division would prefer that another form not be created. 15.45.007(6) in this draft already covers this by requiring the circulator to certify "that the circulator has not entered into an agreement with a person or organization in violation of AS 15.45.003(b)."
4. Page 2, line 19 - Who will enforce this?
5. Page 2, line 21 - Who will assess and collect this fine?
6. Page 2, line 25 - The Lt. Governor is not able to determine the sufficiency of a petition in the case of a recall. That duty lies with the Director of the Division of Elections. HB 94 that passed last year incorrectly changed the law. It is incorrect as a Lt. Governor should not have the ability to determine the sufficiency of a recall petition if he or she is the subject of that recall.
7. Page 3, line 1 - I wonder if mandatory training runs afoul of any court cases or is unconstitutional.
8. Page 3, line 9 - Again, this is based on incorrect language currently in law allowing a Lt. Governor to determine the sufficiency of a recall petition.
9. Page 3, line 28 - Again, this may run afoul of the Buckley decision.
10. Page 4, line 2 - This review will require additional staff time and a fiscal note reflecting this staff time will be required.
11. Page 4, line 5 - These fees will go to the General Fund and will not benefit the Division of Election's budget.
12. Page 4, line 17 - The increase in this percentage will require additional signatures to be qualified and will result in a fiscal note.
13. Page 4, line 27 - Who enforces this if an individual of the recall committee certifies that the facts alleged are true, but knows that they are not?
14. Page 5, line 1 - Where are these definitions based on?
15. Page 5, line 24 - The increase in this percentage will require additional signatures to be qualified and will result in a fiscal note.
16. Page 6, line 14 - Again, this is based on incorrect language currently in law allowing a Lt. Governor to determine the sufficiency of a recall petition.

Sincerely,
Whitney

Response To Comments By The Division Of Elections on HB438

1. **Page 1, line 11 - This requirement may run afoul of the Buckley decision.**
(4) not registered to vote in any other state.

This will ultimately have to be determined by the Department of Law. However, it is already law that a person may not be registered to vote in multiple jurisdictions, AS 15.07.060(a)(5). This provision does not state that a person must be registered to vote in Alaska. It corresponds with current law stating that signature gatherers be residents of the state. Furthermore, to knowingly make a false statement while applying for voter registration is voter misconduct in the second degree under AS 15.56.050, and a class A misdemeanor. Voting in another state is inconsistent with claiming Alaska residency for purposes of AS 15.05.020. The purpose of this provision is to prevent "professional signature gatherers" from coming to Alaska to collect signatures on petitions. Under Buckley, Alaska cannot require circulators to be registered voters, there is some risk that prohibiting them from being registered voters in another state will be interpreted as unconstitutional burden on political expression.

2. **Page 1, line 13 - I know this is already current law, but I want to make sure everyone is aware that this essentially confines a circulator strictly to the boundaries of the district and would prevent the circulator from collecting signatures at the local supermarket (although many residents of a district may frequent it) if it is not exactly within the district boundaries.**

"However, in the case of a petition to recall a member of the state legislature, a petition may be circulated only in person in the senate or house district represented by the official sought to be recalled."

This is current law, the idea being that the petition be brought before the people who it affects.

3. **Page 2, line 8 - "On a form prescribed by the division" - The Division would prefer that another form not be created. 15.45.007(6) in this draft already covers this by requiring the circulator to certify "that the circulator has not entered into an agreement with a person or organization in violation of AS 15.45.003(b)."**

"on a form prescribed by the division of elections, that the circulator has traveled more than 100 miles from the circulator's home on the day for which the payment is received."

This would reduce the fiscal note on the bill and may already be covered under AS 15.45.022(b).

4. Page 2, line 19 - Who will enforce this?

"(d) a person or organization that violates (b) or (c) of this section is guilty of a class B misdemeanor."

There are already provisions under AS 15.45.100, 15.45.330, and AS 15.45.570 that defines crimes of a class B misdemeanor for signers of a petition. Why is it not possible for whoever currently enforces these statutes will to also enforce this provision?

5. Page 2, line 21 - Who will assess and collect this fine?

6. Page 2, line 25 - The Lt. Governor is not able to determine the sufficiency of a petition in the case of a recall. That duty lies with the Director of the Division of Elections. HB 94 that passed last year incorrectly changed the law. It is incorrect as a Lt. Governor should not have the ability to determine the sufficiency of a recall petition if he or she is the subject of that recall.

(f) In determining the sufficiency of a petition, the lieutenant governor may not count subscriptions on a petition circulated by a circulator who violated (b) of this section."

This should be changed to reflect that the division and not the Lt. Governor should be able to determine the sufficiency of a recall petition if he or she is the subject of that recall.

7. Page 3, line 1 - I wonder if mandatory training runs afoul of any court cases or is unconstitutional.

This is a question for the Department of Law. However, my office has not found any cases on point.

8. Page 3, line 9 - Again, this is based on incorrect language currently in law allowing a Lt. Governor to determine the sufficiency of a recall petition.

This should be changed to reflect that the division and not the Lt. Governor may not count subscriptions on recall petitions.

9. Page 3, line 28 - Again, this may run afoul of the Buckley decision.

(9) that the circulator is not registered to vote in another state

See answer to comment number one.

10. Page 4, line 2 - This review will require additional staff time and a fiscal note reflecting this staff time will be required.

"The sponsor may, before filing a petition, submit individual numbered petitions containing up to a total of 2,000 subscriptions to the director to review. The director shall within 45 days, determine whether each subscription submitted for review is that of a qualified voter and notify the sponsors of the number of signatures of qualified voters from each district in the petitions submitted. The director shall assess and the sponsors shall pay a fee of \$1 for each subscription submitted under this section."

This is understood, which is why a \$1 fee is to be paid for each subscription submitted under this section.

11. Page 4, line 5 - These fees will go to the General Fund and will not benefit the Division of Election's budget.

Yes.

12. Page 4, line 17 - The increase in this percentage will require additional signatures to be qualified and will result in a fiscal note.

Understood.

13. Page 4, line 27 - Who enforces this if an individual of the recall committee certifies that the facts alleged are true, but knows that they are not?

(5) a certification by each member of the recall committee, under penalty of perjury, that the facts alleged in the application are true to the best of the member's knowledge.

This should be enforced by APOC.

14. Page 5, line 1 - Where are these definitions based on? *

(b) In this section,

(1) "corruption" means an act done by a person who is subject to recall under AS 15.45.470 with an intent to give some advantage inconsistent with official duty and the rights of others;

(2) "incompetence" means substantial inability to perform the duties of office;

(3) "lack of fitness" means the existence of a long-term physical or mental disability that seriously impairs the official's ability to perform the duties of the office.

(4) "neglect of duties" means failure to perform a duty of office established by law.

These are definitions that were worked on by the drafter and the legislative legal department. They reflect the definitions in Black's Law Dictionary. These definitions

are not currently in statute. However, the drafter believes that they should be, especially when used for recalling public officials.

15. Page 5, line 24 - The increase in this percentage will require additional signatures to be qualified and will result in a fiscal note.

Yes.

16. Page 6, line 14 - Again, this is based on incorrect language currently in law allowing a Lt. Governor to determine the sufficiency of a recall petition.

Again, this will be changed to reflect the department when determining the sufficiency of a recall petition.

RECEIVED

SEP - 3 2004

Attorney Generals Office

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

VALLEY RESIDENTS FOR A CITIZEN
LEGISLATURE and TOM BAIRD,

Plaintiffs,

vs.

THE STATE OF ALASKA, Division of
Elections and LAURA A. GLAISER, Director
Of the Division of Elections,

Defendants,

SENATOR SCOTT OGAN,

Intervenor.

) Case No. 3AN-04-G6827 CI

ORDER REGARDING PENDING MOTIONS

Plaintiffs and Intervenor Senator Scott Ogan (hereinafter referred to jointly as plaintiffs) challenge the decision of the director of the Division of Elections that certified an application for a petition to recall Senator Ogan. The plaintiffs assert that the recall petition is legally insufficient for several reasons. Before the court is the plaintiffs' motion for injunctive relief, in which the plaintiffs seek an order from this court directing the Division of Elections to withdraw certification of the application for recall and void the recall petition. Both parties also filed motions for partial summary judgment. For the reasons expressed below, this court denies the plaintiffs' motion for injunctive relief and grants the defendants' motion for partial summary judgment.

RECEIVED

AUG 25 2004

DEPARTMENT OF LAW
OFFICE OF ATTORNEY GENERAL
3RD JUDICIAL DISTRICT
ANCHORAGE, ALASKA

FACTUAL BACKGROUND

Senator Ogan was elected in District H to the Alaska State Senate in November 2002.

On February 17, 2004, an application for the recall of Senator Ogan was filed with the Division of Elections. In its original form as submitted on that date, the application's stated grounds for recall were as follows:

Senator Scott Ogan demonstrated corruption in office by actively promoting legislation, directly benefiting business interests of his employer Evergreen Resources, (Evergreen), instead of protecting the private property and due process rights of his constituents.

Ogan's legislative activities enabled Evergreen to acquire coal bed methane (CBM) leases knowing it would deprive his Mat-Su Valley constituents of actual notice of leases and therefore their constitutional right to due process, demonstrating neglect of duty.

Ogan neglected his duties to constituents by promoting Evergreen in legislative committee, misstated important facts (3-28-03), and was even listed as Evergreen's corporate contact in its legislative materials submitted to the House Oil and Gas Committee hearing on HB 69.

Ogan did not abstain from voting on HB 69, which reduced local control over CBM development that directly benefited his employer, Evergreen.

Ogan's persistent and irreconcilable conflict of interest between his duties to his constituents and his activities as an Evergreen and CBM industry promoter demonstrate his inability to recognize his obvious conflict, a failure in ethical judgment that shows lack of fitness to serve in public office, incompetence, and neglect of duty.

[Ex. 3 to Plaintiff's TRO Memo. at 1.]

On April 9, 2004, Laura Glaiser, the director of the Division of Elections, certified the recall petition, but with several deletions to the statement of grounds. She informed

the recall sponsor that she had struck from the application "language that does not meet the particularity requirement or is a legal allegation asserting non-existent laws." [Ex. 4 to Plaintiff's TRO Memo. at 1.] Glasier's deletions were as follows:

Senator Scott Ogan demonstrated corruption in office by actively promoting legislation, directly benefiting business interests of his employer Evergreen Resources, (Evergreen), ~~instead of protecting the private property and due process rights of his constituents.~~

Ogan's legislative activities enabled Evergreen to acquire coal bed methane (CBM) leases knowing it would deprive his Mat-Su Valley constituents of actual notice of leases ~~and therefore their constitutional right to due process, demonstrating neglect of duty.~~

Ogan neglected his duties to constituents by promoting Evergreen in legislative committee, ~~misstated important facts (3-28-03),~~ and was even listed as Evergreen's corporate contact in its legislative materials submitted to the House Oil and Gas Committee hearing on HB 69.

Ogan did not abstain from voting on HB 69, which reduced local control over CBM development that directly benefited his employer, Evergreen.

Ogan's persistent and irreconcilable conflict of interest between his duties to his constituents and his activities as an Evergreen and CBM industry promoter demonstrate his inability to recognize his obvious conflict, a failure in ethical judgment that shows lack of fitness to serve in public office, ~~incompetence,~~ and neglect of duty.

On April 23, 2004, the Legislative Ethics Committee issued a Draft Advisory Opinion, in which it responded to hypothetical questions that had been posed to the committee by Senator Ogan.

On May 6, 2004, the plaintiffs filed this civil action. However, the plaintiffs did not file any motion in this action so as to bring the issue before the court until August 5, 2004, shortly after the recall sponsors had filed signed petitions with the Division of

Elections in an amount which, if approved, would be sufficient to place the recall petition on the November ballot.

On August 5, 2004, the plaintiffs filed a motion for a temporary restraining order and/or preliminary injunction. The following day, August 6, 2004, the defendants filed a motion seeking partial summary judgment for the defendants on the plaintiffs' claims for injunctive relief. The plaintiffs filed a cross-motion for summary judgment on these same claims on August 16, 2004. Neither party has sought summary judgment on the plaintiffs' due process claim. On August 19, 2004, Senator Ogan moved to intervene in the case, and the defendants filed a non-opposition to his intervention on that same date.

Oral argument on all pending motions was held on August 20, 2004. Senator Ogan's motion to intervene was granted at the outset of oral argument, and he then joined in the plaintiffs' motions.

Standard of Review

Summary judgment shall be granted if the record demonstrates that no material facts are genuinely disputed and a party is entitled to judgment as a matter of law. Civil Rule 56. If summary judgment is appropriate as to any claim, then a final decision on the merits is entered as to such claim and the issue of whether a preliminary injunction should be entered until a final decision is entered becomes moot with respect to that claim.

Neither side has sought summary judgment with respect to the plaintiffs' due process claim. Instead, plaintiffs have sought to enjoin the certification of the recall petition on a temporary basis while the due process issue is determined. Determination

of whether a preliminary injunction should be issued requires consideration of three factors: "(1) the plaintiff must be faced with irreparable harm; (2) the opposing party must be adequately protected; and (3) the plaintiff must raise serious and substantial questions going to the merits of the case; that is, the issues cannot be frivolous or obviously without merit." North Kenai Peninsula Road v. Kenai Peninsula Borough, 850 P.2d 636, 639 (Alaska 1993). "The 'serious and substantial question' standard applies only where the injury which will result from the . . . preliminary injunction can be indemnified by a bond or where it is relatively slight in comparison to the injury which the person seeking the injunction will suffer if the injunction is not granted." State v. United Cook Inlet Drift Ass'n., 815 P.2d 378 (Alaska 1991)(citations omitted). Otherwise, the plaintiffs must show "probable success on the merits" before a preliminary injunction can be issued. Id. at 379.

Legal Framework

Article XI, Section 8 of the Alaska Constitution provides as follows:

All elected public officials in the State, except judicial officers, are subject to recall by the voters of the State or political subdivision from which elected. Procedures and grounds for recall shall be prescribed by the legislature.

The statutory provisions regarding the recall of legislators are set forth in Title 15 of the Alaska Statutes. In Alaska, state legislators are subject to recall only for specified reasons. AS 15.45.510, enacted in 1960, provides: "The grounds for recall are (1) lack of fitness, (2) incompetence, (3) neglect of duties, or (4) corruption." A recall petition, or application, is submitted to the director of the Division of Elections for review, where it is either certified or the recall committee is notified of the grounds for the director's refusal to certify the application. AS 15.45.540. AS 15.45.550 sets out the four bases for

denial of certification. Here, the plaintiffs assert that the recall application failed to meet one of these required bases in that statute: "The application is not substantially in the required form." AS 15.45.550(1). Any person aggrieved by a determination made by the director with respect to a recall application may seek judicial review of that determination pursuant to AS 15.45.720.

The Alaska Supreme Court has not directly addressed the statutory recall provisions for legislators set forth in Title 15 that are at issue in this litigation. However, that court has addressed the recall provisions for municipal officials contained in Title 29. Although the statutory grounds for recall are different for municipal officials than for state legislators,¹ the principles enunciated by the Alaska Supreme Court regarding the recall process in general should apply to the recall provisions of Title 15, particularly since the right to recall as to all elected officials emanates from the same constitutional provision. Specifically, the Alaska Supreme Court has held that recall statutes should be "liberally construed so that 'the people are permitted to vote and express their will' The purposes of recall are therefore not well served if artificial technical hurdles are unnecessarily created by the judiciary as parts of the process prescribed by statute." Meiners v. Bering Strait School District, 687 P.2d 287, 296 (Alaska 1984)(citations omitted). Further, the Supreme Court has recognized the "need to avoid wrapping the recall process in such a tight legal straitjacket that a legally sufficient recall petition could be prepared only by an attorney who is a specialist in election law matters." Id. at 301. "We emphasize that it is not [the court's] role, but rather that of the voters, to assess the truth or falsity of the allegations in the petition." Id. at 305, n.18.

¹ Cf. AS 29.26.250 and AS 15.45.510.
Valley Residents v. State, 3AN-04-6827 CI
Order re Pending Motions
Page 6 of 16

In their filings to this court, the plaintiffs assert six separate reasons in support of their motion to enjoin the certification of the recall petition. The plaintiffs' allegations are as follows:

- (1) The grounds stated in the recall application are not violations of law, nor do they constitute any of the statutory grounds for recall;
- (2) Since Senator Ogan's alleged conduct was in accordance with the Uniform Rules of the Legislature and the Legislative Ethics Code, permitting the recall application to go forward would violate the doctrine of separation of powers between the court and the legislature;
- (3) The grounds for recall are not alleged with sufficient particularity as required by statute, AS 15.45.500(2);
- (4) The Division of Elections improperly revised the recall application;
- (5) The recall supporters improperly used the recall effort in order to gain an advantage; and
- (6) The plaintiffs and Senator Ogan are entitled to a due process hearing to show that the factual allegations in the petition are false and misleading.

Each of these arguments is addressed below in turn.

1. Are the Recall Allegations Legally Sufficient?

Legislators in Alaska may only be recalled for one or more of the causes specified in AS 15.45.510: lack of fitness, incompetence, neglect of duties, or corruption. In reviewing the legal sufficiency of allegations in recall petitions, the court is

to "take the allegations as true" and "determine whether such facts constitute a prima facie showing" of the statutory grounds for recall. Von Stauffenberg v. Committee for Honest and Ethical School Bd., 903 P.2d 1055, 1059-60 (Alaska 1995).

Here, the director of the Division of Elections found that three of the four statutory bases had been adequately alleged by the recall applicants: corruption, neglect of duties, and lack of fitness. None of these terms are defined in the recall statutes. However, for purposes of the motions now before the court, the plaintiffs have accepted the defendants' definitions of those terms. [See Plaintiffs' Memo in Opp. to Partial Summary Judgment at 8.]

a. The recall petition is legally sufficient in alleging "corruption."

For purposes of this action, the parties have agreed that "corruption" in the context of recall of a legislator means (1) intentional conduct, (2) motivated by private self-interest, (3) in the performance of work as a legislator, and (4) that violates one or more provisions of the Legislative Ethics Act (AS 24.60.030 et. seq.) or other statutes intended to guard against corruption.² [Defendants' Opp. to Plaintiffs' Motion for Injunctive Relief at 17].

Here, the recall application alleges that Senator Ogan actively promoted the ~~interests of his employer~~ to the detriment of his constituents in his capacity as a legislator. Defendants assert that this conduct alleges a violation of AS 24.60.100, which provides in relevant part that "a legislator . . . may not represent another person for compensation before an agency, committee, or other entity of the legislative branch."

² Cf. AS 24.60.010(6): "no code of conduct, however comprehensive, can anticipate all situations in which violations may occur nor can it prescribe behaviors that are appropriate to a situation; in addition, laws and regulations regarding ethical responsibilities cannot legislate morality, eradicate corruption, or eliminate bad judgment."

This court agrees with the defendants' analysis. Taking the allegations as true, which this court is required to do under the applicable law, the application provides sufficient detail to allege a violation of AS 24.60.100 constituting "corruption."

b. The recall petition is legally sufficient in alleging "neglect of duty."

Defendants have defined "neglect of duty" as the nonperformance of a duty of office established by applicable law. In this regard, the recall application states that Senator Ogan had neglected his duties in three ways: (1) by enabling Evergreen to acquire coal-bed methane leases knowing it would deprive his constituents of notice and their constitutional rights to due process; (2) by promoting Evergreen in legislative committee; and (3) by failing to recognize an obvious conflict of interest between his duties to his constituents and those to his employer. The director of the Division of Elections found that the second and third of these allegations amounted to legally sufficient allegations of neglect of duty. The director deleted the first allegation, finding that this allegation, even if true, would not constitute "neglect of duty."

AS 24.60.010 of the Legislative Ethics Act (LEA) provides, "a fair and open government requires that legislators . . . conduct the public's business in a manner that preserves the integrity of the legislative process and avoids conflicts of interest or even appearances of conflicts of interest." To this end, AS 24.60.030(a)(1) prohibits legislators from accepting "a benefit other than official compensation for the performance of public duties." By allegedly taking action in violation of the statutory standards of conduct set forth in the LEA, Senator Ogan is alleged to have neglected his duties, which in this context overlaps with the ground of "corruption." Irrespective of

the overlap, the petition as approved is legally sufficient in its allegation of "neglect of duty."

c. The recall petition is legally sufficient in alleging "lack of fitness."

The defendants have defined "lack of fitness" as unsuitability for office demonstrated by specific facts related to the recall target's conduct in office. [Def. Opp. to Inj. Relief at 26.] Here, the recall applicants have asserted that Senator Ogan undertook official conduct for private gain, while failing to recognize the detriment to his constituents of that official conduct. The allegations, which all relate specifically to the alleged conflict between Senator Ogan's loyalty to his employer and to his constituents, are legally sufficient grounds for "lack of fitness" under AS 15.45.510.

2. The doctrine of separation of powers is inapplicable.

Plaintiffs argue that this court should enjoin the Division's actions because the Uniform Rules of the Legislature required Senator Ogan to vote on HB 69. Also, the plaintiffs have asserted that the Advisory Opinion of the Legislative Ethics Committee should be dispositive.

The Advisory Opinion was based on a set of hypotheticals presented to the Committee by Senator Ogan. It is not dispositive of this specific legal dispute. Moreover, the Opinion concluded with the admonition that "you should strictly separate the work that you are otherwise compensated for in your private life from your actions as a public official." It is this alleged failure by Senator Ogan to separate his work for Evergreen from his legislative duties that forms the underlying basis of the recall applicants' claim. [Def. Opp. to Inj. Relief, Ex.2, page 9].

Nor are the Uniform Rules applicable. Those rules preclude a legislator from abstaining on a vote for the final passage of a bill "unless the [legislative body] for special reasons permits a member to abstain." Uniform Rule 34(b). Here, Senator Ogan does not expressly indicate that he requested to abstain from the vote on HB 69 when the bill came before the entire Senate. See Ogan Aff. at 10. Moreover, the Legislative Ethics Act refers to the Uniform Rules' requirement to vote over a legislator's objection in cases where the legislator "has an equity or ownership interest in a business." See AS 24.60.030(g). The recall applicants' petition here is not based on a claim that Senator Ogan had an equity or ownership interest in Evergreen. Rather, it is based on an allegation that Senator Ogan was representing the interests of his employer, Evergreen, in his actions before and within the legislature, rather than representing the interests of his constituents -- conduct which is precluded by AS 24.60.100. Unlike AS 24.60.030, there is no Uniform Rules reference in AS 24.60.100 that could require a legislator to vote after seeking abstention when that legislator was allegedly representing another person for compensation before the agency or committee.

3. The grounds for recall are alleged with sufficient particularity.

The Plaintiffs also assert that the Division erred in approving the recall petition because the grounds for recall were not alleged with sufficient particularity. AS 15.45.500(2) requires that "the grounds for recall [be] described in particular in not more than 200 words."

In von Stauffenberg, 903 P.2d 1055, the Alaska Supreme Court held that allegations in a school board recall petition lack sufficient particularity. There, the

petitioners had alleged that the school board members had violated Alaska law by meeting in an improper, closed-door executive session to discuss retention of a school employee. Since Alaska law expressly permits school boards to meet in executive session while discussing certain personnel issues, the court held that the allegations were legally insufficient. Moreover, with executive sessions for such personnel issues expressly permitted by statute, the court founds that the allegations lacked sufficient particularity when they failed to explain why entering into executive session violated Alaska law.

This court does not read von Stauffenberg to require recall petitioners to state the precise statute(s) that are alleged to have been violated in all instances. To do so would create the type of "artificial technical hurdle" and "tight legal straitjacket" that the Supreme Court proscribed in Meiners, 687 P.2d at 296, 301. Unlike Von Stauffenberg, the alleged conduct of Senator Ogan that formed the basis of the petition is not expressly authorized by statute. The recall petition has sufficient particularity in these circumstances.

4. The recall application is legally sufficient as revised.

Plaintiffs also assert that the recall election should be enjoined because the Division improperly edited the recall petition. "Important considerations of public policy favor an approach that places all legally sufficient charges on the recall ballot to avoid erecting 'artificial technical hurdles' to recall and allow the process to operate in a way that permits the electorate to express its will." Matanuska Elec. Ass'n v. Rewire the Bd., 36 P.3d 685, 693 (Alaska 2001)(quoting Meiners, 687 P. 2d at 291).

Here, the Division did not change any of the words in the recall application. However, it did delete several words and phrases it concluded were legally insufficient. As the defendants note, it is primarily the recall sponsors – not the target of the recall – who are most affected when the Division deletes language from the application, and it is those sponsors who can either submit a new petition for review, seek judicial review of the Division's deletions, or proceed with the petition as amended. The impact of deletions on the recall target is far less substantial, so long as standing alone, the remainder of the petition can be given legal effect. Since this court has already concluded that the petition as approved by the Division was legally sufficient, the plaintiffs' challenge to the Division's deletions is without merit.

5. The motives of the recall supporters are not a relevant consideration for judicial review of the recall petition.

Plaintiffs also argue that the recall election should be enjoined because "the recall supporters have used the recall as a weapon to coerce illegal legislative conduct." [Plaintiffs' Memo. for Inj. at 21.] But analysis of the motivations of citizens behind a recall petition is outside the scope of judicial review of the petition. Moreover, as defendants correctly note, each of the sponsors and signatories of a recall petition may well have different motivations. Rather, in reviewing allegations in recall petitions, this court is to accept the allegations as true and determine whether such alleged facts constitute a prima facie showing of grounds for recall. See von Stauffenberg, 903 P.2d at 1059.

6. Plaintiffs are not entitled to a preliminary injunction pending a judicial determination as to whether Alaska's constitutional right to due process entitles the plaintiffs to an evidentiary hearing as to the truth or falsity of the allegations in the recall petition.

The plaintiffs and Senator Ogan assert that they are entitled to a due process hearing to show that the factual allegations in the recall petition are false and misleading. The interface between the constitutional right to due process, on the one hand, and the constitutional right to recall elected officials, on the other hand, has not been resolved by the Alaska Supreme Court.³ Simply stated, to what extent should a judge make a preliminary determination as to the truth or falsity of allegations in a recall petition that is legally sufficient on its face before the petition is submitted to the voters?

The defendants did not seek summary judgment on the plaintiffs' due process claim. Nor did the plaintiffs address the issue directly in their summary judgment pleadings. Accordingly, the court will not grant summary judgment to either party on the due process claim at this time. Instead, the issue will be discussed in the context of the plaintiffs' motion seeking issuance of a preliminary injunction that would halt the recall certification pending determination of the due process claim.

In balancing the hardships, the constitutional right of citizens to seek the recall of their elected officials is of a high magnitude. As the Alaska Supreme Court noted in Meiners, the constitutional provision for recall, together with the rights of initiative and referendum, "give voters a check on the activities of their elected officials above and beyond their power to elect another candidate when the incumbent's term expires." 687 P.2d at 294. "Like the initiative and referendum, the recall process is fundamentally a part of the political process." Id. at 296. Thus, even if Senator Ogan has a protected due process right to a legislative position for a specified term, he acceded to that

³ In von Stauffenberg, 903 P.2d at 1061, the Alaska Supreme Court declined to consider this due process issue because it was raised for the first time on appeal, rather than before the trial court. See also Meiners, 687 P.2d at 304, n.7.

legislative position subject to the constitutional right of Alaska's citizens to seek his recall before the end of the specified term. And permitting the recall issue to go before the voters in Senate District H does not necessarily mean that Senator Ogan is faced with irreparable harm. Rather, it will be for the voters of that district to exercise their constitutional right on the recall question, and only after Senator Ogan is accorded his statutory right to provide to the voters his justification for his conduct in office. See AS 15.45.680. Moreover, the recall statutes, with their requirements that the petition specify the grounds for recall with sufficient particularity and their provision for judicial review, accord a measure of procedural protections to the incumbent prior to the electorate's substantive consideration of the recall petition. In considering whether to issue a preliminary injunction, this court finds that the balance of hardships tips decidedly in favor of the constitutional right of the electorate to consider a petition to recall an elected official in a timely manner.

Moreover, given the repeated holdings of the Alaska Supreme Court that in evaluating recall petitions, courts are not to assess the truth or falsity of the allegations, this court finds that the plaintiffs have failed to demonstrate probable success on the merits on this due process claim. "The political nature of the recall makes the legislative process, rather than judicial statutory interpretation, the preferable means of striking the balances necessary to give effect to the Constitutional command that elected officials shall be subject to recall." Meiners, at 296. There is no statutory provision for an evidentiary hearing before a judge to assess the validity of the recall allegations. Therefore, the certification of the recall petition will not be enjoined on the basis of the due process challenge raised by the plaintiffs.

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Conclusion

For the foregoing reasons, the court GRANTS the defendants' motion for summary judgment on Counts I through III of the plaintiffs' complaint, and DENIES the plaintiffs' motion for a preliminary injunction with respect to Count IV of the plaintiffs' complaint.

DATED this 24th day of August, 2004.

Sharon Gleason
SHARON L. GLEASON
Judge of the Superior Court

I certify that on 8-24-04
a copy of the above was mailed to each of
the following at their addresses of record: *see audio*
[Signature]
Administrative Assistant

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
LABOR & STATE AFFAIRS

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April 6, 2006

The Honorable Paul Seaton
Chair, House State Affairs Committee
State House of Representatives
State Capitol, Room 102
Juneau, AK 99801

Re: HB 438 (Initiative, Referendum, Recall Petitions)

Dear Representative Seaton:

At the April 6, 2006, House State Affairs Committee meeting the committee requested advice from our office on an additional question regarding HB 438. At that meeting the Committee was considering a new work draft CS for HB 438: 24-LS1344\R, Kurtz, 4/3/06.

The committee's question concerned the requirement set out in proposed AS 15.45.061(3), on page 2, at line 26, that a petition circulator be "a resident of the state as determined under AS 15.05.020." The committee asked: "If an individual who is registered to vote in another state moves to Alaska, and intends to establish residency here, lives in Alaska for an extended period of time, but does not register to vote in Alaska, can this individual attain Alaska residency under AS 15.05.020?"

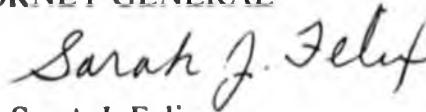
We believe that the answer to this question is "yes." AS 15.05.020(6) provides that a person who votes in another state's election loses Alaska residency;

the statute does not require that a person who is registered to vote in another state loses Alaska residency for voting purposes.

Do not hesitate to contact me if I can be of further assistance to your committee on this matter.

Sincerely,

DAVID W. MÁRQUEZ
ATTORNEY GENERAL



By: Sarah J. Felix
Assistant Attorney General

SJF/cjh

cc: Kevin Jardell, Legislative Liaison
Office of the Governor

Annette Kreitzer, Chief of Staff
Whitney Brewster, Director, Division of Elections
Office of the Lieutenant Governor

Deborah Behr, Legislation and Regulations Attorney
Randy Ruaro, Legislative Liaison
Attorney General's Office

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Title 15. Elections.

Chapter

- 05. Qualification of Voters (§§ 15.05.010 — 15.05.030)
- 07. Registration of Voters (§§ 15.07.010 — 15.07.200)
- 10. Election Districts, Election Officials, and Redistricting (§§ 15.10.010 — 15.10.300)
- 13. State Election Campaigns (§§ 15.13.010 — 15.13.400)
- 15. Elections and Ballots (§§ 15.15.010 — 15.15.480)
- 20. Special Procedures for Elections (§§ 15.20.010 — 15.20.900)
- 25. Nomination of Candidates (§§ 15.25.010 — 15.25.200)
- 30. National Elections (§§ 15.30.010 — 15.30.190)
- 35. State Elections (§§ 15.35.010 — 15.35.130)
- 40. Special Elections and Appointments (§§ 15.40.140 — 15.40.470)
- 45. Initiative, Referendum, and Recall (§§ 15.45.010 — 15.45.720)
- 50. Constitutional Amendments and Conventions (§§ 15.50.010 — 15.50.110)
- 55. Election Offenses, Corrupt Practices, and Penalties (§§ 15.56.012 — 15.56.199)
- 58. Election Pamphlet (§§ 15.58.010 — 15.58.090)
- 60. General Provisions (§§ 15.60.005 — 15.60.020)

Revisor's notes. — The provisions of this title were redrafted in 1988 to remove personal pronouns pursuant to § 4, ch. 58, SLA 1982, and in 1988 and 2000 to make other minor word changes.

In 1971 "secretary of state" was changed to "lieutenant governor" throughout the title in conformity with the 1970 Alaska constitutional amendment (SJR

2) changing the designation of that office.

Administrative Code. — For elections, see 6 AAC, part 1.

Legislative history reports. — For governor's transmittal letter for ch. 113, SLA 2003 (House Bill 266), see 2003 House Journal 965 - 969.

Chapter 05. Qualification of Voters.

Section

- 10. Voter qualification
- 11. Qualifications of overseas voters
- 12. Voter qualification for presidential election

Section

- 14. Procedures in presidential elections
- 20. Rules for determining residence of voter
- 30. Loss and restoration of voting rights

Collateral references. — 25 Am. Jur. 2d, Elec- tions, § 1 et seq.

29 C.J.S., Elections, §§ 14-35.

Sec. 15.05.010. Voter qualification. A person may vote at any election who

- (1) is a citizen of the United States;
- (2) is 18 years of age or older;
- (3) has been a resident of the state and of the house district in which the person seeks to vote for at least 30 days just before the election; and
- (4) has registered before the election as required under AS 15.07 and is not registered to vote in another jurisdiction. (§ 1.01 ch 83 SLA 1960; am § 1 ch 125 SLA 1962; am § 1 ch 80 SLA 1963; am § 1 ch 211 SLA 1968; am § 1 ch 88 SLA 1969; am § 1 ch 15 SLA 1970; am § 1 ch 75 SLA 1972; am §§ 1, 38 ch 116 SLA 1972; am §§ 2, 3 ch 197 SLA 1975; am § 1 ch 100 SLA 1980; am § 27 ch 21 SLA 2000)

the following procedures apply to elections for the office of President and Vice-President of the United States:

- (1) registration and absentee voting procedures, except as otherwise provided in this section, shall be identical to the procedures established in this title;
- (2) registration of otherwise qualified persons shall be permitted without regard to a durational residency requirement;
- (3) if any citizen who is otherwise qualified to vote in the state for president and vice-president has begun residence in another state after the 30th day preceding the election and, for that reason, does not satisfy the registration requirements of that state, that person shall be allowed to vote for president and vice-president either in person in the precinct in which the person resided immediately before removal, or by absentee ballot as provided in AS 15.20. (§ 1 ch 69 SLA 1967; am § 3 ch 116 SLA 1972)

Sec. 15.05.016. Fee prohibited. [Repealed, § 43 ch 85 SLA 1988.]

Sec. 15.05.020. Rules for determining residence of voter. For the purpose of determining residence for voting, the place of residence is governed by the following rules:

(1) A person may not be considered to have gained a residence solely by reason of presence nor may a person lose it solely by reason of absence while in the civil or military service of this state or of the United States or of absence because of marriage to a person engaged in the civil or military service of this state or the United States, while a student at an institution of learning, while in an institution or asylum at public expense, while confined in public prison, while engaged in the navigation of waters of this state or the United States or of the high seas, while residing upon an Indian or military reservation, or while residing in the Alaska Pioneers' Home or the Alaska Veterans' Home.

(2) The residence of a person is that place in which the person's habitation is fixed, and to which, whenever absent, the person has the intention to return. If a person resides in one place, but does business in another, the former is the person's place of residence. Temporary construction camps do not constitute a dwelling place.

(3) A change of residence is made only by the act of removal joined with the intent to remain in another place. There can only be one residence.

(4) A person does not lose residence if the person leaves home and goes to another country, state, or place in this state for temporary purposes only and with the intent of returning.

(5) A person does not gain residence in any place to which the person comes without the present intention to establish a permanent dwelling at that place.

(6) A person loses residence in this state if the person votes in another state's election, either in person or by absentee ballot, and will not be eligible to vote in this state until again qualifying under AS 15.05.010.

(7) The term of residence is computed by including the day on which the person's residence begins and excluding the day of election.

(8) The address of a voter as it appears on an official voter registration card is presumptive evidence of the person's voting residence. This presumption is negated only if the voter notifies the director in writing of a change of voting residence. (§ 1.02 ch 83 SLA 1960; am § 2 ch 125 SLA 1962; am §§ 2, 3 ch 136 SLA 1966; am § 1 ch 228 SLA 1968; am §§ 4, 38 ch 116 SLA 1972; am §§ 4, 5 ch 197 SLA 1975; am § 6 ch 11 SLA 1979; am § 3 ch 100 SLA 1980; am § 2 ch 111 SLA 1994; am § 2 ch 59 SLA 2004)

Effect of amendments. — The 2004 amendment, effective July 1, 2004, inserted "or the Alaska Veterans' Home" in paragraph (1) and made stylistic changes.

Legislative history reports. — For governor's transmittal letter on SB 303, which became ch. 111, SLA 1994, and amended (10) of this section, see 1994 Senate Journal 2793 — 2796.

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Opinion

did not address because



LEGAL SERVICES

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

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

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

MEMORANDUM

March 15, 2006

SUBJECT: Issues relating to HB 438
(CSHB 438(), (Work Order No. 24-LS1344X))

TO: Representative Jay Ramras
Attn: Jim Pound

FROM: Kathryn L. Kurtz *KLC*
Assistant Revisor

You have asked several questions about the above noted draft.

Constitutionality

I have not noted any constitutional issues with this draft other than those discussed below. Please note that the potential for legal challenge is always present, and there may be constitutional issues I have not anticipated.

Page 4, line 9

You noted that page 4, line 9 only inserts a reference to 270 days, and does not delete text referring to 180 days. That is because there is no language in the current AS 15.45.490 relating to the end of the term of office, in contrast to subsequent statutory sections.

Gathering signatures in the district

Under the proposed AS 15.45.003, yes, it would be a class B misdemeanor to gather signatures on a recall petition at a location across the street from but not within the district represented by the official sought to be recalled. This is consistent with the language of the current AS 15.45.580.

Constitutional rights of signers

Yes, potentially the constitutional right of voters to enact laws by initiative, established in Article XI, sec. 1, Constitution of the State of Alaska, may be infringed by the provision at page 2, lines 25 - 27 (instructing the lieutenant governor not to count signatures collected by a circulator who has violated the compensation rules).

Courts have been sympathetic to states refusing to count signatures on a petition based on a violation of certification requirements similar to Alaska's, and have found that certification requirements are important to prevent fraud and preserve the integrity of the initiative process. *See for example Loontjer v. Robinson*, 670 N.W.2d 301 (Neb. 2003) (where sponsors failed to submit a sworn statement including the addresses of the

Representative Jay Ramras
March 15, 2006
Page 2

sponsors, the initiative petition was held to be legally insufficient); *Maine Taxpayers Action Network v. Secretary of State*, 795 A.2d 75 (Me. 2002) (where a circulator lied about his identity, the veracity of other statements on his affidavit was called into question and invalidation of the signatures he collected was upheld).

However, this new provision may be more susceptible to a court challenge than the existing language, as it may be less central to safeguarding the initiative process against fraud and deception than the certification requirement. What is at stake here is the constitutional right of the voters to enact laws by the initiative, established in Article XI, sec. 1 of the Constitution of the State of Alaska. The Alaska Supreme Court has held that the right of initiative should be liberally construed to permit exercise of that right. *Thomas v. Bailey*, 595 P.2d 1, 3 (Alaska 1979). I cannot predict the outcome of a legal challenge to this new provision on this basis.

Raising the recall bar

You are correct that Article XII, sec. 8 provides that "[p]rocedures and grounds for recall shall be prescribed by the legislature."

KLK:med
06-218.med

Barbara Bochmier

① 107. OK

② Maximum Rate of Meals @ 15

③ organizing duties increase the process cost
 circ training

792 line 12

4 23

8 16

④ Fiscal note
 how fines collection

Louie Flora

From: Whitney Brewster [whitney_brewster@gov.state.ak.us]
Sent: Wednesday, March 22, 2006 1:56 PM
To: Louie Flora
Cc: Annette E Kreitzer
Subject: Answers to Questions on HB 438

Louie,

There were two questions that came up during the last (H) STA meeting on HB 438 that I said I would find answers for the committee on. Representative Seaton asked whether or not changes to the initiative, referendum and recall statutes referenced in HB 438 would impact municipal governments. The answer is no. There are separate statutes for municipalities for initiative, referendum and recall petitions beginning in 29.26.100.

Additionally, Representative Gardner asked about the costs of training for petition sponsors. The Division's Election Coordinator provides the training and works with the sponsors on where to best hold the petition training. For budgetary purposes, the Division estimates that the training costs approximately \$806 per petition.

If you will please distribute this information to the committee members, I would greatly appreciate it. If there are any additional questions, please feel free to contact me.

Sincerely,
Whitney Brewster, Director
Division of Elections

Louie Flora

From: Whitney Brewster [whitney_brewster@gov.state.ak.us]
Sent: Tuesday, March 28, 2006 3:37 PM
To: Louie Flora
Cc: Annette E Kreitzer
Subject: Re: new question

Hi Louie,

There is nothing in current statute that addresses food per diem. The only payment for petition circulators that is referenced in law is the \$1 per signature in AS 15.45.110. This has been an issue that the Division has had questions about and has sought guidance from the Department of Law on. I have attached an opinion issued by the Department of Law in December 2005 regarding circulator payment for your review. Please let me know if you have any further questions.

Sincerely,
Whitney

Louie Flora wrote:

Hi Whitney,

Where in the Elections statute does it discuss whether or not a circulator may receive a food per diem. Is it implicit in the 1\$ per signature limit in AS 15.45.110 that a circulator may not receive a food per diem?

Louie Flora
Staff, Rep. Seaton
(907) 465-4963

SEE LAST TWO PARAGRAPHS

MEMORANDUM

State of Alaska

Department of Law

TO: Whitney H. Brewster
Director, Division of Elections

DATE: December 23, 2005
FILE NO: 663-06-0088

TEL. NO.: (907) 465-3600

FAX: (907) 465-2520

FROM: Michael A. Barnhill MB
Assistant Attorney General
Labor and State Affairs Section

SUBJECT: Reimbursement of Expenses for
Initiative Signature Gatherers

You have asked us to review the question of whether AS 15.45.110(c) permits the reimbursement of expenses to circulators of ballot measure petitions. We examined this question previously, and based on our review of the statute and its legislative history, provided oral advice to your office that this statute did not appear to permit the reimbursement of circulator expenses. Subsequent to that, questions were raised regarding the constitutionality of limiting spending for a First Amendment activity, especially in light of the recent approval by Alaskans of HJR 5. HJR 5 amended art. XI, sec. 3, of the Alaska Constitution to require that initiative petitions be signed by seven percent of qualified voters who voted in the previous general election in each of 30 of the 40 house districts. Because we had not fully considered these issues when we provided the oral advice, we reconsider that advice here. We conclude that the expenses of circulators may be paid or reimbursed.

AS 15.45.110(c) was enacted in 1998. It provides:

A circulator may not receive payment or agree to receive payment that is greater than \$1 a signature, and a person or an organization may not pay or agree to pay an amount that is greater than \$1 a signature, for the collection of signatures on a petition.

AS 15.45.110(e) provides that the violation of this provision is a crime: "A person or organization that violates (c) . . . of this section is guilty of a class B misdemeanor."

From a statutory interpretation perspective, the issue boils down to the meaning of the word "pay." In other words, does the statutory prohibition against paying a circulator

more than \$1 per signature also prohibit payment or reimbursement of circulator expenses?¹

There are a number of dictionary definitions of the term "pay," including "to make due return for services rendered or property delivered"; "to requite according to what is deserved (as in "to pay him back")"; and "to make compensation for." See Webster's New Collegiate Dictionary 842 (1976). The dictionary lists the word "reimburse" as a synonym for the word "pay." *Id.*

Thus, it is possible to interpret the word "pay" as used in AS 15.45.110(c) to include the concept of "reimburse." Accordingly, one possible interpretation of this statute is that reimbursement of expenses in excess of \$1 per signature is prohibited. We acknowledge, however, that another possible interpretation of the word "pay" could limit the term to only compensation for circulator services. Thus, we conclude that the term "pay" as used in the statute is ambiguous with respect to payment of circulator expenses. As set forth in greater detail below, the narrower interpretation is the better interpretation, despite the legislative history, which we discuss next.

Because of the statutory ambiguity, we next turn to the legislative history. Alaska courts frequently resort to legislative history in an attempt to divine legislative intent. See *In re Estate of Maldonado*, 117 P.3d 720, 725 (Alaska 2005).

The sponsor statement that accompanied this legislation expressed concern about the growing use of initiatives in Alaska:

The flurry of initiatives that we are currently experiencing has resulted in the verification of signatures, and thus qualifying for the ballot, coming as late as the middle of April, resulting in eliminating the possibility of the legislature being able to react by crafting a similar statute. The number of initiatives appear to be growing, and the results may well be the Californization of our entire legislative process.

SB 313, H. Jud. Minutes (April 27, 1998). Similar concerns were expressed as the bill progressed through the legislature. The minutes of the House Finance committee following the incorporation of the per signature payment cap language into the bill reveals that the committee was advised that the U.S. Supreme Court struck down a prohibition against payment of initiative circulators in *Meyer v. Grant*, 486 U.S. 414, 108

¹ To date there has been no attempt to describe precisely what expenses are at issue. We assume that only standard expenses are at issue here, such as travel expenses, food and lodging.

S.Ct. 1886 (1988). The committee then turned to the issue of the one dollar per signature payment cap. “[Representative Mulder] stressed that a cap of a dollar per signature would slow the collection of signatures.” SB 313, H. Fin. Minutes (May 8, 1988). The committee did not explicitly consider the issue of payment for circulator expenses.

The legislative history does not shed much light on how to interpret the word “pay.” It appears evident, however, that there was at least some desire to deter, presumably within the bounds of the constitution, the collection of signatures in support of an initiative. In light of this, the broader definition of the word “pay” appears to be the most consistent with the legislative history. This analysis was the basis for our earlier oral advice to your office that the statute does not appear to permit the payment of circulator expenses.

However, we did not consider the constitutional dimensions of this issue. In the landmark case of *Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612 (1976), the U.S. Supreme Court considered a number of issues related to limits imposed by the Federal Election Campaign Act (“FECA”) on campaign expenditures. At that time, FECA imposed several types of limitations on expenditures related to campaigns for public office. The first such limitation prohibited individuals and groups from spending in excess of \$10⁰ per year on a candidate. See 18 U.S.C. § 608(e)(1) (as enacted 1971). The Court observed that the expenditure limit placed significant burdens on the First Amendment rights of political expression. *Buckley*, 424 U.S. at 44, 96 S.Ct. at 647. Accordingly, the Court struck it down. *Id.* at 44-50, 96 S.Ct. at 647-50.

The *Buckley* Court also considered FECA’s expenditure limitations on candidates. The Court also struck this limitation down: “the First Amendment simply cannot tolerate [FECA’s] restriction upon the freedom of a candidate to speak without legislative limit on behalf of his own candidacy.” *Id.* at 54, 96 S.Ct. at 651.

Finally, *Buckley* also struck down FECA’s expenditure limitations on campaigns:

The First Amendment denies government the power to determine that spending to promote one’s political views is wasteful, excessive, or unwise. In the free society ordained by our Constitution it is not the government, but the people—individually as citizens and candidates and collectively as associations and political committees—who must retain control over the quantity and range of debate on public issues in a political campaign.

Id. at 57, 96 S.Ct. at 653. In sum, the Court concluded that FECA placed “substantial and direct restrictions on the ability of candidates, citizens, and associations to engage in

protected political expression, restrictions that the First Amendment cannot tolerate." *Id.* at 59-60, 424 S.Ct. at 654.

We note that *Buckley* did not arise in the context of an initiative process, but rather in the context of a candidate election. Although candidate and initiative elections are certainly similar, we must first determine the extent to which the Court's fairly categorical pronouncements have application to expenses incurred in the initiative context.

The Court appears to have answered that question in *Meyer v. Grant*, 486 U.S. 414, 108 S.Ct. 1886 (1988). In *Meyer*, the Court considered the constitutionality of a ban against paying petition circulators. The Court concluded that the circulation of a petition was "core political speech" and thus any legislative restriction of that right was subject to "exacting scrutiny." *Id.* at 420, 108 S.Ct. at 1891. The Court struck down the prohibition and held that its candidate expenditure analysis from *Buckley* applied in the petition context: "That principle [as articulated by *Buckley*] applies equally to 'the discussion of political policy generally or advocacy of the passage or defeat of legislation.'" *Id.* at 428, 486 S.Ct. at 1895.

In *Buckley v. American Const. Law Found.*, 525 U.S. 182, 119 S.Ct. 636 (1999), the Court considered the extent to which a state can regulate the initiative process. At issue were Colorado's requirements that petition circulators be registered voters and wear an identification badge, and that initiative proponents report the names of, and amounts paid to, all paid circulators. While recognizing the state's interest in regulating initiatives so as to "protect the integrity and reliability of the initiative process," the Court again emphasized the significance of the First Amendment issues at stake. *Id.* at 191-92, 119 S.Ct. at 642. The Court expressed concern that the restrictions at issue decreased the pool of potential circulators thus burdening protected speech. *Id.* at 194, 197-98, 119 S.Ct. at 643, 645. The Court found that these restrictions could not survive the First Amendment standard of exacting scrutiny and struck them down. *Id.* at 205, 119 S.Ct. at 647.

Finally, in *McConnell v. Federal Election Comm'n*, 540 U.S. 93, 124 S.Ct. 619 (2003), the Court again considered issues related to campaign expenditures (amongst a host of other elections issues). There, the Court reaffirmed the vitality of its decision in *Buckley v. Valeo* with respect to campaign expenditures and struck down a provision in the Bipartisan Campaign Reform Act of 2002 which limited certain kinds of expenditures by political parties. *Id.* at 217, 124 S.Ct. at 703 (striking provision that a political party making a lawful coordinated expenditure with a candidate forfeited the right to make independent expenditures for express advocacy in support of the candidate).

Alaska courts have also considered the importance of First Amendment interests in the election context. In *Messerli v. State*, 626 P.2d 81 (Alaska 1980), the Alaska

Supreme Court held, "we believe that an expenditure for influencing the outcome of a ballot proposition or question comes far closer to pure political speech than does an expenditure advocating the election or defeat of a particular candidate." *Id.* at 85. The court held that the right of free speech "may not be abridged by governmental action unless the government meets its substantial burden of establishing that an abridgment of any such right is justified by a legitimate and compelling governmental interest." *Id.* at 86.

We can distill the wisdom from this line of cases as follows. Legislation related to initiative expenses is likely to trigger the exacting scrutiny standard of the First Amendment. To the extent that such legislation is found to decrease the pool of petition circulators, it is probable that a court will find that such legislation burdens core political speech, a right protected by the First Amendment. In that case, it will be up to the state to demonstrate it has a meaningful or compelling government interest in the restriction.

With that constitutional background in mind, we return to our analysis of AS 15.45.110(c). As noted above, our initial interpretation of the term "pay" was broad. However, a broad interpretation of this term such that reimbursement of actual expenses above \$1 per signature would be prohibited is more likely to lead to a finding that the statute is unconstitutional. Unless the state could demonstrate that such a limitation on reimbursement were needed to promote a meaningful, or even compelling, interest (which is not readily apparent), the limitation probably would not survive review under the First Amendment.² Notably, courts routinely interpret statutes in a manner to avoid a finding that they are unconstitutional. *Chenega Corp. v. Exxon Corp.*, 991 P.2d 769, 785 (Alaska 1999). Moreover, courts also narrowly interpret statutes that impose criminal liability. *State v. Strane*, 61 P.3d 1284, 1285 (Alaska 2003). Finally, statutes in the initiative context are to be "construed so that 'the people [are] permitted to vote and express their will on the proposed legislation . . .'" *Boucher v. Engstrom*, 528 P.2d 456, 462 (Alaska 1974), *overruled on other grounds by McAipine v. Univ. of Alaska*, 762 P.2d 81 (Alaska 1988).

As noted above, the statutory term "pay" is ambiguous and susceptible to multiple meanings. Accordingly, in order to avoid a finding that AS 15.45.110(c) is unconstitutional under the *Buckley-Meyer* line of cases, we now recommend interpreting the term "pay" as used in AS 15.45.110(c) narrowly. In other words, the term "pay" should be limited to only compensation for the gathering of signatures. The one dollar per signature limitation should not encompass any payment or reimbursement of the actual out-of-pocket expenses related to signature gathering. Moreover, since we think

² When this office reviewed this legislation in 1998 we concluded that the per signature payment cap as a limitation, as opposed to a prohibition, was "in a constitutional gray area." 1998 Inf. Op. Att'y Gen. (May 29; 883-98-0086).

Whitney H. Brewster, Director
Re: Reimbursement of Circulator Expenses

December 23, 2005
Page 6

the payment or reimbursement of expenses should not be prohibited by AS 15.45.110(c), it follows that we do not think that any criminal penalty may be imposed under AS 15.45.110(e) by reason of such payment or reimbursement.

Given the ambiguity in the term "pay" as used in AS 15.45.110(c), the legislature may wish to consider a clarifying amendment. Additionally, the legislature may wish to consider providing guidelines, or direct the Division to provide such guidelines through regulation, regarding permissible expenses.³ While we think it appropriate to interpret this statute to permit the payment or reimbursement of reasonable expenses, we think the Division should be cautious with respect to payment or reimbursement of excessive expenditures.

Please contact us if you have further questions or would like to discuss further.

³ We think the Division has the authority to promulgate regulations regulating such expenses under AS 15.15.010.

Recalls in Alaska

In response to question by Rep. Berta Gardner in (H) STA during testimony on HB 438: Initiatives, Referendums, Recalls
March 14, 2006

There have been five instances involving the recall of elected officials in Alaska.

- In 1984, the Bering Strait School District sought declaratory and injunctive relief against the Director of Elections regarding a recall petition filed against certain school board members. (*Meiners v. Bering Strait School District*)
- Application for recall of Governor Walter Hickel and Lt. Governor Jack Coghill was filed with the Director of Elections in 1992. The Director of Elections certified the application despite legal counsel of insufficient grounds. This recall attempt was not completed.
- In 1995, a citizens' committee brought suit against the Haines Borough and Borough clerk challenging the clerk's denial of a recall petition of school board members. (*Stauffenberg v. The Committee for an Honest and Ethical School Board*)
- In 2004, a group successfully garnered enough signatures and stated grounds for recall sufficient to proceed with a recall effort of Senator Scott Ogan. However, Senator Ogan resigned his seat before ballots were printed and therefore, the recall effort did not go to voters in District H.
- In 2005, a group filed a petition for recall of Senator Ben Stevens. The Director of the Division of Elections did not certify the application because the grounds for recall were not sufficiently particular. The recall committee has appealed (after losing a Superior Court decision) to the Alaska Supreme Court on this recall.

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
LABOR & STATE AFFAIRS

FRANK H. MURKOWSKI, GOVERNOR

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123 4TH STREET
DIMOND COURT HOUSE, 6TH FLOOR
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600

March 22, 2006

The Honorable Paul Seaton
Chair, House State Affairs Committee
State House of Representatives
State Capitol, Room 102
Juneau, AK 99801

Re: HB 438 (Initiative, Referendum, Recall Petitions)

Dear Representative Seaton:

We have received a new work draft CS for HB 438: 24-LS1344\C, Kurtz, 3/18/06. As we explained in our March 17, 2006, letter to you on HB 438, we had reserved answering the House State Affairs Committee's final question concerning the overall constitutionality of HB 438 pending a new committee substitute for the bill. We now address that question.

The constitutional issues set out in our March 17, 2006, letter concerning the prior work draft of HB 438 remain in the new work draft committee substitute for the bill. In addition, proposed AS 15.45.001(4) and 15.45.007(9) in sec. 1 of the new committee substitute continue to include a qualification for petition circulators that they are "not registered to vote in any other state." These provisions raise constitutional issues.

Circulation of an initiative petition is "core political speech" and legislative restriction of that right is subject to exacting scrutiny. The United States Supreme Court in *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999), struck down Colorado's requirements that petition circulators be registered voters as an impermissible burden on First Amendment petition circulation rights through undue limitation of the pool of petition circulators. On the other hand, the

Supreme Court allows states to regulate the petition circulation process because "there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Id.* at 187. In light of this precedent, the above restriction set out in the new work draft CS for HB 438 is in a gray area, as it imposes an additional restriction on petition circulation related to voter registration, but does not amount to a requirement that circulators be registered to vote in Alaska.

The "not registered to vote in another state" prohibition set out in sec. 1 of the new work draft CS for the bill imposes a requirement that may similarly reduce the pool of petition circulators and thereby diminish free speech. If these provisions are challenged, the reviewing court likely assess the severity of the burden imposed on petition circulation, and balance that burden against the magnitude of the state interest asserted in support of the new requirement. The court would probably also require that the new requirement be narrowly tailored to meet the asserted state interest.

The legislature should therefore identify a correspondingly significant state interest in support of the "not registered to vote in another state" restriction, and explain how the restriction is narrowly tailored to further the state interests. In this context, courts have recognized state interests such as reducing signature fraud and policing lawbreakers to uphold circulator payment restrictions. However, the United States Supreme Court has indicated that it is not willing to assume that professional circulators are more likely to accept false signatures than a volunteer, and that states cannot target paid circulators in regulations. *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182, 203-04 (1999).

We agree with Legislative Counsel Kathryn Kurtz's December 6, 2005, memorandum which indicates that the proposed ban on petition circulation for voters registered in other states may be more susceptible to a court challenge than the existing language on petition circulation. As Ms. Kurtz stated, "[s]ince Alaska cannot require circulators to be registered voters, there is some risk that prohibiting them from being registered to vote in another state will be interpreted as an unconstitutional burden on political expression."

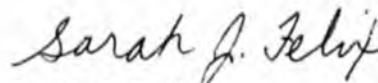
We also agree with Ms. Kurtz's analysis set out in her February 7, 2006, memorandum on this bill that the "Alaska Supreme Court has held that the right of

initiative should be liberally construed to permit exercise of that right. *Thomas v. Bailey*, 595 P.2d 1, 3 (Alaska 1979)." Given the Alaska Supreme Court and United States Supreme Court cases cited above, we cannot predict the outcome of a legal challenge to the "not registered to vote in another state" restriction on petition circulation.

Do not hesitate to contact me if I can be of further assistance to your committee on this matter.

Sincerely,

DAVID W. MÁRQUEZ
ATTORNEY GENERAL



By: Sarah J. Felix
Assistant Attorney General

SJF/cjh

cc: Kevin Jardell, Legislative Liaison
Office of the Governor

Annette Kreitzer, Chief of Staff
Whitney Brewster, Director, Division of Elections
Office of the Lieutenant Governor

Deborah Behr, Legislation and Regulations Attorney
Randy Ruaro, Legislative Liaison
Attorney General's Office

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
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March 17, 2006

The Honorable Paul Seaton
Chair, House State Affairs Committee
State House of Representatives
State Capitol, Room 102
Juneau, AK 99801

Re: HB 438 (Initiative, Referendum, Recall Petitions)

Dear Representative Seaton:

At the March 14, 2006, meeting of the House State Affairs Committee, the Department of Law received two requests, set out below, for legal advice concerning HB 438, Work Draft 24-LS1344\X, Kurtz, 2/22/06. Additional questions concerning the recall process raised at the March 14, 2006, meeting are not addressed here because the sponsor indicated at the March 16, 2006, committee hearing that HB 438 would be revised to delete the recall provisions in question. The committee's final question concerning the overall constitutionality of HB 438 is also reserved as the sponsor indicated that there would be a committee substitute for the bill.

1. Are there constitutional issues where a subscriber's signature is not counted on an initiative petition due to the circulator's failure to comply with laws on payment for petition circulation? (Set out in section 1 of the bill, proposed AS 15.45.003(f)). Is failure to count the subscriber's signature an undue burden on the subscriber's right to use the initiative process? What if the circulator is instead fined for violation of payment laws, and the signatures are counted?

Request number one presents a mixed legal and policy question. The new circulator payment restrictions set out in proposed AS 15.45.003 in sec. 1 of the bill implicate First Amendment issues. Circulation of an initiative petition is "core political speech" and thus any legislative restriction of that right is subject to

exacting scrutiny. The United States Supreme Court in *Meyer v. Grant*, 486 U.S. 414 (1988), invalidated Colorado's prohibition on payment of petition circulators, finding an impermissible burden on First Amendment petition circulation rights through undue limitation of the pool of petition circulators. Similarly, in *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999), the United States Supreme Court struck down Colorado's requirements that petition circulators be registered voters and wear an identification badge, and that initiative proponents report the names of, and amount paid to, all paid circulators. In light of these precedents the restrictions set out in HB 438 are in a gray area, as they impose additional restrictions on petition circulator payment, but do not amount to a ban on payment. We agree with Legislative Counsel Kathryn Kurtz's February 7, 2006, memorandum which indicates that the proposed revision to AS 15.45.110 may be more susceptible to a court challenge than the existing language. As Ms. Kurtz stated, the "Alaska Supreme Court has held that the right of initiative should be liberally construed to permit exercise of that right. *Thomas v. Bailey*, 595 P.2d 1, 3 (Alaska 1979)." We therefore agree with Ms. Kurtz that we cannot predict the outcome of a legal challenge to this new provision on this basis.

The allowable scope of state restrictions on payment to initiative petition circulators is still being developed in the courts. For example, the Ninth Circuit Court of Appeals recently upheld Oregon's law prohibiting per signature payment for petition circulation in *Prete v. Bradbury*, 2006 WL 399590 (Feb. 22, 2006). In upholding the Oregon law the Court in *Prete* assessed the degree of the decrease in the pool of circulators resulting from this new limitation in determining the severity of the burden under the First Amendment.

Following the analysis set out in *Prete*, the legislature may wish to consider the degree of the burden that the proposed new payment limitations would impose on petition circulation. Given the size of Alaska, its remote communities, and the requirements for statewide signature gathering, we can anticipate that petition circulators would claim that the payment limitations impose a significant burden. The legislature should therefore assert a correspondingly significant state interest in support of the payment limitations, and explain how the restrictions are narrowly tailored to further the state interests. In this context, courts have recognized state interests such as reducing signature fraud and policing lawbreakers to uphold circulator payment restrictions. However, the United States Supreme Court has indicated that it is not willing to assume that professional circulators are more likely to accept false signatures than a volunteer, and that states cannot target paid circulators in regulations. *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182, 203-04 (1999).

The mixed law and policy issue in request number one is whether the remedy for circulator payment violations should be a penalty for the circulator or

invalidation of the petition signatures collected by that circulator. Under current Alaska law, invalidation of petition signatures is the remedy. Neither the Alaska Supreme Court nor the United States Supreme Court has addressed the constitutionality of invalidation of petition signatures as the remedy for circulator payment violations. Similarly, neither Court has addressed the proposed alternative remedy of penalizing the petition circulators. The decision on which of these two remedies should apply to circulator payment violations is a policy call for the legislature. We believe either remedy is defensible.

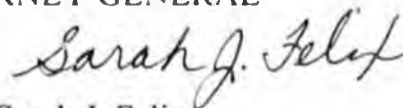
2. Are the requirements set out in current law on disqualifying petition signatures constitutional?

As to request number two, the current Alaska law on disqualifying petition signatures in AS 15.45.130 has not been reviewed by the Alaska Supreme Court. We agree with Legislative Counsel Kathryn Kurtz's memorandum of February 7, 2006, that similar provisions in other states have survived constitutional challenges on the basis that these laws prevent fraud and preserve the integrity of the initiative process. We believe that the current Alaska law would withstand constitutional challenge before the Alaska courts as well.

Do not hesitate to contact me if i can be of further assistance to you on this matter.

Sincerely,

DAVID W. MARQUEZ
ATTORNEY GENERAL



By: Sarah J. Felix
Assistant Attorney General

SJF/cjh

cc: Kevin Jardell, Legislative Liaison
Office of the Governor

Annette Kreitzer, Chief of Staff
Office of the Lieutenant Governor

Deborah Behr, Legislation and Regulations Attorney
Randy Ruaro, Legislative Liaison
Attorney General's Office

SEE LAST TWO PARAGRAPHS

MEMORANDUM

State of Alaska

Department of Law

TO: Whitney H. Brewster
Director, Division of Elections

DATE: December 23, 2005
FILE NO: 663-06-0088

TEL. NO.: (907) 465-3600

FAX: (907) 465-2520

FROM: Michael A. Barnhill *MB*
Assistant Attorney General
Labor and State Affairs Section

SUBJECT: Reimbursement of Expenses for
Initiative Signature Gatherers

You have asked us to review the question of whether AS 15.45.110(c) permits the reimbursement of expenses to circulators of ballot measure petitions. We examined this question previously, and based on our review of the statute and its legislative history, provided oral advice to your office that this statute did not appear to permit the reimbursement of circulator expenses. Subsequent to that, questions were raised regarding the constitutionality of limiting spending for a First Amendment activity, especially in light of the recent approval by Alaskans of HJR 5. HJR 5 amended art. XI, sec. 3, of the Alaska Constitution to require that initiative petitions be signed by seven percent of qualified voters who voted in the previous general election in each of 30 of the 40 house districts. Because we had not fully considered these issues when we provided the oral advice, we reconsider that advice here. We conclude that the expenses of circulators may be paid or reimbursed.

AS 15.45.110(c) was enacted in 1998. It provides:

A circulator may not receive payment or agree to receive payment that is greater than \$1 a signature, and a person or an organization may not pay or agree to pay an amount that is greater than \$1 a signature, for the collection of signatures on a petition.

AS 15.45.110(e) provides that the violation of this provision is a crime: "A person or organization that violates (c) . . . of this section is guilty of a class B misdemeanor."

From a statutory interpretation perspective, the issue boils down to the meaning of the word "pay." In other words, does the statutory prohibition against paying a circulator

more than \$1 per signature also prohibit payment or reimbursement of circulator expenses?¹

There are a number of dictionary definitions of the term "pay," including "to make due return for services rendered or property delivered"; "to requite according to what is deserved (as in "to pay him back")"; and "to make compensation for." See Webster's New Collegiate Dictionary 842 (1976). The dictionary lists the word "reimburse" as a synonym for the word "pay." *Id.*

Thus, it is possible to interpret the word "pay" as used in AS 15.45.110(c) to include the concept of "reimburse." Accordingly, one possible interpretation of this statute is that reimbursement of expenses in excess of \$1 per signature is prohibited. We acknowledge, however, that another possible interpretation of the word "pay" could limit the term to only compensation for circulator services. Thus, we conclude that the term "pay" as used in the statute is ambiguous with respect to payment of circulator expenses. As set forth in greater detail below, the narrower interpretation is the better interpretation, despite the legislative history, which we discuss next.

Because of the statutory ambiguity, we next turn to the legislative history. Alaska courts frequently resort to legislative history in an attempt to divine legislative intent. See *In re Estate of Maldonado*, 117 P.3d 720, 725 (Alaska 2005).

The sponsor statement that accompanied this legislation expressed concern about the growing use of initiatives in Alaska:

The flurry of initiatives that we are currently experiencing has resulted in the verification of signatures, and thus qualifying for the ballot, coming as late as the middle of April, resulting in eliminating the possibility of the legislature being able to react by crafting a similar statute. The number of initiatives appear to be growing, and the results may well be the Californization of our entire legislative process.

SB 313, H. Jud. Minutes (April 27, 1998). Similar concerns were expressed as the bill progressed through the legislature. The minutes of the House Finance committee following the incorporation of the per signature payment cap language into the bill reveals that the committee was advised that the U.S. Supreme Court struck down a prohibition against payment of initiative circulators in *Meyer v. Grant*, 486 U.S. 414, 108

¹ To date there has been no attempt to describe precisely what expenses are at issue. We assume that only standard expenses are at issue here, such as travel expenses, food and lodging.

S.Ct. 1886 (1988). The committee then turned to the issue of the one dollar per signature payment cap. “[Representative Mulder] stressed that a cap of a dollar per signature would slow the collection of signatures.” SB 313, H. Fin. Minutes (May 8, 1998). The committee did not explicitly consider the issue of payment for circulator expenses.

The legislative history does not shed much light on how to interpret the word “pay.” It appears evident, however, that there was at least some desire to deter, presumably within the bounds of the constitution, the collection of signatures in support of an initiative. In light of this, the broader definition of the word “pay” appears to be the most consistent with the legislative history. This analysis was the basis for our earlier oral advice to your office that the statute does not appear to permit the payment of circulator expenses.

However, we did not consider the constitutional dimensions of this issue. In the landmark case of *Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612 (1976), the U.S. Supreme Court considered a number of issues related to limits imposed by the Federal Election Campaign Act (“FECA”) on campaign expenditures. At that time, FECA imposed several types of limitations on expenditures related to campaigns for public office. The first such limitation prohibited individuals and groups from spending in excess of \$1000 per year on a candidate. See 18 U.S.C. § 608(e)(1) (as enacted 1971). The Court observed that the expenditure limit placed significant burdens on the First Amendment rights of political expression. *Buckley*, 424 U.S. at 44, 96 S.Ct. at 647. Accordingly, the Court struck it down. *Id.* at 44-50, 96 S.Ct. at 647-50.

The *Buckley* Court also considered FECA’s expenditure limitations on candidates. The Court also struck this limitation down: “the First Amendment simply cannot tolerate [FECA’s] restriction upon the freedom of a candidate to speak without legislative limit on behalf of his own candidacy.” *Id.* at 54, 96 S.Ct. at 651.

Finally, *Buckley* also struck down FECA’s expenditure limitations on campaigns:

The First Amendment denies government the power to determine that spending to promote one’s political views is wasteful, excessive, or unwise. In the free society ordained by our Constitution it is not the government, but the people—individually as citizens and candidates and collectively as associations and political committees—who must retain control over the quantity and range of debate on public issues in a political campaign.

Id. at 57, 96 S.Ct. at 653. In sum, the Court concluded that FECA placed “substantial and direct restrictions on the ability of candidates, citizens, and associations to engage in

protected political expression, restrictions that the First Amendment cannot tolerate." *Id.* at 59-60, 424 S.Ct. at 654.

We note that *Buckley* did not arise in the context of an initiative process, but rather in the context of a candidate election. Although candidate and initiative elections are certainly similar, we must first determine the extent to which the Court's fairly categorical pronouncements have application to expenses incurred in the initiative context.

The Court appears to have answered that question in *Meyer v. Grant*, 486 U.S. 414, 108 S.Ct. 1886 (1988). In *Meyer*, the Court considered the constitutionality of a ban against paying petition circulators. The Court concluded that the circulation of a petition was "core political speech" and thus any legislative restriction of that right was subject to "exacting scrutiny." *Id.* at 420, 108 S.Ct. at 1891. The Court struck down the prohibition and held that its candidate expenditure analysis from *Buckley* applied in the petition context: "That principle [as articulated by *Buckley*] applies equally to 'the discussion of political policy generally or advocacy of the passage or defeat of legislation.'" *Id.* at 428, 486 S.Ct. at 1895.

In *Buckley v. American Const. Law Found.*, 525 U.S. 182, 119 S.Ct. 636 (1999), the Court considered the extent to which a state can regulate the initiative process. At issue were Colorado's requirements that petition circulators be registered voters and wear an identification badge, and that initiative proponents report the names of, and amounts paid to, all paid circulators. While recognizing the state's interest in regulating initiatives so as to "protect the integrity and reliability of the initiative process," the Court again emphasized the significance of the First Amendment issues at stake. *Id.* at 191-92, 119 S.Ct. at 642. The Court expressed concern that the restrictions at issue decreased the pool of potential circulators thus burdening protected speech. *Id.* at 194, 197-98, 119 S.Ct. at 643, 645. The Court found that these restrictions could not survive the First Amendment standard of exacting scrutiny and struck them down. *Id.* at 205, 119 S.Ct. at 649.

Finally, in *McConnell v. Federal Election Comm'n*, 540 U.S. 93, 124 S.Ct. 619 (2003), the Court again considered issues related to campaign expenditures (amongst a host of other elections issues). There, the Court reaffirmed the vitality of its decision in *Buckley v. Valeo* with respect to campaign expenditures and struck down a provision in the Bipartisan Campaign Reform Act of 2002 which limited certain kinds of expenditures by political parties. *Id.* at 217, 124 S.Ct. at 703 (striking provision that a political party making a lawful coordinated expenditure with a candidate forfeited the right to make independent expenditures for express advocacy in support of the candidate).

Alaska courts have also considered the importance of First Amendment interests in the election context. In *Messerli v. State*, 626 P.2d 81 (Alaska 1980), the Alaska

Supreme Court held, "we believe that an expenditure for influencing the outcome of a ballot proposition or question comes far closer to pure political speech than does an expenditure advocating the election or defeat of a particular candidate" *Id.* at 85. The court held that the right of free speech "may not be abridged by governmental action unless the government meets its substantial burden of establishing that an abridgment of any such right is justified by a legitimate and compelling governmental interest." *Id.* at 86.

We can distill the wisdom from this line of cases as follows. Legislation related to initiative expenses is likely to trigger the exacting scrutiny standard of the First Amendment. To the extent that such legislation is found to decrease the pool of petition circulators, it is probable that a court will find that such legislation burdens core political speech, a right protected by the First Amendment. In that case, it will be up to the state to demonstrate it has a meaningful or compelling government interest in the restriction.

With that constitutional background in mind, we return to our analysis of AS 15.45.110(c). As noted above, our initial interpretation of the term "pay" was broad. However, a broad interpretation of this term such that reimbursement of actual expenses above \$1 per signature would be prohibited is more likely to lead to a finding that the statute is unconstitutional. Unless the state could demonstrate that such a limitation on reimbursement were needed to promote a meaningful, or even compelling, interest (which is not readily apparent), the limitation probably would not survive review under the First Amendment.² Notably, courts routinely interpret statutes in a manner to avoid a finding that they are unconstitutional. *Chenega Corp. v. Exxon Corp.*, 991 P.2d 769, 785 (Alaska 1999). Moreover, courts also narrowly interpret statutes that impose criminal liability. *State v. Strane*, 61 P.3d 1284, 1286 (Alaska 2003). Finally, statutes in the initiative context are to be "construed so that 'the people [are] permitted to vote and express their will on the proposed legislation . . .'" *Boucher v. Engstrom*, 528 P.2d 456, 462 (Alaska 1974), *overruled on other grounds by McAlpine v. Univ. of Alaska*, 762 P.2d 81 (Alaska 1988).

As noted above, the statutory term "pay" is ambiguous and susceptible to multiple meanings. Accordingly, in order to avoid a finding that AS 15.45.110(c) is unconstitutional under the *Buckley-Meyer* line of cases, we now recommend interpreting the term "pay" as used in AS 15.45.110(c) narrowly. In other words, the term "pay" should be limited to only compensation for the gathering of signatures. The one dollar per signature limitation should not encompass any payment or reimbursement of the actual out-of-pocket expenses related to signature gathering. Moreover, since we think

² When this office reviewed this legislation in 1998 we concluded that the per signature payment cap as a limitation, as opposed to a prohibition, was "in a constitutional gray area." 1998 Inf. Op. Att'y Gen. (May 29; 883-98-0086).

Whitney H. Brewster, Director
Re: Reimbursement of Circulator Expenses

December 23, 2005
Page 6

the payment or reimbursement of expenses should not be prohibited by AS 15.45.110(c), it follows that we do not think that any criminal penalty may be imposed under AS 15.45.110(e) by reason of such payment or reimbursement.

Given the ambiguity in the term "pay" as used in AS 15.45.110(c), the legislature may wish to consider a clarifying amendment. Additionally, the legislature may wish to consider providing guidelines, or direct the Division to provide such guidelines through regulation, regarding permissible expenses.³ While we think it appropriate to interpret this statute to permit the payment or reimbursement of reasonable expenses, we think the Division should be cautious with respect to payment or reimbursement of excessive expenditures.

Please contact us if you have further questions or would like to discuss further.

³ We think the Division has the authority to promulgate regulations regulating such expenses under AS 15.15.010.

Jane Pierson

From: Whitney Brewster [whitney_brewster@gov.state.ak.us]
Sent: Wednesday, March 08, 2006 5:01 PM
To: Jane Pierson
Cc: Annette Kreitzer
Subject: Re: HB 438

Hi Jane,

I just wanted to get you my comments on this latest draft of HB 438. Once you've had a chance to review them, I'd be happy to meet with you, Annette and the attorneys to talk through the bill. My comments are as follows:

1. Page 1, line 11 - This requirement may run afoul of the Buckley decision.
2. Page 1, line 13 - I know this is already current law, but I want to make sure everyone is aware that this essentially confines a circulator strictly to the boundaries of the district and would prevent the circulator from collecting signatures at the local supermarket (although many residents of a district may frequent it) if it is not exactly within the district boundaries.
3. Page 2, line 8 - "On a form prescribed by the division" - The Division would prefer that another form not be created. 15.45.007(6) in this draft already covers this by requiring the circulator to certify "that the circulator has not entered into an agreement with a person or organization in violation of AS 15.45.003(b)."
4. Page 2, line 19 - Who will enforce this? (possibly APOC)
5. Page 2, line 21 - Who will assess and collect this fine? - *has never been a fine + ?? (APOC?)*
6. Page 2, line 25 - The Lt. Governor is not able to determine the sufficiency of a petition in the case of a recall. That duty lies with the Director of the Division of Elections. HB 94 that passed last year incorrectly changed the law. It is incorrect as a Lt. Governor should not have the ability to determine the sufficiency of a recall petition if he or she is the subject of that recall.
7. Page 3, line 1 - I wonder if mandatory training runs afoul of any court cases or is unconstitutional.
8. Page 3, line 9 - Again, this is based on incorrect language currently in law allowing a Lt. Governor to determine the sufficiency of a recall petition.
9. Page 3, line 28 - Again, this may run afoul of the Buckley decision.
- 10. Page 4, line 2 - This review will require additional staff time and a fiscal note reflecting this staff time will be required. *2000 signatures to initiate it per signature fee*
11. Page 4, line 5 - These fees will go to the General Fund and will not benefit the Division of Election's budget.
12. Page 4, line 17 - The increase in this percentage will require additional signatures to be qualified and will result in a fiscal note.
13. Page 4, line 27 - Who enforces this if an individual of the recall committee certifies that the facts alleged are true, but knows that they are not?
14. Page 5, line 1 - Where are these definitions based on?
15. Page 5, line 24 - The increase in this percentage will require additional signatures to be qualified and will result in a fiscal note.
16. Page 6, line 14 - Again, this is based on incorrect language currently in law allowing a Lt. Governor to determine the sufficiency of a recall petition.

Sincerely,
Whitney

3/13/2006

Response To Comments By The Division Of Elections on HB438

1. **Page 1, line 11 - This requirement may run afoul of the Buckley decision.**
(4) not registered to vote in any other state.

This will ultimately have to be determined by the Department of Law. However, it is already law that a person may not be registered to vote in multiple jurisdictions, AS 15.07.060(a)(5). This provision does not state that a person must be registered to vote in Alaska. It corresponds with current law stating that signature gatherers be residents of the state. Furthermore, to knowingly make a false statement while applying for voter registration is voter misconduct in the second degree under AS 15.56.050, and a class A misdemeanor. Voting in another state is inconsistent with claiming Alaska residency for purposes of AS 15.05.020. The purpose of this provision is to prevent "professional signature gatherers" from coming to Alaska to collect signatures on petitions. Under Buckley, Alaska cannot require circulators to be registered voters, there is some risk that prohibiting them from being registered voters in another state will be interpreted as unconstitutional burden on political expression.

2. **Page 1, line 13 - I know this is already current law, but I want to make sure everyone is aware that this essentially confines a circulator strictly to the boundaries of the district and would prevent the circulator from collecting signatures at the local supermarket (although many residents of a district may frequent it) if it is not exactly within the district boundaries.**

"However, in the case of a petition to recall a member of the state legislature, a petition may be circulated only in person in the senate or house district represented by the official sought to be recalled."

This is current law, the idea being that the petition be brought before the people who it affects.

3. **Page 2, line 8 - "On a form prescribed by the division" - The Division would prefer that another form not be created. 15.45.007(6) in this draft already covers this by requiring the circulator to certify "that the circulator has not entered into an agreement with a person or organization in violation of AS 15.45.003(b)."**

"on a form prescribed by the division of elections, that the circulator has traveled more than 100 miles from the circulator's home on the day for which the payment is received."

This would reduce the fiscal note on the bill and may already be covered under AS 15.45.022(b).

4. Page 2, line 19 - Who will enforce this?

"(d) a person or organization that violates (b) or (c) of this section is guilty of a class B misdemeanor."

There are already provisions under AS 15.45.100, 15.45.330, and AS 15.45.570 that defines crimes of a class B misdemeanor for signers of a petition. Why is it not possible for whoever currently enforces these statutes will to also enforce this provision?

5. Page 2, line 21 - Who will assess and collect this fine?

6. Page 2, line 25 - The Lt. Governor is not able to determine the sufficiency of a petition in the case of a recall. That duty lies with the Director of the Division of Elections. HB 94 that passed last year incorrectly changed the law. It is incorrect as a Lt. Governor should not have the ability to determine the sufficiency of a recall petition if he or she is the subject of that recall.

(f) In determining the sufficiency of a petition, the lieutenant governor may not count subscriptions on a petition circulated by a circulator who violated (b) of this section."

This should be changed to reflect that the division and not the Lt. Governor should be able to determine the sufficiency of a recall petition if he or she is the subject of that recall.

7. Page 3, line 1 - I wonder if mandatory training runs afoul of any court cases or is unconstitutional.

This is a question for the Department of Law. However, my office has not found any cases on point.

8. Page 3, line 9 - Again, this is based on incorrect language currently in law allowing a Lt. Governor to determine the sufficiency of a recall petition.

This should be changed to reflect that the division and not the Lt. Governor may not count subscriptions on recall petitions.

9. Page 3, line 28 - Again, this may run afoul of the Buckley decision.

(9) that the circulator is not registered to vote in another state

See answer to comment number one.

- 10. Page 4, line 2 - This review will require additional staff time and a fiscal note reflecting this staff time will be required.**

"The sponsor may, before filing a petition, submit individual numbered petitions containing up to a total of 2,000 subscriptions to the director to review. The director shall within 45 days, determine whether each subscription submitted for review is that of a qualified voter and notify the sponsors of the number of signatures of qualified voters from each district in the petitions submitted. The director shall assess and the sponsors shall pay a fee of \$1 for each subscription submitted under this section."

This is understood, which is why a \$1 fee is to be paid for each subscription submitted under this section.

- 11. Page 4, line 5 - These fees will go to the General Fund and will not benefit the Division of Election's budget.**

Yes.

- 12. Page 4, line 17 - The increase in this percentage will require additional signatures to be qualified and will result in a fiscal note.**

Understood.

- 13. Page 4, line 27 - Who enforces this if an individual of the recall committee certifies that the facts alleged are true, but knows that they are not?**

(5) a certification by each member of the recall committee, under penalty of perjury, that the facts alleged in the application are true to the best of the member's knowledge.

This should be enforced by APOC.

- 14. Page 5, line 1 - Where are these definitions based on? ***

(b) In this section,

(1) "corruption" means an act done by a person who is subject to recall under AS 15.45.470 with an intent to give some advantage inconsistent with official duty and the rights of others;

(2) "incompetence" means substantial inability to perform the duties of office;

(3) "lack of fitness" means the existence of a long-term physical or mental disability that seriously impairs the official's ability to perform the duties of the office;

(4) "neglect of duties" means failure to perform a duty of office established by law.

These are definitions that were worked on by the drafter and the legislative legal department. They reflect the definitions in Black's Law Dictionary. These definitions

are not currently in statute. However, the drafter believes that they should be, especially when used for recalling public officials.

15. Page 5, line 24 - The increase in the percentage will require additional signatures to be qualified and will result in a fiscal note.

Yes.

16. Page 6, line 14 - Again, this is based on incorrect language currently in law allowing a Lt. Governor to determine the sufficiency of a recall petition.

Again, this will be changed to reflect the department when determining the sufficiency of a recall petition.

**BANKSTON, GRONNING, O'HARA,
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THOMAS V. WANG, JR.

April 8, 2004

Laura A. Glaiser
Director, Division of Elections
c/o Attorney General Gregg Renkes
State of Alaska, Department of Law
Office of the Attorney General
P.O. Box 110300
Juneau, Alaska 99811-0300

*via electronic transmission
original (with exhibits) to follow*

Re: *Legal Review of Recall Application Re: Senator Ogan*
State Department of Law File No. 663-04-0126
Contract No. 04-215-171
Our File No.: S3476-02

Dear Ms. Glaiser:

We have been retained as independent counsel to review and provide you with a legal opinion concerning whether you should certify the application for the recall of Alaska State Senator Scott Ogan that was filed with the Division of Elections on February 17, 2004. See letter of retention attached as **Exhibit 1**.¹

I. Introductory Remarks

The statutes governing recall of state public officials are threadbare in critical places. Like those at issue in *Meiners v. Bering Strait School District*, the statutory scheme has many "ambiguities."² The Alaska Supreme Court has yet to

¹ We have not been asked and we have not reached any conclusion as to whether "recall targets have a due process right to notice and a hearing under the due process clause of the Alaska Constitution prior to the holding of a recall election to determine the truth or falsity of recall allegations," which is an issue the Alaska Supreme Court has specifically not resolved. *Von Stauffenberg v. Committee for an Honest & Ethical Sch. Bd.*, 903 P.2d 1055, 1061 (Alaska 1995); see also *Meiners v. Bering Strait Sch. Dist.*, 687 P.2d 287, 294 n.7 (Alaska 1984) (due process claim not raised).

² *Meiners*, 687 P.2d at 296.

interpret the recall statutes under Title 15 that are at issue here. This required us to undertake an exercise in extrapolating standards and rules from common yet undeveloped principles. We have attempted to do this in as transparent a manner as possible. Given the lack of statutory specificity and case law guidance, we are keenly aware that reasonable minds could come to differing conclusions. We believe the conclusions we have reached reflect the current state of the law and the policies underlying recall in Alaska.

II. **Background Facts**

Senator Scott Ogan was elected in 2002 to represent Senate District H. On February 17, 2004, an application for recall of Senator Ogan was filed with the State of Alaska Division of Elections.³ The stated grounds for recall are:

Senator Scott Ogan demonstrated corruption in office by actively promoting legislation, directly benefiting business interests of his employer Evergreen Resources, (Evergreen), instead of protecting the private property and due process rights of his constituents.

Ogan's legislative activities enabled Evergreen to acquire coal bed methane (CBM) leases knowing it would deprive his Mat-Su Valley constituents of actual notice of leases and therefore their constitutional right to due process, demonstrating neglect of duty.

Ogan neglected his duties to constituents by promoting Evergreen in legislative committee, misstated important facts (3-28-03), and was even listed as Evergreen's corporate contact in its legislative materials submitted to the House Oil and Gas Committee hearing on HB 69.

Ogan did not abstain from voting for HB 69, which reduced local control over CBM development that directly benefited his employer, Evergreen.

Ogan's persistent and irreconcilable conflict of interest between his duties to his constituents and his activities as an Evergreen and CBM industry promoter demonstrate his inability to recognize his obvious conflict, a failure in ethical judgment that shows lack of fitness to serve in public office, incompetence, and neglect of duty.

³ Pages from the Application for Recall are attached as **Exhibit 2**.

For these reasons, Senator Ogan cannot adequately serve as Senator and should be recalled.

III. Statutory Framework

Alaska Statutes Title 15, Chapter 45, Article 3 sets forth the grounds and procedures for recall of the governor, the lieutenant governor, and state legislators.

Relevant to our role, a recall application must be filed with the Director of Elections ("Director"). The application must include

- (1) the name and office of the person to be recalled;
- (2) the grounds for recall described in particular in not more than 200 words;
- (3) a statement that the sponsors are qualified voters who signed the application with the statement of grounds for recall attached;
- (4) the designation of a recall committee of three sponsors who shall represent all sponsors and subscribers in matters relating to the recall;
- (5) the signatures of at least 100 qualified voters who subscribe to the application as sponsors for purposes of circulation; and
- (6) the signatures and addresses of qualified voters equal in number to 10 percent of those who voted in the preceding general election in the state or in the senate or house district of the official sought to be recalled.⁴

The Director must review the application and "either certify it or notify the recall committee of the grounds for refusal."⁵ The applicable statutes do not provide a timeline within which the Director must respond.⁶ Alaska Statute 15.45.550 sets out four grounds for denying certification of a recall application:

- (1) the application is not substantially in the required form;

⁴ AS 15.45.500.

⁵ AS 15.45.540.

⁶ Compare AS 15.45.620, which provides 30 days for the Director to review a recall petition.

- (2) the application was filed during the first 120 days of the term of office of the official subject to recall or within less than 180 days of the termination of the term of office of any official subject to recall;
- (3) the person named in the application is not subject to recall; or
- (4) there is an insufficient number of qualified subscribers.

We are aware of no basis to deny the recall application under numbers (2) through (4) above. The application was timely filed and Senator Ogan is subject to recall. Our letter of retention states that the Division of Elections has verified that the requisite number of voters has subscribed to the application as sponsors.⁷

The remaining question is whether the Director should deny certification on grounds that the application is not substantially in the required form pursuant to AS 15.45.550(1). The application identifies Senator Scott Ogan representing Alaska Senate District H as the official sought to be recalled, satisfying AS 15.45.500(1). The pages listing sponsors for circulation of the recall petition indicate that the sponsors are qualified voters and the list of sponsors includes the signatures of the sponsors on the same sheet as the statement of grounds for recall, satisfying AS 15.45.500(3). The page designating a recall committee names three members to represent all sponsors and subscribers in matters relating to the recall of Senator Ogan, satisfying AS 15.45.500(4). Our letter of retention states that the Division of Elections has verified that the requisite number of qualified voters has subscribed to the application as sponsors, satisfying AS 15.45.500(5), and that the application contains signatures and addresses of the requisite percentage of the number of voters who voted in the preceding general election in Senator Ogan's district, satisfying AS 15.45.500(6).⁸

That leaves the question whether the application includes "the grounds for recall described in particular in not more than 200 words" as required by AS 15.45.500(2). The stated grounds in the recall application contain 197 words, which is within the 200 word limit.

The remainder of this letter will focus on whether the application states grounds for a recall and satisfies the particularity requirement of AS 15.45.500(2). We begin by setting forth our general approach to interpreting

⁷ Exhibit 1.

⁸ Exhibit 1.

the recall processes set out in Title 15, then discuss the statutory grounds for recall set out in AS 15.45.510, and then, finally, describe how we recommend applying those standards to the application at issue here.

IV. Recall Under Title 15 Occupies the "Middle Ground" Between a Pure Political Process and a Technical Legal Process

Like referendum and the initiative process, recall, in general, provides voters "a check on the activities of their elected officials above and beyond their power to elect another candidate when the incumbent's term expires."⁹ The right of Alaskan voters to recall elected officials emanates from Article XI, Section 8 of the Constitution of Alaska, which provides:

All elected public officials in the State, except judicial officers, are subject to recall by the voters of the State or political Subdivision from which elected. Procedures and grounds for recall shall be prescribed by the legislature.

The Legislature has established recall procedures and grounds in two separate places. In Title 29, the recall process for elected and appointed municipal office holders is provided.¹⁰ Title 15 contains the recall process for the governor, the lieutenant governor, and state legislators. The process under Title 15 is the one relevant to the Senator Ogan recall application. While the two statutory recall processes (under Title 15 and under Title 29) are similar, the grounds for recall are not identical. Under Title 15, the grounds for recall are "(1) lack of fitness, (2) incompetence, (3) neglect of duties, or (4) corruption."¹¹ Under Title 29, the grounds for recall are now "misconduct in office, incompetency, or failure to perform prescribed duties."¹²

Unlike the Title 15 recall procedures, which have never been addressed by the Alaska Supreme Court, the Title 29 recall procedures have been the subject of three reported Alaska Supreme Court cases.¹³ In *Meiners v. Bering*

⁹ 687 P.2d at 294.

¹⁰ AS 29.26.240-.360.

¹¹ AS 15.45.500.

¹² AS 29.26.250.

¹³ *Von Stauffenberg v. Committee for an Honest & Ethical Sch. Bd.*, 903 P.2d 1055 (Alaska 1995); *Meiners v. Bering Strait Sch. Dist.*, 687 P.2d 287 (Alaska 1984); *McCormick v. Smith*, 793 P.2d 1042 (Alaska 1990), vacated on unrelated grounds, 799 P.2d 287). McCormick addressed the ability of recall sponsors to intervene in an action between the target of the recall and the municipal clerk, whether the waiting period is mandatory when the application is rejected as insufficient, and the validity of certain signatures. None of these issues are relevant to our inquiry.

Strait School District, the Alaska Supreme Court considered the recall process in Alaska.¹⁴ The *Meiners* court analyzed relevant comments from the Alaska Constitutional Convention as well as recall processes from across the country and discussed recall in terms of a spectrum.¹⁵

At one end of the spectrum is recall as a legal process. Under this view, recall is an extraordinary process producing the harsh result of removing elected officials before expiration of their terms of office.¹⁶ Grounds for recall, therefore, are narrowly construed. Procedural requirements are strictly construed. All doubts are resolved against conduct of a recall election and there is no doctrine of substantial compliance.¹⁷ For example, in Florida, recall is viewed as an extraordinary proceeding with a heavy burden on those seeking recall to conform to the statutes governing recall.¹⁸ While Washington courts previously took a more political view of recall,¹⁹ significant statutory changes now make recall available only for specific narrowly defined grounds that must be set out in a detailed charge including the date, location, and nature of each act upon which recall would be based.²⁰ Washington requires a recall petitioner to verify under oath that she or he has knowledge of the facts underlying the asserted grounds for recall²¹ and the recall charges are submitted to the court for a sufficiency review.²²

At the other end of the spectrum discussed by *Meiners* is recall as a political process. Under this view, there is little judicial or administrative oversight in the recall process and all doubts are "resolved in favor of placing the recall questions before voters."²³ In states taking this view, there are no statutory grounds for recall. So long as a sufficient number of signatures are obtained, any disagreement with an office holder's conduct is sufficient to force a recall election.²⁴ In New Jersey, for example, any elected official can be removed from office after serving for at least one year based on any statement of cause

¹⁴ 687 P.2d at 295.

¹⁵ 687 P.2d at 294.

¹⁶ 687 P.2d at 294 (describing the approach taken in states such as Montana as illustrated in *State ex rel. Palmer v. Hart*, 655 P.2d 965 (Mont. 1982)).

¹⁷ 687 P.2d at 294.

¹⁸ *Garvin v. Jerome*, 767 So.2d 1190, 1193 (Fla. 2000).

¹⁹ *Chandler v. Otto*, 693 P.2d 71, 73 (Wash. 1984)(*en banc*).

²⁰ Wash. Rev. Code §29.82.010.

²¹ Wash. Rev. Code §29.82.010; *Chandler*, 693 P.2d at 73.

²² Wash. Rev. Code §29.82.021(2).

²³ 687 P.2d at 294.

²⁴ 687 P.2d at 294 & n.5 (citing cases from Colorado, Michigan, Nebraska and New Jersey); see also *Abbey v. Green*, 235 P.2d 150 (Ariz. 1925); *Bernzen v. City of Boulder*, 525 P.2d 416 (Colo. 1974) (*en banc*); *In re: Bower*, 242 N.E. 2d 252, 255 (Ill. 1968); *Batchelor v. Eighth Judicial Dist. Ct.*, 403 P.2d 239, 241 (Nev. 1965).

connected with his office, without any requirement that the statement of cause allege malfeasance or nonfeasance or provide particulars so long as at least 25% of registered voters sign the recall petition.²⁵ In Oregon, there are no constitutional or statutory grounds for recall and there is no statutory authorization for judicial review of a recall petition.²⁶ California requires recall petitions to state grounds for recall, but the statement is purely to inform voters and the sufficiency of the stated grounds is not reviewable.²⁷

Meiners concluded that recall in Alaska occupies a "middle ground" between recall as a legal process and recall as a political process.²⁸ The Alaska Constitution requires the legislature to prescribe procedures and grounds for recall,²⁹ but these statutes (governing recall) are to be "liberally construed" to permit voters to express their will without being stymied by artificial technical hurdles.³⁰ While Alaska does not permit political or no-cause recalls, neither has the Alaska Supreme Court emphasized the legal character of recall to the exclusion of the political aspects of the process.³¹

This "middle ground" approach does not eliminate the need to comply substantially with the statutory framework provided.³² In other words,

[t]o liberally construe the statutes governing the exercise of the power to recall is not to ignore entirely the requirements of those statutes.³³

Whatever the "middle ground" may mean in its application, it appears that the "middle ground" approach also applies to recall under Title 15. The *Meiners* court's discussion of the nature of recall did not draw its strength from Title 29

²⁵ *Westpy v. Burnett*, 197 A.2d 400, 406 (N.J. Super. App. Div. 1964) judgment affirmed by *Westpy v. Burnett*, 197 A.2d 857 (N.J. 1964).

²⁶ Or. Const. Art. II §18; Or. Stat. 249.86 et seq.; see also, *Cordon v. Leatherman*, 450 F.2d 562, 564 (5th Cir. 1971) (holding no due process rights attach where there "is no requirement that a recall petition contain any allegation or statement as to the reasons for the recall sought").

²⁷ Cal. Const. Art. II §14.

²⁸ 687 P.2d at 294.

²⁹ Alaska Const. Art. XI § 8.

³⁰ 687 P.2d at 296 quoting *Poucher v. Engstrom*, 528 P.2d 456, 462 (Alaska 1974) (stating that initiative - AS 29.26.100 et seq. - are to be construed to avoid "technical deficiencies").

³¹ 687 P.2d at 294.

³² See, e.g., *Faipeas v. Municipality of Anchorage*, 850 P.2d 1214, 1219 n.8 (Alaska 1993) (notwithstanding liberal construction of initiative laws, the people have a constitutional right to "a fair and accurate summary of issues on which they are being asked to express their will" and that this right extends to "petitions in all elections").

³³ *Hazelwood v. Saul*, 619 P.2d 499, 501 (Colo. 1980).

but, instead, on the constitutional foundations of recall in Alaska.³⁴ The underlying reasoning of *Meiners* and the constitutional grounding of the right to recall in Alaska strongly suggest that the "middle ground" applies with equal force to questions of construction and interpretation of the recall provisions under Title 15. Similarities between the statutory schemes for recall bolster this conclusion.³⁵

V. What Does the "Middle Ground" Mean?

In the "middle ground" that recall occupies in Alaska, a balance must be struck between the rights of citizens to access the recall process without overly burdensome technical hurdles and the rights of elected office holders to be subject to recall only for the statutory grounds stated with particularity. Some guidelines have been developed as to how this balance is to be struck.

A. Factual Allegations Are To Be Taken As True

In *Meiners*, the court addressed the statutory requirement that a petition for recall under Title 29 contain a "statement . . . of the grounds of the recall stated with particularity as to specific instances."³⁶ This requirement is similar to the particularity requirement in Title 15.³⁷ In *Meiners*, the court stated that "it is not the role of the municipal clerk or Director of Elections" to determine whether statements of fact are true or false.³⁸ Instead, the determination as to the truth or falsity of the stated grounds for recall is left to the voters.³⁹ Thus, the Director is to take the factual statements in the application as true and determine whether the application states grounds for recall.⁴⁰ This "means that, accepting the

³⁴ 687 P.2d at 294-96.

³⁵ Compare AS 15.45.470-.720 with AS 29.26.240-.360.

³⁶ 687 P.2d at 291, 299-302 (discussing former AS 29.28.150(a)(3)).

³⁷ AS 15.45.500 requires the recall application to include "the grounds for recall described in particular in not more than 200 words[.]" (emphasis added).

³⁸ 687 P.2d at 301.

³⁹ 687 P.2d at 300 n.18.

⁴⁰ This requirement that factual statements be accepted as true, even when there is strong evidence to the contrary, can create nonsensical results causing significant costs to the government in the form of costs of election and disruption to public business which invariably attend a recall election. For instance, in a recall petition submitted by the Division of Elections for review to the State Attorney General's Office, one of the grounds for recall alleged that the school board member had refused to swear to uphold the Constitution of the United States. 1991 Alaska Atty Gen. Op. (Inf.) 71. Even though the school district had "gratuitously" provided the Division of Elections with a signed and notarized written oath of office, the holding in *Meiners* that the voters should determine the truth or falsity of the allegations prevented the Division from striking the patently untrue allegation from the recall petition. *Id.* at n.3.

allegations as true, the charge on its face supports the conclusion that the official committed" a recallable offense.⁴¹

B. Factual Allegations Must Fairly Inform the Electorate of the Charges and Allow the Targeted Official a Reasonable Opportunity to Rebut the Charges

Meiners identified the purpose of the particularity requirement in the Title 29 recall procedures as being "to give the office holder the opportunity to defend his conduct in a rebuttal limited to 200 words."⁴² Other states have recognized the necessity of having articulated grounds for recall to provide both the public and the recall target notice of why the officer holder is sought to be removed.⁴³ Even in Washington, which is now at the legalistic end of the spectrum, a recall petition is not rejected for "a mere technical violation" of the particularity requirements so long as "the electorate has sufficient information to evaluate the charge and the elected official has sufficient notice to respond to the charge."⁴⁴ Unlike Washington law, the Title 15 recall provisions of Alaska law do not expressly require a statement of the date and location of each alleged act supporting recall.

The Director should not erect artificial technical hurdles by requiring an application for recall to contain detail beyond that necessary to inform the public of the charges and provide the recall target a fair opportunity to

⁴¹ *Matter of Recall of Wade*, 799 P.2d 1179, 1181 (Wash. 1990) (citations omitted).

⁴² 687 P.2d at 302.

⁴³ In *Unger v. Horn*, the Supreme Court of Kansas concluded that a petition seeking recall of a school board member on grounds that he violated open meeting laws by participating in unannounced private meetings failed to satisfy Kansas' particularity requirement because the general allegation that he had violated open meetings laws without details provided the board members no opportunity to refute the charge. 732 P.2d 1275, 1277, 1280-81 (Kan. 1987). In *State ex. rel. City Council of the City of Gladstone v. Yeaman*, the Missouri Court of Appeals ruled that a recall petition that merely repeated the three statutory grounds for recall, misconduct in office, failure to perform duties prescribed by law, or incompetence, in guiding city affairs was insufficient. 768 S.W.2d 103, 107 (Mo. App. 1988). Although Missouri has no statutory requirement for specificity, the court ruled that mere repetition of the statutory grounds for recall did not afford potential petition signers adequate reason to affix their signature or give the recall target a fair opportunity to respond. 768 S.W.2d at 107. Michigan requires the asserted basis for recall to be stated with "sufficient clarity to enable the officer whose recall is sought and the electors to identify the course of conduct that is the basis for the recall." *Dimas v. Macomb County Election Comm'n.*, 639 N.W.2d 850, 852 (Mich. App. 2002) appeal denied by *Dimas v. Macomb County Election Comm'n.*, 646 N.W. 2d 470 (Mich. 2002).

⁴⁴ *In re Recall of Kast*, 31 P.3d 677, 681 (Wash. 2001) (*en banc*).

respond. In this regard, we are mindful that only so much particularity can be reasonably expected in 200 words.⁴⁵

C. The Recall Application Must Be Considered Under the Doctrine of Substantial Compliance

Alaska Statute .45.550 provides that “[t]he director shall deny certification upon determining that the application is not *substantially* in the required form.”⁴⁶ In light of that language, we believe that the doctrine of substantial compliance should be applied during the review of the application for a petition to recall Senator Ogan. This requires that conduct, here the application, “which falls short of strict compliance with the statutory . . . requirements but which affords the public the same protection that strict compliance would offer” be found sufficient.⁴⁷

In determining whether the substantial compliance doctrine should be applied, we consider whether the obligation or conduct at issue is “mandatory or merely directory.” If the rule, here a statute, is mandatory, then strict compliance is required.⁴⁸ On the other hand, “if it is directory, substantial compliance is sufficient absent significant prejudice to the other party.”⁴⁹

The application of the doctrine of substantial compliance is consistent with *Meiners* and *von Stauffenberg*. In fact, it may be that substantial compliance is the mechanism by which the “middle ground” is achieved. One goal of the recall process is to not create “artificial technical hurdles” and provide access to the recall process to a broad spectrum of Alaskans.⁵⁰ At the same time, providing voters a fair summary of the recall allegations⁵¹ and giving “the office holder the opportunity to defend his conduct in a rebuttal limited to 200 words” are equally important goals.⁵² The focus of the Director’s

⁴⁵ AS 15.45.500(2).

⁴⁶ AS 15.45.550(1) (emphasis added)

⁴⁷ *Nenana City Sch. Dist. v. Coghill*, 898 P.2d 929, 933 (Alaska 1995)(quoting *Jones v. Short*, 696 P.2d 665, 667 (Alaska 1985).

⁴⁸ *Copper River Sch. Dist. v. State*, 702 P.2d 625, 627 (Alaska 1985).

⁴⁹ 702 P.2d at 627.

⁵⁰ *Meiners*, 687 P.2d at 296 (quoting *Boucher v. Engstrom*, 528 P.2d 456, 462 (Alaska 1974)); see also *von Stauffenberg*, 903 P.2d at 1058.

⁵¹ See, e.g., *Faipeas v. Municipality of Anchorage*, 860 P.2d 1214, 1219 n.8 (Alaska 1993) (Notwithstanding liberal construction of initiative laws, the people have a constitutional right to “a fair and accurate summary of issues on which they are being asked to express their will” and that this right extends to “petitions and elections”).

⁵² 687 P.2d at 302.

review, in this regard, should be whether these somewhat competing goals are met as opposed to a focus of a more technical or legalistic nature.

D. Allegations of Violation of Nonexistent Laws are Insufficient

In *Von Stauffenberg v. Committee for an Honest & Ethical School Board*,⁵³ the Alaska Supreme Court considered a recall application against school board members that identified the grounds for recall as being "misconduct" and "failure to perform prescribed duties."⁵⁴ The recall proponents alleged that the board members had entered executive session in violation of Alaska law to consider whether to retain an elementary school principal.⁵⁵ To determine whether the application was sufficient, the court accepted as true the factual allegations regarding the board meeting and evaluated whether, as a matter of law, the alleged acts constituted a violation of the Open Meetings Act. *Von Stauffenberg* held that an allegation of violation of a nonexistent law is insufficient.⁵⁶ Thus, "elected officials cannot be recalled for legally exercising discretion granted to them by law."⁵⁷ Applying that same reasoning to Title 15, when a recall application alleges conduct that violates a "law" but no law prohibits the conduct, the allegation is legally insufficient.⁵⁸

E. While the Recall Application Cannot Be Rewritten by the Director, Insufficient Severable Allegations Must Be Deleted

The Director may not permit insufficient allegations to be included in a recall petition.⁵⁹ The Alaska Supreme Court has noted the importance of the governmental screening function when it stated that failure to delete insufficient allegations "invites abuse" and "invites the drafting of recall petitions with little regard for the statutory grounds of recall."⁶⁰ *Meiners* interpreted former AS 29.26.210(1), "as prohibiting the director of elections from re-writing the

⁵³ 903 P.2d 1055 (Alaska 1995).

⁵⁴ 903 P.2d at 1057.

⁵⁵ 903 P.2d at 1057.

⁵⁶ 903 P.2d at 1060 n.13 citing *Meiners*, 687 P.2d at 301.

⁵⁷ 903 P.2d at 1060 n.14 citing *Chandler v. Otto*, 693 P.2d 71, 74 (Wash. 1984) (*en banc*).

⁵⁸ 903 P.2d at 1059-60 n.13. "Given the relevant exception to the Open Meetings Act, the grounds for recall allege a violation of totally nonexistent law. That is, there is no law which precludes public officials from discussing sensitive personnel matters in closed door executive sessions."

⁵⁹ *Meiners*, 687 P.2d at 301.

⁶⁰ *Meiners*, 687 P.2d at 302; see also *Faipeas v. Municipality of Anchorage*, 860 P.2d 1214, 1221 (Alaska 1993) (stating that "all matters . . . should be presented *clearly* and *honestly* to the people of Alaska . . . to guard against inadvertence by petition-signers and voters and to discourage stealth by initiative drafters and promoters . . .") (citations omitted)(emphasis added).

allegations in a recall petition in different language."⁶¹ *Meiners* also rejected the proposition that if any allegation supporting recall is sufficient the entire petition must go forward as a whole.⁶² These conclusions protect a recall target from having to use the limited rebuttal opportunity to respond to legally insufficient charges that may attract voters' attention.⁶³

Meiners also declined to adopt the position that an entire recall petition be rejected if any of the stated grounds are insufficient.⁶⁴ *Meiners* recognized that such a construction would frustrate the purposes of recall because recall proponents may be forced to bear the significant burden of gathering signatures a second time if any aspect of the grounds was found deficient.⁶⁵ Having identified those outcomes to be avoided, *Meiners* ruled that a certifying officer may "delete severable individual charges that do not come within the grounds specified by statute."⁶⁶ *Meiners* ruled, however, that "those charges which are sufficient to meet the statute must be set forth on the ballot in full, as contained in the petition, without revision."⁶⁷ *Meiners* observed that that approach would avoid the hazards of other approaches and would be fair to proponents of recall, the targeted officials, and voters.⁶⁸

The Alaska Supreme Court has employed similar reasoning to address presentation to the voters of a ballot initiative, portions of which were unconstitutional. In *McAlpine v. University of Alaska*, the Alaska Supreme Court discussed whether Alaska courts have the power to sever from an initiative not yet put to popular vote a "discrete constitutionally-impermissible

⁶¹ 687 P.2d at 302.

⁶² 687 P.2d at 302.

⁶³ 687 P.2d at 302.

⁶⁴ 687 P.2d at 302.

⁶⁵ 687 P.2d at 302-303.

⁶⁶ 687 P.2d at 303. Other states take a similar approach. *See, e.g., Hamlett v. Hubbard*, 416 S.E.2d 732, 733-34 (Ga. 1992) (directing that insufficient allegations in a recall petition be expunged or obliterated from the petition before it is submitted to the people); *Reynolds v. Figge*, 19 P.3d 193, 202 (Kan. App. 2001) (indicating that "it would serve little purpose for an official subject to recall to obtain a determination that one or more of the grounds for recall is sufficient, but yet allow those legally insufficient grounds to be posted at the polling places" and ruling "that the statement for recall posted at the polling places must contain only the legally sufficient grounds for recall"). *But see Garvin v. Jerome*, 757 So.2d 1190, 1192-94 (Fla. 2000) (describing recall as an "extraordinary proceeding with the burden on those seeking to overturn the regular elective process to base the petition on lawful grounds or face the invalidation of the proceedings" and holding that a recall petition in which four of the five included grounds "were legally insufficient could not properly form the basis for a recall election").

⁶⁷ 687 P.2d at 303.

⁶⁸ 687 P.2d at 303.

portion of a proposed bill and order the remainder to appear on the next ballot without the sponsors reinstating the certification and signature-gathering processes."⁶⁹ *McAlpine* observed that courts with "power to alter initiatives may frustrate the constitutionally-guaranteed right of the people to sponsor, subscribe to, vote on, and enact laws by initiative."⁷⁰ But *McAlpine* concluded that "circumspect judicial exercise of the power to sever impermissible portions of initiatives will promote, rather than frustrate, the important right of the people to enact laws by initiative."⁷¹ The court noted that invalidating an entire initiative "on grounds that one sentence of secondary importance is constitutionally invalid would be strong medicine" as it would force those supporting the initiative "to choose between abandoning their efforts altogether and submitting a new application and expending, for the second time, the significant time and effort required to generate public enthusiasm and gather the requisite number of signatures."⁷²

McAlpine discussed *Meiners* and emphasized *Meiners*' conclusion that "striking the entire petition rather than excising the invalid portion would place an unwarranted constriction on the rights of the people to express their will."⁷³ *McAlpine* concluded that a court's duty when conducting pre-election review of an initiative was similar to its duty when reviewing an already enacted law, such that a reviewing court should sever an impermissible portion of the proposed bill when:

(1) standing alone, the remainder of the proposed bill can be given legal effect; (2) deleting the impermissible portion would not substantially change the spirit of the measure; and (3) it is evident from the content of the measure and the circumstances surrounding its proposal that the sponsors and subscribers would prefer the measure to stand as altered, rather than to be invalidated in its entirety.^[74]

The protective considerations identified in *McAlpine* apply with equal measure to the certification of a recall application under Title 15. In fact, the third factor noted above becomes self effectuating in the context of a recall application. Recall sponsors can determine for themselves whether to

⁶⁹ 762 P.2d 81, 92 (Alaska 1988).

⁷⁰ 762 P.2d at 92.

⁷¹ 762 P.2d at 93.

⁷² 762 P.2d at 93.

⁷³ 762 P.2d at 94.

⁷⁴ 762 P.2d at 94-95 (footnotes omitted).

undertake the effort of circulating recall petitions if allegations in the application have been severed as insufficient.

That severable individual charges may be deleted from a recall petition does not mean that each element of a recall petition must be evaluated in isolation. Requiring that each factual allegation or paragraph of an application be evaluated in isolation would run counter to the principle that recall statutes are to be reviewed liberally to enable a broad spectrum of Alaskans to use the recall process without being tripped up by unnecessary legal technicalities or artificial hurdles.⁷⁵ It would be inappropriate to evaluate a recall application in such a manner that the certification of the application depended upon fortuities of phrasing, paragraph and structure of the statement of the grounds. In that regard, it is important to remember that the Title 15 recall statutes are skeletal and do not provide clear guidance regarding the methods by which sufficiency of the asserted grounds will be judged.

VI. How Should the Grounds for Recall Under Title 15 be Interpreted?

A. Lack of Definition and General Guidelines

The four statutory grounds for recall of state office holders are "lack of fitness," "incompetence," "neglect of duties," and "corruption."⁷⁶ The legislature, which is charged by the constitution to establish the grounds for recall, has not defined these four terms. Thus, Title 15 has the same "ambiguities" that exist in Title 29.⁷⁷

The paucity of information in the statutes establishing the grounds for recall leaves recall applicants and targeted officials guessing as to what interpretive mechanisms might be employed to define the grounds after the application has been filed. Others have used a variety of interpretive methods to grapple with the problem of fairly interpreting undefined terms in the context of the "middle ground" where recall is both for cause as well as a political tool⁷⁸

⁷⁵ 687 P.2d at 296.

⁷⁶ AS 15.45.510.

⁷⁷ Cf. *Meiners*, 687 P.2d at 296.

⁷⁸ See Letter from attorney Harold Brown to Charlotte Thickstun, Director, Division of Elections (August 24, 1992) (hereinafter "Brown letter") attached as **Exhibit 3**; *Coghill v Rollins, et al.*, No. 4FA-92-178 CI (Alaska Super., Sept. 14, 1993) (Memorandum decision) (hereinafter "Savell decision"), attached as **Exhibit 4**.

We interpret the grounds of recall in light of the following guidelines:

1. The grounds for recall should not be defined too restrictively. While grounds for recall must be specified, the *Meiners* court, in discussing the Title 29 grounds, contrasted Delegate White's comments at the Alaska Constitutional convention (urging that the people retain the right to determine the reasons for recall) with Delegate Hurley's comments (urging that the Legislature prescribe the grounds to avoid recalls for "petty grounds") and noted that the original statutory listing of grounds by the Legislature was quite broad - effectively tracking Delegate White's philosophy.⁷⁹ The court went on to note with approval that subsequent amendment of the statute, while appearing to be a limitation of grounds for recall, may have, instead, been a summary of existing grounds.⁸⁰ The court counseled that "it would be a mistake to read too much into the statute's history."⁸¹
2. The Alaska Supreme Court has said that "[i]n interpreting a statute or an ordinance, [the court's] goal is to give effect to the intent of the law making body with due regard for the meaning that the language in the provision conveys to others."⁸² A related principle is that "[i]n assessing statutory language, unless words have acquired a peculiar meaning, by virtue of statutory definition or judicial construction, they are to be construed in accordance with their common usage."⁸³
3. One could try to define the four statutory grounds for recall through reference to unrelated statutes. While this might be helpful, it is a problematic interpretive method because it involves relatively elaborate legal research.⁸⁴ Interpretation of the grounds

⁷⁹ *Meiners*, 687 P.2d at 295.

⁸⁰ 687 P.2d at 295.

⁸¹ 687 P.2d at 295.

⁸² *Marlow v. Municipality of Anchorage*, 889 P.2d 599, 602 (Alaska 1995) quoting *Foreman v. Anchorage Equal Rights Comm'n.*, 779 P.2d 1199, 1201 (Alaska 1989)(citing *State v. Alex*, 646 P.2d 203, 208-09 n.4 (Alaska 1982)).

⁸³ *Mueller v. BP Exploration (Alaska), Inc.*, 923 P.2d 783, 787 (Alaska 1996) quoting *Tesoro Alaska Petroleum Co. v. State*, 746 P.2d 896, 905 (Alaska 1987).

⁸⁴ Dozens of Alaska statutes use the terms "fitness" and "incompetence." Six Alaska statutes, other than AS 15.45.510, use "corruption": AS 09.43.120(a)(2) ("corruption in any of the arbitrators" is grounds for vacating an arbitration award); AS 15.20.540 ("corruption on the part of an election official sufficient to change the result of the election" is grounds for contesting an election result); AS 5.30.160 (listing findings supporting the Congressional Ballot

for recall based on such research might require detailed legal advice and thereby render recall inaccessible to a broad spectrum of Alaskans, a result to be avoided.⁸⁵ Interpretation through comparison to other statutes is also impossible for some of the listed grounds for recall. Each Alaska statute using the word "corruption," for instance, involves concerns about corruption or the appearance of corruption among public office holders, including legislators, but none defines corruption.

4. *Meiners* defined "failure to perform prescribed duties" by reference to the office holder's statutory duties broadly interpreted to include implicit related obligations.⁸⁶ In *Meiners*, the recall proponents alleged that the school board members had failed to adequately supervise and control the conduct of the superintendent.⁸⁷ *Meiners* analyzed the sufficiency of the allegations by referring to the statute establishing the duties of a regional school board, which included the obligation to "employ a chief school administrator,"⁸⁸ and the statute establishing the powers of a regional school board, which included the power to "appoint, compensate and otherwise control all school employees."⁸⁹ *Meiners* rejected the argument that "controlling" school employees, including the superintendent, was merely a discretionary function that the board may choose not to perform.⁹⁰ Thus, at least when statutory duties are involved, implicit related obligations must also be considered.

Access Limitation Act, including that close alignment of federal office holders with special interest groups providing campaign contributions creates corruption or the appearance of corruption, which reduces voter participation); AS 15.30.170(1) (listing purposes of the Congressional Ballot Access Limitation Act including to "promote, protect, and defend the compelling interest of the citizens of this state in preventing corruption and the appearance of corruption among the federal legislative representatives of this state by limiting the number of terms in which any Senator or Representative may hold office[.]"); AS 24.50.010(6) (legislative findings for legislative ethics statutes include that "No code of conduct, however comprehensive, can anticipate all situations in which violations may occur nor can it prescribe behaviors that are appropriate to every situation; in addition, laws and regulations regarding ethical responsibilities cannot legislate morality, eradicate corruption, or eliminate bad judgment[.]")(emphasis added); AS 39.52.010(6) (recognizing the same in legislative findings regarding the executive branch ethics act).

⁸⁵ *Meiners*, 687 P.2d at 295-96.

⁸⁶ 687 P.2d at 299.

⁸⁷ 687 P.2d at 291-92.

⁸⁸ 687 P.2d at 299 & n.15 (quoting AS 14.08.111).

⁸⁹ 687 P.2d at 299 & n.16 (quoting AS 14.08.101).

⁹⁰ 687 P.2d at 300.

B. Interpreting the Statutory Grounds for Recall in Title 15

1. Corruption

No Alaska Statute defines corruption. No Alaska Supreme Court case defines "corruption." In a 1992 legal opinion, Harold Brown concluded that "corruption implies an intentional evil or wrongful act."⁹¹ Brown's definition is broader than the definitions of corruption in legal and nonlegal dictionaries. Black's Law Dictionary defines corruption as follow:

An act done with intent to give some advantage inconsistent with official duty and the rights of others. The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.^[92]

The definition of corruption in Black's Law Dictionary includes a cross-reference to the term "bribe," which it defines as,

Any money, goods, a right in action, property, thing of value, or any preferment, advantage, privilege, or emolument, or any promise or undertaking to give any, asked, given, or accepted, with the corrupt intent to induce or influence action, vote, or opinion of a person in any public or official capacity.^[93]

Nonlegal dictionaries have similar definitions. For example, The New Oxford American Dictionary defines corruption as "dishonest or fraudulent conduct by those in power, typically involving bribery."⁹⁴ The definitions of corruption in Merriam-Webster's Collegiate Dictionary include "impairment of integrity, virtue, or moral principle," or an "inducement to wrong by improper or unlawful means (as bribery)."⁹⁵

The problem of elected officials being perceived as being influenced in the execution of their duties by conflicts of interest has been recognized by the

⁹¹ See Brown Letter, **Exhibit 3** at 9-10.

⁹² Black's Law Dictionary 345 (6th ed. 1990).

⁹³ Black's Law Dictionary 191 (6th ed. 1990).

⁹⁴ The New Oxford American Dictionary 386 (2001).

⁹⁵ Merriam-Webster's Collegiate Dictionary 408 (Deluxe ed. 1998).

Alaska legislature and is addressed in the Legislative Ethics Act ("LEA"),⁹⁶ which establishes standards of conduct for legislators. As an introduction to those standards, the legislature found that "A fair and open government requires of legislators . . . conduct the public's business in a manner that preserves the integrity of a legislative process and avoids conflicts of interest or even the appearance of conflicts of interest" and that "A part time citizen legislature implies that legislators are expected and permitted to earn outside income, and that the rules governing legislators' conduct during and after leaving public service, must be clear, fair, and as complete as possible."⁹⁷

The statutory standards of conduct for legislators "specifically supersede the provisions of the common law relating to legislative conflict of interest that may apply to a member of the legislature."⁹⁸ These provisions, however, do "not exempt a person from applicable provisions of another law unless the law is expressly superceded or incompatibly inconsistent with the specific provisions of the LEA."⁹⁹ Because the statutory term "corruption," at its very essence, reflects a particular type of conflict of interest, "corruption" in Title 15 should not be interpreted in a way that is inconsistent with the LEA.

Based on the above, we interpret "corruption" in the context of recall of a legislator as (1) intentional conduct, (2) motivated by private self-interest, (3) in the performance of work as a legislator, (4) that violates one or more provisions of the LEA or other statutes intended to guard against corruption.¹⁰⁰

2. Neglect of Duties

Neglect of duties as a statutory ground for recall of a state public official has not been expressly construed in any Alaska case with precedential value in Alaska.¹⁰¹ Harold Brown interpreted "neglect of duties" as meaning refusal or unwillingness without sufficient excuse to perform one's duties.¹⁰² Brown did not discuss how an office holder's duties should be defined.

⁹⁶ Alaska Statutes Title 24, Chapter 60.

⁹⁷ AS 24.60.010(2) and (4).

⁹⁸ AS 24.60.020(b).

⁹⁹ AS 24.60.020(b).

¹⁰⁰ See, e.g., AS 11.41.520 (establishing the crime of extortion); AS 11.41.530 (establishing the crime of coercion).

¹⁰¹ Judge Savell limited his analysis to allegations of incompetence and unfitness and did not define neglect of duties. See Savell decision, **Exhibit 4**.

¹⁰² See Brown letter, **Exhibit 3** at 9.

Meiners addressed the sufficiency of allegations of "failure to perform prescribed duties,"¹⁰³ which is a statutory ground for recall under Title 29 that may be similar to "neglect of duties." The difference in wording of the two recall statutes may suggest that those terms should be interpreted as having distinct meanings. We believe the terms in the two recall statutes are sufficiently similar that it is appropriate to follow the *Meiners* approach in evaluating the sufficiency of allegations of neglect of duty. As demonstrated by the discussion of the alleged failure to adequately supervise a school administrator, *Meiners* defines duties for the purposes of recall as encompassing the express statutory obligations associated with the office and related obligations implicitly included as corollaries to the office holder's express duties.¹⁰⁴

We, therefore, interpret "neglect of duties" under Title 15 as the nonperformance of a duty of office established by applicable law. An "applicable law" includes implicit related obligations. While "neglect of duties" may overlap with "corruption" to the extent that an allegation describes conduct violative of the LEA, neglect of duties also encompasses duties outside of and in addition to the LEA.

3. Incompetence

In 1992, Harold Brown concluded that "incompetence" means a lack of physical or mental capacity to perform the duties of the office.¹⁰⁵ In 1993, when ruling on the sufficiency of an application for a petition to recall Lieutenant Governor Coghill, Superior Court Judge Richard Savell ruled that "incompetence for the purposes of recall must relate to a lack of ability to perform the official's required duties" without including any requirement that the lack of ability stem from mental or physical disability.¹⁰⁶ The definitions of incompetence in nonlegal dictionaries vary in their levels of generality and detail, but do not include the limitation that the inability of an incompetent person to perform stems from a physical or mental disability.¹⁰⁷

¹⁰³ Cf. *Meiners*, 687 P.2d at 299 n.14 (discussing failure to perform prescribed duties).

¹⁰⁴ 687 P.2d at 300.

¹⁰⁵ Brown letter, **Exhibit 3** at 9 citing *Cole v. Webster*, 692 P.2d 799, 804 (Wash. 1984) and 1981 Op. Kansas Atty. Gen. (Jan. 20, No. 1 82-11).

¹⁰⁶ Savell decision, **Exhibit 4** at 21.

¹⁰⁷ The New Oxford American Dictionary defines "incompetent" as "not having or showing the necessary skills to do something successfully," and notes that in the field of law "incompetent" means "not qualified to act in a particular capacity." The New Oxford American Dictionary 860 (2001). Merriam-Webster's Collegiate Dictionary defines "incompetent" as "not legally qualified[;] inadequate or unsuitable for a particular purpose[; and] lacking the qualities need for effective action [,] unable to function properly." Merriam-Webster's Collegiate Dictionary 928 (Deluxe ed. 1998).

We find Judge Savell's less restrictive definition to be closer to a common understanding of incompetence. We interpret "incompetence" for the purposes of recall under Title 15 as the inability to perform the duties of office regardless of the cause.

In keeping with the principle that an office holder cannot be recalled for discretionary decisions, we bound our definition of "incompetence" to exclude claims that a lawmaker is incompetent by reason of being insufficiently informed about the subjects and policies before the legislature. We would not find sufficient allegations that a policy maker was incompetent because he or she declined to read briefing or a position paper on a given subject. We also would not require lawmakers or executive officials with broad responsibilities, such as the Governor, to have personally read each title and chapter of the Alaska Statutes.¹⁰⁸

4. Lack of Fitness

The statutes governing recall under Title 15 do not define "lack of fitness." Brown concluded that a "lack of fitness" implied conduct that was unsuitable, inappropriate or improper.¹⁰⁹ Brown deemed insufficient the allegation that Governor Hickel's "unfitness was demonstrated by lapses of memory and publicly admitted mistakes which far exceed the normal bounds of sound judgment" because the allegation did not describe improper conduct and lacked necessary detail.¹¹⁰ We find Brown's working definition of fitness to be consistent with the common understanding of lack of fitness as unsuitability.¹¹¹ Standing alone, the common understanding of lack of fitness as unsuitability might bring Alaska too close to a political model of recall. That result can be avoided, however, by the requirement of particularity and the limitation that the asserted grounds for recall must relate to the recall target's conduct in office.¹¹² Those limiting considerations prevent lack of fitness from being used as a catch-all allowing a minority of the electorate to produce political instability by attempting recall without identifiable cause.

¹⁰⁸ Cf. Savell decision, **Exhibit 4**.

¹⁰⁹ Brown letter, **Exhibit 3** at 9 citing *CAPS v. Alvarado*, 832 P.2d 790 (N.M. 1992).

¹¹⁰ **Exhibit 3** at 10-11.

¹¹¹ Cf. *The New Oxford American Dictionary* 640 (2001) (defining "fitness" as "the quality of being suitable to fill a particular role or task").

¹¹² Even states taking a more political view of recall require that the asserted cause for recall be connected with the recall target's conduct in office. See, e.g., *Westpy v. Burnette*, 197 A.2d 400, 403-04 (N.J. Super. App. Div. 1964) *judgment aff'd by Westpy v. Burnette*, 197 A.2d 857 (N.J. 1964).

In our view, allegations need not demonstrate a violation of the LEA to sufficiently state "lack of fitness" as a ground for recall under Title 15. Among the findings in the introduction to the LEA are:

(1) high moral and ethical standards among public servants in the legislative branch of government are essential to assure the trust, respect, and confidence of the people of this state;

(2) a fair and open government requires that legislators and legislative employees conduct the public's business in a manner that preserves the integrity of the legislative process and avoids conflicts of interest or even appearances of conflicts of interest;

....
(6) no code of conduct, however comprehensive, can anticipate all situations in which violations may occur nor can it prescribe behaviors that are appropriate to every situation; in addition, laws and regulations regarding ethical responsibilities cannot legislate morality, eradicate corruption, or eliminate bad judgment[.]¹¹³

As noted above, the provisions of the LEA supersede provisions of the common law related to conflict of interest, but do not exempt legislators from applicable provisions of another law unless that law is expressly superseded or incompatibly inconsistent with the LEA.¹¹⁴ An interpretation of "lack of fitness" that treats the standards of conduct of the LEA as behavioral floors, is not "incompatibly inconsistent" with the LEA and is, in fact, wholly consistent with the legislative findings that the LEA does not anticipate all possible violations and cannot draw statutory lines prohibiting all conduct which is not acceptable.

We interpret "lack of fitness" under Title 15 as referring to conduct in office showing the office holder to be unsuitable through factual detail sufficient to enable the public to understand the charge and the recall target to respond meaningfully.

¹¹³ AS 24.60.010.

¹¹⁴ AS 24.60.020(b).

VII. Analysis of the Ogan Recall Application

A. Factual Particularity

With regard to the application for a petition to recall Senator Ogan, we find that the alleged grounds for recall relate to one alleged event: Senator Ogan's alleged promotion of Evergreen Resources' interests through HB 69. We conclude that individual factual allegations that are related to a single claim should be read together.¹¹⁵ In other words, the application to recall Senator Ogan should be read as a whole.

An argument could be made that to evaluate a recall application, the stated grounds should be parsed so each factual assertion is compared in isolation to the statutory grounds for recall under Title 15. We advise against taking that approach for somewhat interrelated reasons. First, in discussing Title 29 recalls, the Alaska Supreme Court has indicated that the recall processes and statutes are to be reviewed liberally so individual Alaskans can use the recall process without being tripped up by unnecessary legal technicalities or artificial hurdles.¹¹⁶ In general, considering each allegation or paragraph of an application in isolation would be counter to that principal because certification of an application would depend upon fortuities of phrasing, paragraphing and structure of the statement of the grounds.

In addition, given the lack of statutory guidance in Title 15, recall sponsors ought not be penalized for either mischaracterizing one paragraph as one ground of recall or alleging that a particular fact alleged constitutes all or more than one ground for recall. To conclude otherwise would, through the ambiguities of the statutes, put the recall process into a legalistic straight jacket. Finally, the allegations in the specific application for recall of Senator Ogan all relate to Senator Ogan's alleged promotion of Evergreen Resources and HB 69. Because the application states facts related to a single event, separating those facts for consideration in isolation would be inappropriate.

We find, reading the application as a whole, that the application for a petition to recall Senator Ogan is sufficiently particular to enable those who may sign a recall petition to understand the nature of the alleged wrongdoing and to permit Senator Ogan to meaningfully respond in a rebuttal limited to

¹¹⁵ Cf. Savell decision, **Exhibit 4** at 22-23 (concluding that the allegation that Coghill had made contradictory public statements regarding his involvement and knowledge of the recall process should be read together with the claim that Coghill was incompetent because he did not know the State's election laws).

¹¹⁶ *Meiners*, 687 P.2d at 296.

200 words. The application, therefore, meets the goals of the statute as discussed *supra* in Section IV above. Stripped of argument, nonparticularized facts, and legal conclusions, the application for the recall of Senator Scott Ogan contains the following factual allegations:

1. Ogan was employed by Evergreen Resources.¹¹⁷
2. Ogan was active as an Evergreen and coal bed methane industry promoter.¹¹⁸
3. Ogan actively promoted legislation directly benefiting business interests of Evergreen Resources.¹¹⁹
4. Ogan promoted Evergreen in legislative committee.¹²⁰
5. Ogan was listed as Evergreen's corporate contact in legislative material submitted to the House Oil and Gas Committee hearings on HB 69.¹²¹
6. HB 69 reduced local control over coal bed methane development, which directly benefited Ogan's employer Evergreen.¹²²
7. Ogan did not abstain from voting for HB 69.¹²³
8. Ogan's legislative activities enabled Evergreen to acquire coal bed methane leases.¹²⁴
9. Ogan knew that his constituents would be deprived of actual notice of the leases.¹²⁵
10. Ogan did not protect the private property and due process rights of his constituents.¹²⁶

¹¹⁷ Exhibit 2 at ¶ 1.

¹¹⁸ Exhibit 2 at ¶ 5.

¹¹⁹ Exhibit 2 at ¶ 1.

¹²⁰ Exhibit 2 at ¶ 3.

¹²¹ Exhibit 2 at ¶ 3.

¹²² Exhibit 2 at ¶ 4.

¹²³ Exhibit 2 at ¶ 4.

¹²⁴ Exhibit 2 at ¶ 2.

¹²⁵ Exhibit 2 at ¶ 2.

¹²⁶ Exhibit 2 at ¶ 1.

Taking all the above factual allegations as true and reading them together, the application describes a course of conduct whereby an elected official took active steps to promote legislation benefiting his employer, including promoting the employer in legislative committee proceedings and voting in favor of that legislation knowing that it would benefit his employer at the expense of his constituents. The application as a whole alleges conduct in sufficient detail to enable voters and petition signatories to understand the nature of the alleged wrongdoing and to permit a meaningful response from Senator Ogan. We therefore conclude the particularity requirement of AS 15.45.500 is satisfied.

We did not include in the above list of facts the allegation that Senator Ogan misstated important facts on March 28, 2003.¹²⁷ The application does not indicate what facts Senator Ogan is alleged to have misstated on March 28, 2003, why the facts were important, or how the alleged misstatements relate to the alleged conflict of interest. The absence of such particulars deprives Senator Ogan of the opportunity to meaningfully respond to the allegation that he misstated important facts. Because the allegation that Senator Ogan misstated facts lacks detail necessary to satisfy the purposes of the particularity requirement, it should be stricken.

B. Legal Sufficiency

Having concluded that the allegations are stated with sufficient particularity, we considered whether the facts alleged in the application for a petition to recall Senator Ogan amount to a prima facie showing of any of the four statutory grounds for recall under Title 15, each of which has been asserted by the applicants. A related question is what significance, if any, derives from the fact that the applicants have asserted that the same course of conduct demonstrates all four of the statutory grounds for recall under Title 15. Given the lack of definition of each of the four asserted grounds for recall, their potential overlap, and the fact that recall applicants may obtain clarification on that point only after composing an application and gathering the preliminary signatures necessary for the initial filing, less weight should be given to the precise phrasing of the application and characterization of the facts as applying to each of the four grounds for recall. In order to avoid erecting artificial technical hurdles, we recommend comparing the particular factual allegations as a group to each of the four statutory grounds for recall.

¹²⁷ Exhibit 2 at ¶ 3.

1. Neglect of Duties

The application alleges facts that constitute "neglect of duties" as a ground for recall. We have interpreted "neglect of duties" as meaning nonperformance of a duty of office established by applicable law. The precise duties of a legislator are not as clearly defined as the duties for executive branch officials such as the Lieutenant Governor, but even broadly defined, the duties of legislators do not include any obligation to refrain from supporting legislation that alters the notice procedures for matters such as mineral leasing. In the absence of information about a conflict of interest, the assertion that a legislator violated his duties by supporting legislation that enabled such leases to be obtained, is little more than criticism of a policy decision. The duties of an individual legislator such as Ogan do not differ from those of any other legislator, and the legislative body is not prohibited from passing such legislation merely because it may be susceptible to constitutional challenge. To the extent that the application alleges that Senator Ogan neglected his duties by working to pass legislation changing the lease notice standards, the allegation is insufficient. The assertions that "neglect of duties" include the allegations that Senator Ogan promoted legislation "instead of protecting the private property and due process rights of his constituents" and that Senator Ogan's constituents were deprived of their constitutional right of due process should be stricken because, as noted above, neglect of duty cannot be interpreted to include support for legislation that may be subject to constitutional challenge.¹²⁸

The application also asserts that Senator Ogan neglected his duties by failing to recognize an obvious conflict of interest. With respect to conflicts of interest, a legislator's legal obligation is to refrain from taking action in violation of the statutory standards of conduct set forth in the LEA. Whether the allegations suggest a violation of those standards of conduct is discussed below under the rubric of corruption. In this respect, the statutory ground "neglect of duties" overlaps with the ground "corruption."

2. Corruption

The application asserts that Senator Ogan should be recalled due to corruption. We have interpreted "corruption" as a ground for recall under Title 15 as intentional conduct in the performance of work as a legislator motivated by private interests that violates the LEA. Among the provisions in

¹²⁸ The grounds for recall with redline changes recommended in this opinion are attached as Exhibit 5.

the LEA is a prohibition on using public funds for a nonlegislative purpose, or for the private benefit of the legislator or another person.¹²⁹ The statutory standard of conduct for legislators also provide that

Unless required by the Uniform Rules of the Alaska State Legislature, a legislator may not vote on a question if the legislator has an *equity* or ownership interest in a business, investment, real property, lease, or other enterprise if the enterprise is substantial and the effect on that interest of the action to be voted on is greater than the effect on a substantial class of persons to which the legislator belongs as a member of a profession, occupation, industry or region.¹³⁰

Under AS 24.60.100, a legislator "may not represent another person for compensation before an agency, committee, or other entity at the legislative branch."

Read together, the allegations in the application for a petition to recall Senator Ogan allege that Senator Ogan as an employee of Evergreen Resources, promoted Evergreen before at least one legislative committee, supported HB 69 to benefit his employer to the detriment of his constituents and later voted for HB 69. The activity described in the application does not demonstrate a violation of the prohibition on voting set forth in AS 24.60.030 insofar as Senator Ogan is not alleged to have any equity or ownership interest in Evergreen. The LEA does not expressly prohibit voting on legislation that would benefit one's employer. Nor do the allegations indicate that Senator Ogan used any public funds for the private benefit of himself or Evergreen or any other person.

The factual allegations in the application for a petition to recall Senator Ogan do, however, describe a violation of AS 24.60.100, which prohibits legislators from representing another person for compensation before a committee of the legislative branch. The application includes the allegation that Senator Ogan promoted his employer Evergreen in legislative committee and was listed as Evergreen's corporate contact in legislative materials submitted to the House Oil and Gas Committee hearing on HB 69. The application does not expressly assert that Senator Ogan intended a violation of the legislative standards of conduct, or that he engaged in that representation of Evergreen

¹²⁹ AS 24.60.030(2).

¹³⁰ AS 24.60.030(g) (emphasis added).

for the purpose of benefiting himself, but it provides sufficient detail to allege a violation of AS 24.60.100 which, per our interpretation, amounts to "corruption." This allegation also constitutes an allegation of "neglect of duty" insofar as the two grounds overlap on violations of the LEA.

3. Lack of Fitness

The application states that Senator Ogan's conflict of interest between his legislative duties and his activities as a promoter for Evergreen and the coal bed methane industry demonstrate an inability to recognize an obvious conflict showing Senator Ogan's lack of fitness for his office. Like Brown, we have interpreted "lack of fitness" as meaning unsuitability demonstrated by specific facts related to a recall target's conduct in office. Read together, the factual allegations in the application for a petition to recall Senator Ogan sufficiently state lack of fitness as a ground for his recall from office. The asserted grounds, taken as true, describe a specific alleged conflict of interest and explain what basis there is for believing that Senator Ogan's performance of his functions as a legislator have been colored by concern for the private interests of his alleged employer, Evergreen, at the expense of his broader policy making obligations. By providing a specific example of alleged conduct whereby Senator Ogan's performance of his legislative duties is said to have been compromised, the application adequately states grounds by which the electorate could conclude that Senator Ogan is unsuitable for his position as a legislator. In essence, and in this application, "lack of fitness" encompasses the claim that Senator Ogan's conduct created an "appearance[s] of conflict[s] of interest"¹³¹ which, while not specifically violating the LEA, has made him unfit for office.

4. Incompetence

The application for a petition to recall Senator Ogan also asserts that Senator Ogan's alleged conflict of interest demonstrates a failure in ethical judgment that shows incompetence. However, the specific factual allegations contained in the application do not demonstrate that Senator Ogan is unable to perform the duties of his office. The application therefore does not state incompetence as a proper ground for recall.

VIII. **Conclusion**

For the reasons stated above, we recommend that you certify the application for a petition to recall Senator Ogan. The application was timely

¹³¹ AS 24.60.010(2).

Laura A. Glaiser
Director, Division of Elections
April 8, 2004
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filed, names a person subject to recall, and is supported by a sufficient number of qualified subscribers. The application is substantially in the required form, but its grounds include one factual allegation that is insufficient to meet the purposes of the particularity requirement of AS 15.45.500(2). The application also includes unsupported legal assertions and conclusions that should be stricken. Attached as **Exhibit 5** is a statement of the grounds showing which portions have been deleted. We recommend that you use the grounds as set forth in **Exhibit 5**, rather than as submitted by the applicants, to prepare a recall petition in accordance with AS 15.45.560.

If you have any questions, please contact me.

Sincerely,

BANKSTON, GRONNING, O'HARA,
SEDOR, MILLS, GIVENS & HEAPHEY, P.C.



John M. Sedor

JMS/LEF/sl
Enclosure
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HB 438 Definitions

Corruption:

HB 438 – means an act done by a person who is subject to recall under AS 15.45.470 with an intent to give some advantage inconsistent with official duty and the rights of others.

Black's - An act done with intent to give some advantage inconsistent with official duty and the rights of others. The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or another person, contrary to duty and the rights of others.

Words and Phrases – The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or another person, contrary to duty and the rights of others. *State v. Barnett, Okl. Cr. App., 69 P.2d 77, 78.*

is an act of an official or fiduciary person who wrongfully acts contrary to duty and to rights of others and its effect vitiates the basic integrity and purity negating that which is vital to the due course of justice. *U.S. ex rel. Montgomery v. Ragen, D.C. Ill., 86 F. Supp. 382, 390.*

Incompetence:

HB 438 – means substantial inability to perform the duties of office.

Attorney Harold Brown in his August 24, 1992 letter to Charlotte Thickstun, Dir., Division of Elections concluded that "incompetence" means a lack of physical or mental capacity to perform the duties of office.

Judge Richard Savell in ruling on the sufficiency of an application for a petition to recall Lt. Governor Coghill ruled that "incompetence for the purposes of recall must relate to a lack of ability to perform the official's required duties" without including any requirement that the lack of ability stem from mental or physical disability.

Black's – Lack of ability, knowledge, legal qualification, or fitness to discharge the required duty of professional obligation. A relative term, which may be, employed as meaning disqualification, inability or incapacity and it can refer to lack of legal qualifications or fitness to discharge the required duty and to show want of physical or intellectual or moral fitness.

Words and Phrases - the lack of ability or fitness to discharge the required duty. *Hatfield v. New Mexico State Bd. Of Registration for Professional Engineers and Land Surveyors, 290 P.2d 1077, 1080, 60 N.M. 242.*

"Incompetency" as grounds for removal of public officer, has reference to any physical, moral, or intellectual quality, lack of which incapacitates officer to perform his duties, and criticism of a public official does not constitute "incompetency". *Laws 1921, c. 669 §30. Sausbier v. Wheeler, 299 N.Y.S. 466, 473, 252 App.Div. 267.*

"Incompetency" as ground for suspension and removal of officer, refers to any physical, moral, or intellectual quality, lack of which incapacitates one to perform duties of his office. "Incompetency" of officer, as grounds for suspension and removal from office under F.S.A. Const. Art, 4 § 15, may arise from gross ignorance of official duties or gross carelessness in the discharge of them, or it may arise from lack of judgment and discretion, or from serious physical or mental defect not present at the time of election, although not all physical and mental defects so arising would give ground for suspension. *State ex rel. Hardie v. Coleman, 155 So. 129, 155 Fla. 119, 92 A.L.R. 988.*

Means gross ignorance of official duties or gross carelessness in the discharge of them, or an officer may be found to be incompetent when, by reason of some serious physical or mental defect, not existing at the time of his election, he has become unfit or unable to discharge promptly and properly the duties of his office. *State ex rel. DeBellvue v. Ledoux, La.App., 3 So. 188, 191, 192.*

Lack of fitness

HB 438 – means the existence of long-term physical or mental disability that seriously impairs the official's ability to perform the duties of the office.

Attorney Harold Brown in his August 24, 1992 letter to Charlotte Thickstun, Dir., Division of Elections concluded that "lack of fitness" implied conduct that was unsuitable, inappropriate or improper.

Attorney John M. Sedor in his April 8, 2004 letter to Laura Glaiser, Director, Division of Elections defined "lack of fitness" under Title 15 as referring to conduct in office showing the office holder to be unsuitable through factual detail sufficient to enable the public to understand the charge and the recall target to respond meaningfully.

Black's - not defined

Words and Phrases – not defined

Neglect of Duties

HB 438 – failure to perform a duty of office established by law.

Attorney Harold Brown in his August 24, 1992 letter to Charlotte Thickstun, Dir., Division of Elections interpreted "neglect of duties" as meaningful refusal or unwillingness without sufficient excuse to perform one's duties.

Attorney John M. Sedor in his April 8, 2004 letter to Laura Glaiser, Director, Division of Elections interpreted "neglect of duties" under Title 15 as the nonperformance of a duty of office established by applicable law. An "applicable law" includes implicit related obligations.

Black's – not defined

Words and Phrases – refers to neglect or failure of officer, to do and perform some duty imposed by virtue of his office or required by law. Fla, Const. Art. 4 § 15. – *State ex rel. Hardie v. Coleman*, 155 So. 129, 155 Fla. 119, 92 A.L.R. 988- *Offic 66*.

l in the preceding general election in the state or in the senate or house district sought to be recalled. (§ 9.74 ch 83 SLA 1960; am § 185 ch 100 SLA ch 21 SLA 2000)

Amendments. — The 2000 amendment, in the introductory language and "house district" for "electoral district" in paragraph (6).

10. Grounds for recall. The grounds for recall are (1) lack of fitness, (2) neglect of duties, or (3) neglect of duties, or (4) corruption. (§ 9.75 ch 83 SLA 1960)

20. Manner of notice. Notice on all matters pertaining to the application may be served on any member of the recall committee in person or by mail to a committee member as indicated on the application. (§ 9.76 ch 83 SLA 1960)

30. Notice of the number of voters. The director, upon request, shall advise the recall committee of the official number of persons who voted in the preceding general election in the state or in the senate or house district of the official to be recalled. (§ 9.77 ch 83 SLA 1960; am § 186 ch 100 SLA 1980; am § 60 ch 21 SLA 2000)

Amendments. — The 2000 amendment, effective July 1, 2000, substituted "house district" for "electoral district."

40. Review of application for certification. The director shall review the application and shall either certify it or notify the recall committee of the grounds of denial. (§ 9.78 ch 83 SLA 1960; am § 187 ch 100 SLA 1980)

50. Bases of denial of certification. The director shall deny certification if the application is not substantially in the required form; if the application was filed during the first 120 days of the term of office of the official or within less than 180 days of the termination of the term of office of any official named in the application; if the official is not subject to recall; or if there is an insufficient number of qualified subscribers. (§ 9.79 ch 83 SLA 1960; am § 188 ch 100 SLA 1980)

60. Preparation of petition. Upon certifying the application, the director shall describe the form of, and prepare, a petition containing (1) the name and office of the official to be recalled, (2) the statement of the grounds for recall included in the application, (3) the statement of warning required in AS 15.45.570, (4) sufficient space for signatures and addresses, and (5) other specifications prescribed by the director to assure proper filing and control. Petitions, for purposes of circulation, shall be prepared by the director in a number reasonably calculated to allow full circulation throughout the state or house district of the official sought to be recalled. The

own to the petition, or who knowingly signs more than once for the same proposition at one election, or who signs the petition while knowingly not a qualified voter, is guilty of a class B misdemeanor. (§ 9.81 ch 83 SLA 1960; am § 190 ch 100 SLA 1980)

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Sec. 15.45.680. Circulation. The petitions may be circulated only in person throughout the state or senate or house district represented by the official sought to be recalled. (§ 9.82 ch 83 SLA 1960; am § 62 ch 21 SLA 2000; am § 69 ch 82 SLA 2000)

Effect of amendments. — The first 2000 amendment, effective April 28, 2000, substituted "house district" for "election district." The second 2000 amendment, effective July 1, 2000, deleted "only by a sponsor and" following "circulated" and substituted "house district" for "election district."

Sec. 15.45.590. Manner of signing and withdrawing name from petition. Any qualified voter may subscribe to the petition by signing the voter's name and address. A person who has signed the petition may withdraw the person's name only by giving written notice to the director before the date the petition is filed. (§ 9.83 ch 83 SLA 1960; am § 191 ch 100 SLA 1980)

Sec. 15.45.600. Certification of circulator. Before being filed, each petition shall be certified by an affidavit by the person who personally circulated the petition. The affidavit shall state in substance that (1) the person signing the affidavit meets the residency, age, and citizenship qualifications of AS 15.05.010, (2) the person is the only circulator of that petition or copy, (3) the signatures were made in the circulator's actual presence, and (4) to the best of the circulator's knowledge, the signatures are those of the persons whose names they purport to be. In determining the sufficiency of the petition, the director may not count subscriptions on petitions not properly certified. (§ 9.84 ch 83 SLA 1960; am § 192 ch 100 SLA 1980; am § 70 ch 82 SLA 2000)

Effect of amendments. — The 2000 amendment, effective July 1, 2000, substituted "person" for "sponsor" in the first sentence, and in the second sentence substituted "meets the residency, age, and citizenship qualifications of AS 15.05.010" for "is a sponsor" and "circulator's" for "sponsor's" in two places.

Sec. 15.45.610. Filing of petition. A petition may not be filed within less than 180 days of the termination of the term of office of a state public official subject to recall. The sponsor may file the petition only if signed by qualified voters equal in number to 25 percent of those who voted in the preceding general election in the state or in the senate or house district of the official sought to be recalled. (§ 9.85 ch 83 SLA 1960; am § 63 ch 21 SLA 2000)

Effect of amendments. — The 2000 amendment, effective April 28, 2000, substituted "house district" for "election district" in the second sentence.

Sec. 15.45.620. Review of petition. Within 30 days of the date of filing, the director shall review the petition and shall notify the recall committee and the person subject to recall whether the petition was properly or improperly filed. (§ 9.86 ch 83 SLA 1960; am § 193 ch 100 SLA 1980)

zanship night schools established; however, control of the federal of Indian Affairs; il service area in the reservation, and that portion of those grade of a single regional

school district or a 3 ch 98 SLA 1966; am 32 ch 124 SLA 1975)

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Title 15. Elections.

Chapter

- 05. Qualification of Voters (§§ 15.05.010 — 15.05.030)
- 07. Registration of Voters (§§ 15.07.010 — 15.07.200)
- 10. Election Districts, Election Officials, and Redistricting (§§ 15.10.010 — 15.10.300)
- 13. State Election Campaigns (§§ 15.13.010 — 15.13.400)
- 15. Elections and Ballots (§§ 15.15.010 — 15.15.480)
- 20. Special Procedures for Elections (§§ 15.20.010 — 15.20.900)
- 25. Nomination of Candidates (§§ 15.25.010 — 15.25.200)
- 30. National Elections (§§ 15.30.010 — 15.30.190)
- 35. State Elections (§§ 15.35.010 — 15.35.130)
- 40. Special Elections and Appointments (§§ 15.40.140 — 15.40.470)
- 45. Initiative, Referendum, and Recall (§§ 15.45.010 — 15.45.720)
- 50. Constitutional Amendments and Conventions (§§ 15.50.010 — 15.50.110)
- 56. Election Offenses, Corrupt Practices, and Penalties (§§ 15.56.012 — 15.56.199)
- 58. Election Pamphlet (§§ 15.58.010 — 15.58.090)
- 60. General Provisions (§§ 15.60.005 — 15.60.020)

Revisor's notes. — The provisions of this title were redrafted in 1988 to remove personal pronouns pursuant to § 4, ch. 58, SLA 1982, and in 1988 and 2000 to make other minor word changes.

In 1971 "secretary of state" was changed to "lieutenant governor" throughout the title in conformity with the 1970 Alaska constitutional amendment (SJR

2) changing the designation of that office.

Administrative Code. — For elections, see 6 AAC, part 1.

Legislative history reports. — For governor's transmittal letter for ch. 113, SLA 2003 (House Bill 266), see 2003 House Journal 965 - 969.

Chapter 05. Qualification of Voters.

Section

- 10. Voter qualification
- 11. Qualifications of overseas voters
- 12. Voter qualification for presidential election

Section

- 14. Procedures in presidential elections
- 20. Rules for determining residence of voter
- 30. Loss and restoration of voting rights

Collateral references. — 25 Am. Jur. 2d, Elections, § 1 et seq.

29 C.J.S., Elections, §§ 14-35.

Sec. 15.05.010. Voter qualification. A person may vote at any election who

- (1) is a citizen of the United States;
- (2) is 18 years of age or older;
- (3) has been a resident of the state and of the house district in which the person seeks to vote for at least 30 days just before the election; and
- (4) has registered before the election as required under AS 15.07 and is not registered to vote in another jurisdiction. (§ 1.01 ch 83 SLA 1960; am § 1 ch 125 SLA 1962; am § 1 ch 80 SLA 1963; am § 1 ch 211 SLA 1968; am § 1 ch 88 SLA 1969; am § 1 ch 15 SLA 1970; am § 1 ch 75 SLA 1972; am §§ 1, 38 ch 116 SLA 1972; am §§ 2, 3 ch 197 SLA 1975; am § 1 ch 100 SLA 1980; am § 27 ch 21 SLA 2000)

the following procedures apply to elections for the office of President and Vice-President of the United States:

- (1) registration and absentee voting procedures, except as otherwise provided in this section, shall be identical to the procedures established in this title;
- (2) registration of otherwise qualified persons shall be permitted without regard to a durational residency requirement;
- (3) if any citizen who is otherwise qualified to vote in the state for president and vice-president has begun residence in another state after the 30th day preceding the election and, for that reason, does not satisfy the registration requirements of that state, that person shall be allowed to vote for president and vice-president either in person in the precinct in which the person resided immediately before removal, or by absentee ballot as provided in AS 15.20. (§ 1 ch 69 SLA 1967; am § 3 ch 116 SLA 1972)

Sec. 15.05.016. Fee prohibited. [Repealed, § 43 ch 85 SLA 1988.]

Sec. 15.05.020. Rules for determining residence of voter. For the purpose of determining residence for voting, the place of residence is governed by the following rules:

(1) A person may not be considered to have gained a residence solely by reason of presence nor may a person lose it solely by reason of absence while in the civil or military service of this state or of the United States or of absence because of marriage to a person engaged in the civil or military service of this state or the United States, while a student at an institution of learning, while in an institution or asylum at public expense, while confined in public prison, while engaged in the navigation of waters of this state or the United States or of the high seas, while residing upon an Indian or military reservation, or while residing in the Alaska Pioneers' Home or the Alaska Veterans' Home.

(2) The residence of a person is that place in which the person's habitation is fixed, and to which, whenever absent, the person has the intention to return. If a person resides in one place, but does business in another, the former is the person's place of residence. Temporary construction camps do not constitute a dwelling place.

(3) A change of residence is made only by the act of removal joined with the intent to remain in another place. There can only be one residence.

(4) A person does not lose residence if the person leaves home and goes to another country, state, or place in this state for temporary purposes only and with the intent of returning.

(5) A person does not gain residence in a place to which the person comes without the present intention to establish a permanent dwelling at that place.

(6) A person loses residence in this state if the person votes in another state's election, either in person or by absentee ballot, and will not be eligible to vote in this state until again qualifying under AS 15.05.010.

(7) The term of residence is computed by including the day on which the person's residence begins and excluding the day of election.

(8) The address of a voter as it appears on an official voter registration card is presumptive evidence of the person's voting residence. This presumption is negated only if the voter notifies the director in writing of a change of voting residence. (§ 1.02 ch 83 SLA 1960; am § 2 ch 125 SLA 1962; am §§ 2, 3 ch 136 SLA 1966; am § 1 ch 228 SLA 1968; am §§ 4, 38 ch 116 SLA 1972; am §§ 4, 5 ch 197 SLA 1975; am § 6 ch 11 SLA 1979; am § 3 ch 100 SLA 1980; am § 2 ch 111 SLA 1994; am § 2 ch 59 SLA 2004)

Effect of amendments. — The 2004 amendment, effective July 1, 2004, inserted "or the Alaska Veterans' Home" in paragraph (1) and made stylistic changes.

Legislative history reports. — For governor's transmittal letter on SB 303, which became ch. 111, SLA 1994, and amended (10) of this section, see 1994 Senate Journal 2793 — 2796.

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Collateral references. — residents of military establish
Residence of students of
ALR3d 797.

Sec. 15.05.030. Loss of
crime that constitutes :
not vote in a state, fed
the date of the uncondi
the person may registe
(b) The commission
unconditionally discha

	TOTAL	A	D	R	N	U	F	G	I	H
REGION 3 REGION III										
DISTRICT										
6	9,759	517	1,621	2,046	1,766	3,500		78	85	79
7	13,202	406	1,687	3,195	2,421	5,039		100	107	115
8	12,925	304	2,853	2,529	2,299	5,144		261	166	116
9	11,108	342	1,965	2,495	1,698	4,290		66	84	131
10	10,874	225	1,899	2,896	1,348	4,111		49	78	229
11	12,855	373	1,244	4,373	1,711	4,831		34	72	171
12	12,110	315	1,197	4,090	1,553	4,537	1	63	100	198
TOTAL REGION III (101 PRECINCTS)	82,838	2,482	11,666	21,624	12,796	31,452	1	731	692	1,039

44248

	TOTAL	A	D	R	N	U	F	G	I	H
REGION 4 REGION IV										
DISTRICT										
37	7,259	388	1,329	1,094	1,164	3,046		40	63	70
38	7,874	642	2,468	795	1,302	2,693		44	51	22
39	7,877	724	2,097	922	1,287	2,619		34	64	40
40	8,381	779	2,014	1,060	1,068	3,249		39	69	44
TOTAL REGION IV (98 PRECINCTS)	31,391	2,533	7,908	3,871	4,821	11,607		157	247	176
STATE TOTAL (439 PRECINCTS)	450,985	13,441	66,023	111,117	69,938	170,273	4	3,723	8,807	5,189

109,938
170,273
240,211

'GPVD090P X3QY

VIEW PETITION TOTALS

03/13/2006 11:35

GVREMS GMC528A

GUSERS

PETITION ID: 05GAS2

TYPE: INITIATIVE

NAME: AN ACT LEVYING A TAX ON CERTAIN LEASES HAVING KNOWN RESOURCES OF NATURAL GAS, CONDITIONALLY REPEALING THE LEVY OF THAT TAX, AND AUTHORIZING

REQUIRED SIGNATURES: 31,450	(A) ADDRESS NOT PROVIDED: 583
	(B) DOB NOT MATCHED... ..: 66
NUMBER OF QUALIFIED: 33,353	(D) DUPLICATE.....: 1,968
(Q) COMPUTER QUALIFIED: 27,952	(I) INACTIVE.....: 35
(M) MANUALLY QUALIFIED: 5,369	(J) NOT IN JURISDICTION..:
(H) INACTIVE QUALIFIED: 32	(K) PETITION SIGNATURE...: 327
	(N) NAME NOT MATCHED.....: 8,171
NUMBER OF UNQUALIFIED: 14,176	(R) NOT REGISTERED.....: 1,074
	(S) SSN NOT MATCHED.....: 843
	(T) DUPLICATE SSN.....: 1
TOTAL SIGNATURES: 47,529	(U) UNABLE TO IDENTIFY...: 976
	(V) VTR NUM NOT FOUND...: 90
	(X) NOT YET COUNTED.....: 13
QUALIFIED SPONSORS: 142	(Z) ADL NOT MATCHED.....: 18
UNQUALIFIED SPONSORS: 3	() OTHER.....: 11
	(W) WITHDRAWN.....:

F1=MENU, F9=QUIT

10% 310,450 voted in 2004

450,985
 140,535
 - no number produced by Div. of Elections 3/13
 from last 2004 qualified voters
 2006
 - myself & thousands of AK NATIVES + AK VOTERS CHALLENGE
 the statistics produced by Div. of Elections since
 all the petition books I & my ATHAB partner turned
 in were 100's of his native falling blood.
 - not receiving their voter reg. cards after I put
 my name on FED. DOCUMENT

GPVD090P X3QY
GVREMS GMC528A

VIEW PETITION TOTALS

03/13/2006 11:34
GUSERS

PETITION ID: 05LEGS

TYPE: INITIATIVE

NAME: AN ACT RELATING TO A 90-DAY REGULAR SESSION OF THE LEGISLATURE; AND
PROVIDING FOR AN EFFECTIVE DATE.

REQUIRED SIGNATURES: 31,450

NUMBER OF QUALIFIED: 33,702
(Q) COMPUTER QUALIFIED: 25,810
(M) MANUALLY QUALIFIED: 7,858
(H) INACTIVE QUALIFIED: 34

(A) ADDRESS NOT PROVIDED: 302
(B) DOB NOT MATCHED.....: 32
(D) DUPLICATE.....: 2,268
(I) INACTIVE.....: 22
(J) NOT IN JURISDICTION.: 1
(K) PETITION SIGNATURE : 329 -
(N) NAME NOT MATCHED.....: 4,846
(R) NOT REGISTERED.....: 5590
(S) SSN NOT MATCHED.....: 418
(T) DUPLICATF SSN.....:
(U) UNABLE TO IDENTIFY...: 2,524 -
(V) VTR NUM NOT FOUND...: 41
(X) NOT YET CCUNTED.....:
(Z) ADL NOT MATCHED.....: 19
() OTHER.....: 9
(W) WITHDRAWN.....:

NUMBER OF UNQUALIFIED: 11,370

TOTAL SIGNATURES: 45,072

QUALIFIED SPONSORS: 118
UNQUALIFIED SPONSORS: 8

F1=MENU, F9=QUIT

Rep. Paul Seaton

From: john vinduska [jvinduska@hotmail.com]
Sent: Wednesday, March 15, 2006 8:49 PM
To: Rep. Paul Seaton
Subject: HB438

Representative Seaton:

I would like to comment on HB438 regarding recall of legislators. The present law makes it extremely difficult to recall anyone. Citizens must now get the required number of signatures twice before it is even put on the ballot where a majority is necessary to recall a corrupt politician. This has only been successful once since Statehood which shows that it is not something to be done frivolously. Making this more difficult will only send a message to the people that no matter how corrupt someone is, the law will protect them.

Sincerely,
Sherri Jackson

Rep. Paul Seaton

From: John Stinson [stinson5@pci.net]
Sent: Wednesday, March 15, 2006 9:38 PM
To: Rep. Paul Seaton
Subject: Problem with HB 438

Dear Mr. Seaton;

I'm a registered Republican in Big Lake, and wish to send you my comments on HB 438 which has been referred to State Affairs.

The provisions for Circulators' meals and Alaska-only voter registration seem fine.

What bothers me are:

- 1) restriction of application filing within the last 270 days of an official's term; and,
- 2) requirement of 20% of voter numbers as petitions to file.

These amendments make it harder for Alaskan citizenry to wield a potential tool of accountability. It's rarely used; but i was glad to have the option to enforce Senator accountability in Dist H not quite two years ago

Please help keep our recall option accessible to the voters. Thank you for your attention.

John Stinson
POBox 520665
Big Lake, AK
99652

Rep. Paul Seaton

From: Douglas Abbott [douglasabbott@hotmail.com]
Sent: Thursday, March 16, 2006 1:05 AM
To: Rep. Paul Seaton

Dear Sir:

I see that the corrupt Alaska Legislature is attempting to arrange for a complete lack of accountability by making it even more difficult to recall a legislator. The system works fine. If anything, it is already too difficult to recall one. There ought to be a law under which a legislator would be automatically removed from office if his public actions were contrary to his public statement of intentions. Then we might have some conscience at work.

Please stop this bill.

Douglas Abbott

Don't just search. Find. Check out the new MSN Search!
<http://search.msn.click-url.com/go/onm00200636ave/direct/01/>

Rep. Paul Seaton

From: Robin McLean (rmclean@pobox.alaska.net)
Sent: Wednesday, March 15, 2006 11:20 PM
To: Rep. Paul Seaton
Subject: HB 438

Dear Representative Seaton,

I am writing to oppose HB 438 and any other bill that would make it more difficult for citizens to exercise our right (and duty) to recall corrupt officials.

The citizens' right to recall was written into our state Constitution to give the people a save guard against the illegal and unethical acts of our elected officials. As it stands Alaska's recall law is stricter than many states (like California) where recall is "at will" and does not require "cause." Also, as it stands our recall law requires two separate rounds of signature gathering in the official's district, a large percentage of signatures from the district, and reasonable time limits. These demanding requirements have limited the use of the recall statute to very few attempts at recall in the history of our state and fewer successes. As you know, the latest effort at recall directed against Senator Ben Steven failed due to a failure to show sufficient grounds. The Ogan Recall in 2004 was the only legislative recall in state history to succeed on all criterion and make it to the ballot, and in Ogan's case his unethical actions were condemned and notorious statewide. In the Ogan recall the law, though very challenging for citizens in that massive and sparsely populated district, worked properly.

It is hard to understand why the legislature would see fit at this time to make this already rigorously demanding statute - rarely used, and even more rarely successful - even more difficult for the people to utilize. It seems to me that if the legislature would like to strengthen a statute, precious time and effort would be better spent beefing up legislative ethics law, not recall laws.

Please oppose this bill. Thanks for your time and effort for Alaska.

Robin McLean
PO Box 111
Sutton, Ak. 99674

907 745-7009.

Rep. Paul Seaton

From: Joe Sonneman [senator@gci.net]
Sent: Wednesday, March 15, 2006 11:07 PM
To: Rep. Paul Seaton
Subject: HB 438

The Hon. Paul Seaton, Chair, House State Affairs

I understand HB 438 is a bill which would restrict citizen recall and petition efforts.

No additional restriction is needed or wise. The current law is not broke --no need to fix it until it is. Kindly just permanently table bills which attempt to restrict citizen election, recall, initiative, or petition efforts.

Thank you,

Dr. Joe Sonneman
Ph.D., Government
Past Chair, Alaskans for Fair Elections

324 Willoughby
Juneau AK 99801
(907) 463-2624

Rep. Paul Seaton

From: Barbara Belknap [bjbelknap@gci.net]
Sent: Wednesday, March 15, 2006 5:37 PM
To: Rep. Paul Seaton
Subject: HB438

Dear Representative Seaton,

I just found out about this bill, HB438, which would make it more difficult to stage a recall. It seems as if citizens' rights are being eroded by government, particularly politicians in office, on an escalating basis. I do not support this bill and hope that it gets tossed out of the system. There are so many important things for the Legislature to do right now, it is depressing that this bill to thwart the people of this state even exists.

Barbara Belknap
4481 Abby Way
Juneau, AK 99801
780-8602

Louie Flora

From: mike danz [danz@pobox.mtaonline.net]

Sent: Wednesday, March 15, 2006 3:22 PM

To: Rep. Paul Seaton

Subject: against hb438

Mr. Seaton,
Please remove hb 438 from all consideration. the present system works just fine.
Sincerely,
Mike Danz
Palmer, AK

3/15/2006

Louie Flora

From: John [jhdata@international-data.net]
Sent: Wednesday, March 15, 2006 4:01 PM
To: Rep. Paul Seaton
Subject: NO ON HB 438 !!!

NO ON HB 438 !! Were angry as heil you men tried to take our right to petition..... because you think YOU know whats best for we children of the state **and now this** !! We don not want our voices stilled by those we elect to represent us.....your there to speak for us.....not in spite of us !

John Hinzle 25 yr resident of this once great state.

DO NOT SUPPORT THIS UPON PERIL OF YOUR CONSTITUANT GRANTED OFFICE

3/15/2006

Louie Flora

From: Allan Stowe [astowe@gci.net]
Sent: Wednesday, March 15, 2006 2:12 PM
To: Rep. Paul Seaton
Subject: HB 438

Representative Seaton,

I want you to know that we are totally against any changes to the present language on "Recalls and Petitions".

We are registered voters in Meadow Lakes 15-115 and strongly feel that if something is working don't monkey with it.

Allan Stowe Voter#05851604

Jean J. Stowe Voter#05851615

Louie Flora

From: kwells@mtaonline.net
Sent: Wednesday, March 15, 2006 11:49 AM
To: Rep. Paul Seaton
Subject: HB 438

Dear Representative Seaton,

I am writing to oppose HB 438.

Changing the rules for petitions to recall an elected official is a blatant attempt to block a citizens right to recall a legislator.

It is difficult enough to work your way through the process of petitioning to recall. There has only been one legislator that has reached the ballot stage of a recall since statehood, almost 50 years. I would say that the current system is working. We don't need another law or a revamping of the current procedures.

Thank you.
Kathy Wells
Palmer, AK

mail2web - Check your email from the web at <http://mail2web.com/> .

Louie Flora

From: jleerex [jleerex@matnet.com]
Sent: Wednesday, March 15, 2006 12:13 PM
To: Rep. F. A. Seaton
Subject: HB 438

The Honorable Representative Seaton:

I am shocked that the corruptness of the State of Alaska has reached this stage to the point where we may not even be permitted to recall a legislator.

I have a right to question your actions, and the actions of your colleagues.

Do not permit this bill to get out of committee!

We have the right to petition our government and to have elections, rather than appointments, to positions of elective office!

Thank you for hearing my point of view on this matter,

Gerald Rexrod

Veteran

Retired

Republican

Wasilla

907-373-7799

Louie Flora

From: Mike Bishop [mbishop@mtaonline.net]
Sent: Wednesday, March 15, 2006 12:54 PM
To: Rep. Paul Seaton
Subject: HB 438

Sir,

HE 438

Having watched the Ogan recall effort with considerable interest, I cannot believe that this process should be made even more complicated.

I am against all the provisions of HB 438.

One wonders at the motive of those who sponsor such a bill.

--
Mike Bishop
Willow, Alaska

907/495-5737

mbishop@mtaonline.net

Louie Flora

From: Jeff Fair [fairwinds@briloon.org]
Sent: Wednesday, March 15, 2006 12:18 PM
To: Rep. Paul Seaton
Subject: No to HB 438

Representative Seaton:

HB 438 threatens another strike against our democracy. Things are working just fine as they are, and politicians have no reason to make it even harder for citizens to respond to them.

I'm totally against the content and intent of this bill.

Thanks for listening,

Jeff Fair

P.O. Box 2947
Palmer, AK 99645

907-745-1522

Lazy Mtn. district

Louie Flora

From: Carl Reese [cd_reese@yahoo.com]
Sent: Wednesday, March 15, 2006 12:16 PM
To: Rep. Paul Seaton
Subject: Recall

Dear Representative Seaton,

I am emailing you because you are the State Affairs Committee Chair. Please do not support the bill introduced by Rep. Ramras (HB 438) to increase the number of signatures needed for recall from 10% to 20%. Alaska has not had an undue number of recalls and the only one we have had was successful.

Democracy worked in that event. Thank you for your consideration.

Carl Reese
4485 N Douglas Highway
Juneau, AK 99801

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Tired of spam? Yahoo! Mail has the best spam protection around <http://mail.yahoo.com>

Louie Flora

From: David Holladay [shrinkdr@pobox.mtaonline.net]
Sent: Wednesday, March 15, 2006 12:04 PM
To: Rep. Paul Seaton
Subject: HB 438

Dear Rep. Seaton,
I am writing to express my opposition to HB 438 in its entirety. Leave well enough alone. There is no need to make things more difficult. The present system works quite well.

Sincerely,

David Holladay
Pob 1814
Palmer, Alaska 99645

3/15/2006

Louie Flora

From: Lars & Angelika Opland [zdk@mtaonline.net]
Sent: Wednesday, March 15, 2006 1:27 PM
To: Rep. Paul Seaton
Subject: HB 438

Dear Representative Seaton,

It's come to my attention that Representative Ramras of Fairbanks has introduced HB 438 which, as I understand it, would make recall of corrupt or incompetent legislators more difficult if not impossible.

This should go the way of the dodo bird & the plan to make citizen initiatives more difficult to achieve: extinction. The citizens of Alaska are already far removed from effective participation in our own government, both physically & legally; more distance isn't necessary or constructive.

And what do we want with corrupt, incompetent, unfit or neglectful representatives, anyway? How many of these adjectives describe Rep. Ramras, that he is so keen to more narrowly define them?

Sincerely, Lars Opland

P.O. Box 875638
Wasilla, Alaska 99687

Louie Flora

From: Randy Carter [jrc@alaska.net]
Sent: Wednesday, March 15, 2006 11:38 AM
To: Rep. Paul Seaton
Subject: Vote No on H.B. 438!

House State Affairs Committee
Rep. Paul Seaton, Chair

Dear Rep. Seaton,

H.B. 438 (relating to initiative, referendum, and recall petitions) is a bad bill and should NOT be reported out of committee!

In regard to recall petitions, there has only been one legislator that has reached the ballot stage of recall since statehood. The current system is, if anything, too restrictive. There is certainly no need to make it even more restrictive!

It is obvious that the reason Rep. Rarras is trying to change the law is to insure that the will of the people can be ignored. In regard to recalls, the bill is a blatantly cynical attempt to ensure that no politician, however corrupt, incompetent, negligent or unfit, will remain in office.
Enough!

Sincerely,

James R. Carter
P.O. Box 974
Willow, AK

Louie Flora

From: chris pappas [e_ginmoss@yahoo.com]
Sent: Wednesday, March 15, 2006 11:37 AM
To: Rep. Paul Seaton
Subject: hb438

Though I wasn't surprised I must say I was disgusted.
Don't you
guys ever get tired of being walk'ng stereotypes?
I find hb 438 ill
advised and am completel, against it.

Do You Yahoo!?

Tired of spam? Yahoo! Mail has the best spam protection around <http://mail.yahoo.com>

Louie Flora

From: Laura Van Diest [mysticak@mtaonline.net]
Sent: Wednesday, March 15, 2006 11:32 AM
To: Rep. Paul Seaton
Subject: Against HB 438

Follow Up Flag: Follow up
Flag Status: Green

Rep. Seaton,

I understand your State Affairs committee is holding hearings on Jay Ramras' bill to change the current Petitions and Recalls Law. Please be advised that I am against ANY changes to the existing statutes. Please do not let this bill leave your committee.

Laura Van Diest
P.O.Box 331
Sutton, AK 99674
907-745-0534

Louie Flora

From: Butch Allen [butch@akcenter.org]
Sent: Wednesday, March 15, 2006 10:38 AM
To: Rep. Paul Seaton
Subject: No on HB438!

Representative Seaton,
I email to simply request that the state not move forward with HB438 regarding recalls. Its just plain bad for business. Thanks,

Butch Allen

807 G Street, Suite 100
Anchorage, AK 99501
907-274-3647

3/15/2006

Louie Flora

From: The Alaskan Wilderness [vip64587@customcpu.com]

Sent: Wednesday, March 15, 2006 10:34 AM

To: Rep. Paul Seaton

Subject: Re: hb438

Please use whatever power you have to stop the proposed hb438. There is nothing wrong with the current bill so why try to change it? One wonders why, once again, the powers that be are trying to fix something that isn't broken.

Jeannette Keida

Louie Flora

From: brandon moore [happydawg_ak@yahoo.com]
Sent: Wednesday, March 15, 2006 10:06 AM
To: Rep. Paul Seaton
Subject: House Bill 438

Dear Chair Seaton,

I would like it on record that I am totally opposed to the entire HB438, that is now in your committee. There is nothing wrong with our current system or law pertaining to recalls. I cannot believe that this bill is even being brought forward considering all of the things that really do need attention.

Rep. Ramras needs to get a grip. I represented my country in Iraq, Mr. Ramras needs to represent Alaskans and not politicians, here in Alaska.

sincerely,

Spc. Brandon Seth Moore
(U.S Army Reserves)

P.O.Box 877177
Wasilla, AK 99687

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Louie Flora

From: Randy Virgin [randy@akcenter.org]
Sent: Wednesday, March 15, 2006 10:17 AM
To: Rep. Paul Seaton
Subject: Opposed to HB438 (recalls)

Dear Representative Seaton:

I am writing to respectfully share my disagreement with HB 438, a proposed bill to make it more difficult for citizens to recall a state legislator. While I certainly understand that any legislator may initially like this concept for reasons of self preservation, I would argue that citizen checks and balances are critical to a well-functioning democracy.

In fact, only one state legislator has ever been scheduled for a recall election in Alaska's history. It seems that the bar for a recall is plenty high enough already. This bill looks like a solution looking for a problem.

Thank you for your consideration.

Sincerely,

Randy Virgin
Anchorage

3/15/2006

Louie Flora

From: Donna and Bill [dmarks@mtaonline.net]
Sent: Wednesday, March 15, 2006 10:00 AM
To: Rep. Paul Seaton
Subject: *****SPAM***** Bad Bill HB 438
Importance: High

Honorable Representative Paul Seaton,

Thank you for the opportunity to voice our concern re: HB 438, that is before you at this time.

As a life-long Alaskan (55 years), born in Southeast Alaska, and a registered Republican, I am opposed to any legislation that reduces the ability of the Peoples' Voice to be heard in Juneau. HB 438 is one that does just that!

Shame on its sponsor and anyone who would consider this proposed Bill to be anything but another attempt to remove the Peoples' voice from our government.

Redefining the recall process is not needed. The recall process works.

I honestly believe that any attack on the recall process is another pathetic and obvious attempt of the misdirected Alaska Republican party to create a government that is run by the elitists for the elitists.

Again, I am opposed to any changes to the current recall process.

Thank you,
Donna Marks

P.O. Box 329
Willow, Alaska 99688
(907) 495-0149
Fax: (907) 495-0150
E-mail: dmarks@mtaonline.net

Louie Flora

From: Sally [salgreek@mtaonline.net]
Sent: Wednesday, March 15, 2006 9:58 AM
To: Rep. Paul Seaton
Subject: HB 438

This is not a necessary bill. Nothing is broken about the old procedure: why change it. Please dump HB 438.
Sally Hitchcock , Palmer, Alaska

Louie Flora

From: Pat Madigan [pma@adigan@pobox.mtaonline.net]
Sent: Wednesday, March 15, 2006 9:41 AM
To: Rep. Paul Seaton
Subject: HB 438

Mr Seaton,

I strongly oppose this Bill (HB438).

Our politicians do not need any more protection than they already have.

People do not initiate recall petitions frivolously, so what is the justification for this bill?

Thank you.

--
Pat Madigan
Willow, Alaska

907/425-5737

pma@adigan@pobox.mtaonline.net

Louie Flora

From: Emily Doherty [emily@akcenter.org]
Sent: Wednesday, March 15, 2006 9:47 AM
To: Rep. Paul Seaton
Subject: *****SPAM***** HB 438 BAD NEWS

State Affairs Chairman, Representative Paul Seaton
Alaska State Legislature
Juneau, AK

Dear Rep. Paul Seaton,

Please do not pass House Bill 438. In a time when, if anything, our government needs more checks and balances when it comes to corruption, it's irresponsible to pass a bill which makes it even more difficult to recall a legislator. The law doesn't need to be changed to make it nearly impossible to recall someone. The present system works very well. In the almost fifty years since statehood, there has only been one recall that has reached the ballot stage.

Thank you for all your hard work,

Emily Doherty

1325 O Street, #2
Anchorage, AK 99501
(907)258-2558

Louie Flora

From: Barbara McDaniel [bom@alaska.net]
Sent: Wednesday, March 15, 2006 9:56 AM
To: Rep. Paul Seaton
Subject: NO on HB 438

I want the law on recalls and petitions to remain as is.

Barbara McDaniel
1040 N Craig Stadler Loop
Wasilla, AK 99654

373-6977

Louie Flora

From: Chris Whittington-Evans [whitevan@mtaonline.net]
Sent: Wednesday, March 15, 2006 9:16 AM
To: Rep. Paul Seaton
Subject: HB438

Dear Representative Seaton,

This note is to inform you of my opposition to HB438, an attempt to rewrite the process of recalling a legislator. This bill would make it virtually impossible for citizens to oust a representative who has gone astray. The current requirements are tough enough. Please do what you can to keep this bill from moving forward.

Sincerely,
Chris Whittington-Evans
Palmer, Alaska

Louie Flora

From: Helene M. Antel [hma@mtaonline.net]
Sent: Wednesday, March 15, 2006 9:13 AM
To: Rep. Paul Seaton
Subject: *****SPAM***** HB 438

Importance: High

Dear Rep. Seaton:

Please consider my concerns regarding HB 438.

We, the people of Alaska do not elect our representatives to the state legislature so that they can go to Juneau and eviscerate our rights, thank you. There is no need for the legislation you have proposed whatsoever; except to protect bad politicians. Indeed, there are far more important and pressing issues that need to be addressed by our state government than ways to make it more difficult for the people to express their disapproval of someone they elected to serve them. I would much prefer it if you would direct your attention to something more meaningful for the people of Alaska.

There is no good reason whatsoever to raise the qualifying threshold of people voting in the previous election needed to sign the petition, or to change the definitions set forth in the law to make it more difficult for a politician to be recalled

Please leave my rights alone and worry instead about crafting a sustainable budget for our great state.

Thank you for seriously considering my objections to HB 438.

Helene

Helene M. Antel
Attorney at Law
12050 E. Lady Slipper Lane, Palmer, Alaska 99645
(907) 745-3394 (o); (907) 746-3247 (fax); (907) 355-4838 (cell); hma@mtaonline.net

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Louie Flora

From: Sue Bailey [akgardengirl@hotmail.com]
Sent: Wednesday, March 15, 2006 9:19 AM
To: Rep. Paul Seaton
Subject: HB 438

Dear Rep. Seaton,
I am totally against any changes on Recall and Petitions. It is difficult enough to recall incompetent legislators. Please leave the recall process the way it is now. House bill 438 needs to be stopped.
Sincerely,
Susan K. Bailey

Louie Flora

From: Jackie Endsley [jendsley@lbew1547.Org]
Sent: Wednesday, March 15, 2006 8:36 AM
To: Rep. Paul Seaton
Subject: HB 438

I believe the present laws on Recalls and Petitions work just fine. One must already put a significant amount of effort into this process—we don't need to make it any more difficult than it already is.

I am against HB438.

Jackie Endsley
Community Relations Coordinator
3333 Denali St., Suite 200
Anchorage, AK 99503
(907) 777-7257
(907) 777-7264 (fax)

Louie Flora

From: Pamela G. Murray [bluedog@mtaonline.net]
Sent: Wednesday, March 15, 2006 8:29 AM
To: Rep. Paul Seaton
Subject: HB 438

REGARDING HB 438.....JUST LEAVE IT ALONE.....IT WORKS
THE WAY IT IS! Pamela G. Murray, Wasilla,
Alaska

Louie Flora

From: Kitty Benson [kitty_benson@yahoo.com]
Sent: Wednesday, March 15, 2006 8:22 AM
To: Rep. Paul Seaton
Subject: HB 438

Dear Mr. Seaton:

This letter is to advise you that I am opposed to HB438. I do not see any reason to make changes to the recall and petitions laws.

Sincerely,
Kitty P. Benson

Kitty P. Benson, MLS
Houston Middle School
phone: 907-892-9500
email: Kitty_Benson@Yahoo.com

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Tired of spam? Yahoo! Mail has the best spam protection around <http://mail.yahoo.com>

Louie Flora

From: Sue Gibbs [akwildiris@yahoo.com]
Sent: Wednesday, March 15, 2006 8:21 AM
To: Rep. Paul Seaton
Subject: HB 438

Representative Seaton, I am writing to ask you to please see that HB 438 does not leave your committee. This bill is not needed, it is hard enough already to recall anyone. There is no reason to make it more difficult! Please reject this bill in it's entirety!! Thank you!

Susan Gibbs
P.O. Box 871116
781 McMillan Ct.
Wasilla, AK 99687

Relax. Yahoo! Mail virus scanning helps detect nasty viruses!

Louie Flora

From: john vinduska [jvinduska@hotmail.com]
Sent: Wednesday, March 15, 2006 7:53 AM
To: Rep. Paul Seaton

Dear Rep. Seaton,

I would like to comment on HB 438 the recall bill. I was involved in the only recall effort that made it to the ballot stage since statehood. I know from experience that it is very hard process and very few people are willing to put that much effort. With more and more corruption in government now days we don't need a law to make it impossible to rid the halls in Juneau of these individuals that should not be in state government. I see no rush to recall representatives just for a disagreement in policy. I hope this bill is killed!

Thank you

John Vinduska

Louie Flora

From: Warren Keogh [warrenkeogh@gmail.com]
Sent: Wednesday, March 15, 2006 5:18 AM
To: Rep. Paul Seaton
Subject: Comment - HB 438

Dear Representative Seaton:

There is plenty enough for the Legislature to do without spending its valuable time fixing something that is not broken. HB 438, which regards recalls and petitions, belongs in the dustbin. In your capacity as Chair of the State Affairs Committee, please put it there. Thanks.

Warren Keogh
P.O. Box 1166
Chickaloon, AK 99674

3/15/2006

Louie Flora

From: John and Ruth [jsandrw@matnet.com]
Sent: Wednesday, March 15, 2006 12:55 AM
To: Rep. Paul Seaton
Subject: HB 438

Dear Representative Seaton:

I wish to express my strong opposition to HB 438, by Representative Ramras: "An Act relating to initiative, referendum, and recall petitions; and providing for an effective date."

In recent years, the power of the people to petition the State government to "seek redress of grievances" has been steadily ~~been~~ weakened. Legislators have consolidated power at the expense of the general public, and at the expense of our democratic system. It has also lead to legislation that is not in the public interest.

Healthy debate, consideration of diverse views, and stakeholder and public participation is good for democracy and generally leads to good public policy. Shutting out the public and catering to special interests or blindly clinging to an ideology, conversely, leads to bad public policy.

Rep. Ramras' bill makes it more difficult for the public to be heard, both in terms of ballot initiatives and in holding legislators accountable. It diminishes the capability of the governed to participate in the decisions that affect them. It is a bad bill, and I hope that you will act to bury it.

Thank you.

John Strassenburgh
PO Box 766
Talkeetna, AK 99676

3/15/2006

Louie Flora

From: dick [dpalmatier@webtv.net]
Sent: Tuesday, March 14, 2006 11:55 PM
To: Rep. Paul Seaton
Subject: HB438

Don't--I repeat, don't attempt to pass this bill. The whole legislature has lost most of it's credibility and this bill will further erode any credibility you have left. It will bite you back someday if a democrat behaves as unethically as Scott Ogan did. Can't you see that the voters are tired of the Murkowski way of conducting government and this bill will be one more reason to vote many republicans out of office?

Think!!!!

RC Palmatier, Willow Ak.

Louie Flora

From: Tom K [tomk@mtaonline.net]
Sent: Tuesday, March 14, 2006 11:08 PM
To: Rep. Paul Seaton
Subject: POM against hb438

Rep Seaton,

I oppose any law or change to existing law that would make Alaska's recall process more difficult.

Why make a process designed to give people the ability to recall an elected official more difficult when there is no record of abuse of the law as it now stands?

I am against hb438 period!

Tom Kluberton
Talkeetna, Alaska
(907) 733-1457

Louie Flora

From: claire fitzgaireld [clea@mtaonline.net]
Sent: Tuesday, March 14, 2006 11:01 PM
To: Rep. Paul Seaton
Subject: HB 438

I am adamantly opposed to HB 438. The system we have now for recalling unfit people works very well and there is no need to change it. This is just one more attempt to deny Alaskans the opportunity to voice their concern about what is going on in Juneau.

I urge you to not let this bill leave your committee. I am a Sr. citizen who has never missed voting in an election and I do follow the events in Juneau very closely.

Claire R. Fitzgaireld
Willow, AK

Louie Flora

From: Alma & Christian M Hartley [hartley@myopinionmatters.org]
Sent: Tuesday, March 14, 2006 10:40 PM
To: Rep. Paul Seaton
Subject: HB 438

I am absolutely 100% adamantly opposed to proposed HB 438. There is no reason at all to change the way recall elections occur. Recall is a constitutional guarantee on both the federal and state levels, as well as municipal. The current system works so well at preventing frivolous recalls that only one person has ever been even put up for a recall election and even he knew it was valid and resigned, although the complications of his medical conditions certainly guided him to make that decision.

One person's definition of "corruption" can be very different from another. Would you consider placing the interest of a donating constituent above the interests of someone who doesn't donate to be corruption? But the person who doesn't donate may see it as obeying the trail of money. Who is to say that the person is wrong in his point of view?

The purpose of law is to protect the people of the state and nation at large - not to protect their representatives. The people must be able to have recourse when their representative wrongs them. 10% has worked for how long? Why the sudden need to change it? What is the need for this bill, let alone the legal justification?

Please email me back, as soon as you can, and explain why it is that this bill is necessary. When it comes to restricting the voters' ability to peaceably assemble and file a recall petition, it comes dangerously close to violating the biggest law in this land. Justice is blind, but the legislative process isn't. Don't be blind to the obvious agenda of this unnecessary bill -

I will be posting a copy of this email to my website, www.myopinionmatters.com, in the Forums under "Letters to Legislators."
Feel free to answer it there for all to see, or just email to me. I do look forward to hearing from you (or your office) and appreciate the time you are taking to read this.

Christian M Hartley
Alaska resident since 1988

Louie Flora

From: Autodidactic Press [autpress@alaska.net]
Sent: Tuesday, March 14, 2006 10:26 PM
To: Rep. Paul S. Iton
Subject: HB 438

No on HB438. Status quo corruption is going to be identified for what it is and those who are for it as well.

Charles D. Hayes
Wasilla, AK

Louie Flora

From: Mary Kvalheim [marykv@mtaonline.net]
Sent: Tuesday, March 14, 2006 10:00 PM
To: Rep. Paul Seaton
Subject: hb438

I am opposed to the passage of this bill, HB438. Please do not allow passage from your committee. I am opposed to the change in percentage from 10% to 20%. It is nearly impossible to manage this act at present. There has only been one legislator to whom this was applied in the entire years of statehood. Please do not allow this legislation to move out of your committee.

Thank you for your consideration of my opinion.
Mary Kvalheim

Louie Flora

From: Anne Kilkenny/Patrick Johnson [kiljohn@gci.net]
Sent: Tuesday, March 14, 2006 9:20 PM
To: Rep. Paul Seaton
Subject: HB 438

Rep Seaton,

I am totally opposed to HB438.

Since statehood there has only been one recall action that has reached the ballot stage, almost 50 years. The system is difficult enough as is. There is no need to make it more difficult. The system is not broke.

If it ain't broke, don't fix it!

Anne Kilkenny
P. O. Box 870163
Wasilla, AK 99687-0163

Louie Flora

From: Dewey Taylor [dewey@matnet.com]
Sent: Tuesday, March 14, 2006 8:57 PM
To: Rep. Paul Seaton
Subject: Re: Autoreply: HB 438

Please do not vote for HB 438. Thank you.

Dewey Taylor
3201 Elderberry Dr
Wasilla 99654
373-5074

On Mar 14, 2006, at 8:51 PM, rep_paul_seaton@legis.state.ak.us wrote:

This message was automatically created for rep_paul_seaton

Subject: Thanks for contacting me

Hello,

Thank you for contacting me. I receive a high volume of email and try to respond to messages from constituents in a timely matter. If you need immediate assistance, I encourage you to get in touch with my office by calling 1-800-665-2689 or (907) 235-2921, or by emailing one of my staff member at the addresses listed below. If you did not include your contact information in the email you sent to me please do so by replying to this email with your name, address and telephone number so we can respond to your comments. Thank you again for writing to me.

Sincerely,

Representative Paul Seaton
Alaska State Legislature
House District 35

Email address for Katie Shows:
Katie_Shows@legis.state.ak.us

Email address for Louie Flora:

3/15/2006

Louis_Flora@legis.state.ak.us

Email address for Ian Laing:
Ian_Laing@legis.state.ak.us

Louie Flora

From: Gini King-Taylor [gini@matnet.com]
Sent: Tuesday, March 14, 2006 8:56 PM
To: Rep. Paul Seaton
Subject: Re: Autoreply: HB 438

Re: HB438 - Please do not vote for this bill. Thank you for your reply to my previous email.

Virginia King-Taylor
Address: 3201 Elderberry Drive, Wasilla 99654
Phone: 232-7687

On Mar 14, 2006, at 8:48 PM, rep_paul_seaton@legis.state.ak.us wrote:

This message was automatically created for rep_paul_seaton

Subject: Thanks for contacting me

Hello,

Thank you for contacting me. I receive a high volume of email and try to respond to messages from constituents in a timely matter. If you need immediate assistance, I encourage you to get in touch with my office by calling 1-800-665-2689 or (907) 235-2921, or by emailing one of my staff member at the addresses listed below. If you did not include your contact information in the email you sent to me please do so by replying to this email with your name, address and telephone number so we can respond to your comments. Thank you again for writing to me.

Sincerely,

Representative Paul Seaton
Alaska State Legislature
House District 35

Email address for Katie Shows:
Katie_Shows@legis.state.ak.us

Email address for Louie Flora:
Louis_Flora@legis.state.ak.us

3/15/2006

Email address for Ian Laing:
Ian_Laing@legis.state.ak.us

Louie Flora

From: Dewey Taylor [dewey@matnet.com]
Sent: Tuesday, March 14, 2006 8:53 PM
To: Rep. Paul Seaton
Subject: HB 438

Please do not vote for HB 438. We already have a law on the books which protects us against frivolous recalls and petitions. This bill would be a grave mistake and take away our right to question when questions need to be asked.

Thank you.

Dewey Taylor
Mat-Su

Louie Flora

From: Gini King-Taylor [gini@matnet.com]
Sent: Tuesday, March 14, 2006 8:50 PM
To: Rep. Paul Seaton
Subject: HB 438

Please do not change the law on recalls and petitions. As is, the law is strong and makes it very difficult to exercise this right. We need nothing stronger. Please vote against HB 438 in its entirety.

When you have the time, please let me know your vote. Thank you for your every consideration and your efforts with this matter.

Virginia King-Taylor
Wasilla

3/15/2006

Louie Flora

From: Patricia Chesbro [chesbro@mtaonline.net]
Sent: Tuesday, March 14, 2006 8:35 PM
To: Rep. Paul Seaton
Subject: Against HB 438

Recall is an important check and balance measure for the public. Leave the law as it is. It doesn't seem to be abused since there has been only one successful recall in 50 years.

Patricia Chesbro

Louie Flora

From: jay cross [jaykat@mtaonline.net]
Sent: Tuesday, March 14, 2006 8:07 PM
To: Rep. Paul Seaton
Subject: HB438

I am writing in opposition to HB438. The system that is in place works just fine. I find it interesting that this bill is being considered when we think of all the important business that remains to be done this session. Scott Ogan has been the only one ever close to being recalled and he would have been if he hadn't resigned. Now I understand the Legislature voted a commendation for him. What is your message to the people of Alaska?
Jay Cross

Louie Flora

From: Steve Charles [mcharles@ak.net]
Sent: Tuesday, March 14, 2006 8:02 PM
To: Rep. Paul Seaton
Subject: HB 438

Rep. Seaton,

I am completely opposed to HB 438 because it is another attempt for legislators to further insulate themselves from whom they are governing. When, in the eyes of his/her constituents, a legislator acts incompetently, recklessly, of neglect or with corruption, they must have recourse.

This bill make that recourse so difficult that it is, in fact, nearly impossible. Recall should be done only as a last resort and this has been the case, since there has been only one recall in 50 years.

Kill this bill or further erode any positive perception of legislators in this state.

Steve Charles
Willow

Louie Flora

From: Lee Henrikson [lee@cski.org]
Sent: Tuesday, March 14, 2006 7:50 PM
To: Rep. Paul Seaton
Cc: Lee Henrikson
Subject: HB 438 No!

Senator Seaton,

Please stop house bill 438. We don't need a stricter policy for recalling politicians.

Sincerely,
Lee Henrikson
PO Box 3454
Palmer AK 99645

Louie Flora

From: Kathy Cross [kacross@pobox.mtaonline.net]
Sent: Tuesday, March 14, 2006 7:47 PM
To: Rep. Paul Seaton
Subject: HB 438

Representative Seaton,

I have serious concerns about this bill. I haven't seen a rash of recall attempts and do not understand why this process, key in a representative government, should be so restricted.

With all of the important decisions to be addressed in this year's legislature, it seems to me that this type of bill is a waste of precious time.

Thank you for your consideration of my concerns, Kathy Cross Big Lake

Louie Flora

From: Ben and Lisa [BushWings@StarBand.net]
Sent: Tuesday, March 14, 2006 7:33 PM
To: Rep. Paul Seaton
Subject: HB 438

Please stop this bill- HB 438! We need to keep the system intact, not make it more difficult to recall the worst of the lot.

Lisa Stevenson
Chickaloon, Alaska

Testimony Before the House State Affairs Committee
March 16, 2006

Chairman Seaton and members,

Thank you for permitting me this opportunity to speak about HB 438.

In consideration of the current situation in Alaska and my analysis of this bill, I believe that this is unnecessary legislation. Current procedures are not broken; they do not need to be fixed. Please apply your attention to matters that need your focused attention, consideration, and action.

I have worked as a paid signature gatherer in Alaska on a number of petitions. I am delighted to do this work as it causes me to feel that I am participating in democracy and the qualitative improvement of our state. As a retired military officer and former high school teacher, this activity now allows me to participate at the grass-roots level in democratic principles that I hold dear and that keep our state strong. I like that. Please don't make it more difficult for me and others to participate in this way.

The following are four specific areas that I find objectionable in this proposed legislation (24-LS1344(L), dated 2/8/06):

- 1) As discussed on pages 6 line 22 and 10 line 9, there is no need to increase the percentage of qualified voter signatures in order to determine that an initiative, a referendum, or a recall petition has been successful and may appear on an appropriate ballot. Qualified signatures from ten percent of those who voted in the preceding general election comprise a fair sampling of the population. It is important to note that the matter is not finally decided by 10% of the voters; this simply allows the issue to come before all voters on the next voting occasion. This is perfectly fine.
- 2) I also disagree with setting the maximum rate of meals reimbursement, shown on pages 2 line 2, 4 line 13, and 8 line 6, at only \$15.00 for circulators who travel 100 miles or more from their home communities. This figure is unreasonably low and there is no need to address it in this way. But, for the record, I taught school near Bethel; \$15.00 there might buy somebody breakfast, but certainly not lunch and dinner, too. I was a circulator in Fairbanks and had meals at the hotel where I stayed; dinner each night was always over \$15.00. If this reimbursement must be addressed, and I don't believe it should be, I recommend the federal per diem rate. In May, legislators will get \$200.00 per day for food and lodging in Juneau during the session. If this must be addressed, why not make the circulator's meals reimbursement equal to the federal per diem rate that you receive when you are away from your homes and staying here?
- 3) While I was in Fairbanks, I was asked to perform some organizing duties in addition to my signature gathering; I specifically provided circulator training, distributed signature

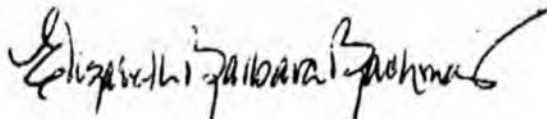
books, collected completed ones, and other duties. I can see no reason to disallow this occasional additional duty as is discussed on pages 2 line 12, 4 line 23, and 8 line 16. **Disallowing the activities I have described increases the cost of the initiative, referendum, and recall process. This is not good for democracy or Alaska.**

4) One final important point is the **fiscal note that must be associated with this bill.** The bill speaks of fees or fines charged to organizations, organizers, or circulators as punishment for infractions or violations to prohibited practices; how are these fines levied, collected, and accounted for? How will these enforcement operations be funded? There is also a new form that is proposed here and that would need to be created and managed. Do we need to spend the State's money in this way? No.

The current initiative, referendum, and recall process works just fine. There is no reason to change it. Do not pass this proposed legislation. There are other topics that need your time and attention. This bill seems to make much more difficult the people's right to participate in state and local government. And, this change would be very wrong.

Thank you for allowing me to testify against **HB 438.** Again, as a person experienced in this work, I believe that changes to the process proposed in this legislation are unnecessary and counter to democracy.

Sincerely,



Elisabeth Barbara Bachmeier
1890 Glacier Ave., #302
Juneau, AK 99801

Addendum ... added after the conclusion of my public testimony on March 16, 2006

When I completed my public testimony and Representative Ramras's consequent questioning and after the committee began to consider another topic, I left the committee meeting room. Although committee business continued, Representative Ramras also left the meeting and asked to speak with me privately in the hallway. I was uncomfortable with this as I expected my comments to him on this proposed legislation to be entirely on the record.

(I told him in the hallway that I did not appreciate being "cut off" when I attempted to add the following comments to the record during public testimony and to have, only minutes later, the occasion to discuss this with him privately.)

When he spoke with me, he continued to allege that I and other circulators had performed unlawfully and "cheated" while working as circulators. He specifically asserted that I was

behaving out of the bounds of the law when I accepted meals reimbursement for my circulator duties. I reminded him that he and I specifically discussed this topic when we spoke in Fairbanks. I told him that he should have informed me then that he considered my behavior in his community to be unlawful, rather than months later during my testimony at a committee meeting. Representative Ramras responded that he did not want to interfere with Eric Croft. This was a surprising rebuttal, as Representative Croft had absolutely nothing to do with my work as a circulator in Fairbanks and/or payment for meals reimbursement.

At this point I asked Representative Ramras for the particular citation that he used to determine that I behaved unlawfully by accepting meals reimbursement. Only then did he remark that my alleged unlawful behavior was based on his interpretation of "something". I asked for this reference document and still do not have the citation.

Can the State Affairs Committee provide me with the reference document and citation leading to Representative Ramras's allegation against me, so I can read and interpret it and decide this matter for myself?

Louie Flora

From: on behalf of Rep. Paul Seaton

Subject: FW: hb438 ramras bill

<kooterville@yahoo.com>  [Add to Address Book](#)

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Subject

HB 438

To:

representative_paul_seaton@legis.state.ak.us

Chairman Paul Seaton,

I am a long time Alaska resident. In fact I voted for statehood. This attempt at changing the recall and petition statutes in a shame and a sham. Please end this insult to our rights as citizens, and get on with more serious business.

There seems to be plenty that legislators could be spending their time on, other than this bill. Please put me on record as in total opposition to HB 438.

Thank You,

Maxine Mae Thompson
P.O. Box 877189
Wasilla, Alaska 99687

3/19/2006

Louie Flora

From: robert opland [bobopland@gci.net]
Sent: Thursday, March 16, 2006 3:11 PM
To: Rep. Paul Seaton
Subject: hb438

Please note that I, along with many other old time Alaskans, am strongly opposed to the concepts fo HB438.

Sincerely
Mildred Opland

Louie Flora

From: Deanna [dmjgearyfam@gci.net]
Sent: Thursday, March 16, 2006 9:43 AM
To: Rep. Paul Seaton
Subject: hb438

Dear Rep. Seaton, I wish to let you know that I am against HB438.
Please do not let this go through.

Thank You, Deanna Geary
4401 N. Charely Dr.
Wasilla, AK. 99654

3/19/2006

Louie Flora

From: John Stinson [stinson5@gci.net]
Sent: Wednesday, March 15, 2006 9:38 PM
To: Rep. Paul Seaton
Subject: Problem with HB 438

Dear Mr. Seaton;

I'm a registered Republican in Big Lake and wish to send you my comments on HB 438 which has been referred to State Affairs.

The provisions for Circulators' meals and Alaska-only voter registration seem fine.

What bothers me are:

- 1) restriction of application filing within the last 270 days of an official's term; and,
- 2) requirement of 20% of voter numbers as petitions to file.

These amendments make it harder for Alaskan citizenry to wield a potential tool of accountability. It's rarely used; but I was glad to have the option to enforce Senator accountability in Dist H not quite two years ago.

Please help keep our recall option accessible to the voters. Thank you for your attention.

John Stinson
POBox 520665
Big Lake, AK
99652

Louie Flora

From: john vinduska [jvinduska@hotmail.com]
Sent: Wednesday, March 15, 2006 8:49 PM
To: Rep. Paul Seaton
Subject: HB438

Representative Seaton:

I would like to comment on HB438 regarding recall of legislators. The present law makes it extremely difficult to recall anyone. Citizens must now get the required number of signatures twice before it is even put on the ballot where a majority is necessary to recall a corrupt politician. This has only been successful once since Statehood which shows that it is not something to be done frivolously. Making this more difficult will only send a message to the people that no matter how corrupt someone is, the law will protect them.

Sincerely,
Sherri Jackson

Louie Flora

From: Pat Owens [pato@mtaonline.net]
Sent: Thursday, March 16, 2006 8:32 AM
To: Rep. Paul Seaton
Subject: HB 438

Representative Seaton,

I oppose HB 438.

Pat Owens
Chickaloon, Alaska

Louie Flora

From: on behalf of Rep. Paul Seaton
Subject: FW: hb438

----- Original Message -----
From: "jz2kute" <jz2kute@yahoo.com>

Subject: hb438

Chairman Seaton,

> I am totally against the hb438 bill. Why fix something that is not
> broke? LEAVE WELL ENOUGH ALONE !!!!!

>
>
>
>
>
>
>
>
>
>

THANKS
LAURA COLEMAN

> Do You Yahoo!?
> Tired of spam? Yahoo! Mail has the best spam protection around
> <http://mail.yahoo.com>

>
>
> --
> No virus found in this incoming message.
> Checked by AVG Free Edition.
> Version: 7.1.385 / Virus Database: 268.2.5/284 - Release Date:
> 3/17/2006
>
>

--
No virus found in this outgoing message.
Checked by AVG Free Edition.
Version: 7.1.385 / Virus Database: 268.2.5/284 - Release Date: 3/17/2006

Louie Flora

From: Judy Olson [jgolson1@yahoo.com]
Sent: Thursday, March 23, 2006 1:03 PM
To: Rep. Paul Seaton
Subject: HB 438

To Mr. Seaton:

Surely we don't need to make it easier for a legislator to be corrupt, incompetent, unfit, or to neglect his/her duties. I strongly oppose HB 438!

Judy Olson
2701 McRae Dr
Wasilla, AK 99654

735-7468

Yahoo! Messenger with Voice. PC-to-Phone calls for ridiculously low rates.

Katie Shows

From: Cody Rice
Sent: Thursday, April 13, 2006 3:39 PM
To: Katie Shows

Did your boss see this?

This guy is a bit of a nut. Associates heavily with Myrl.

Rep_paul_seaton@legis.state.ak.us, regarding House Bill 438

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[christian](#)

Posted: Mar 14 2006, 10:39 PM



Administrator



Group: Admin
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I am absolutely 100% adamantly opposed to proposed HB 438. There is no reason at all to change the way recall elections occur. Recall is a constitutional guarantee on both the federal and state levels, as well as municipal. The current system works so well at preventing frivolous recalls that only one person has ever been even put up for a recall election and even he knew it was valid and resigned, although the complications of his medical conditions certainly guided him to make that decision.

One person's definition of "corruption" can be very different from another. Would you consider placing the interest of a donating constituent above the interests of someone who doesn't donate to be corruption? But the person who doesn't donate may see it as obeying the trail of money. Who is to say that the person is wrong in his point of view?

The purpose of law is to protect the people of the state and nation at large - not to protect their representatives. The people must be able to have recourse when their representative wrongs them. 10% has worked for how long? Why the sudden need to change it? What is the need for this bill, let alone the legal justification?

Please email me back, as soon as you can, and explain why it is that this bill is necessary. When it comes to restricting the voters' ability to peaceably assemble and file a recall petition, it comes dangerously close to violating the biggest law in this land. Justice is blind, but the legislative process isn't. Don't be blind to the obvious agenda of this unnecessary bill -

I will be posting a copy of this email to my website, www.myopinionmatters.com, in the Forums under "Letters to Legislators." Feel free to answer it there for all to see, or just email to me. I do look forward to hearing from you (or your office) and appreciate the time you are taking to read this.

Christian M Hartley
 Alaska resident since 1988

SITE: FAIRBANKS LIO

COMMITTEE: H State Affairs

DATE: March 14, 2006

SUBJECT OF MEETING:

BILL # HB 448

UPDATE #: 1

Mark Thompson

232-1043

AFN public

480,000

BEANS Cafe

V. for

Address -

Sam Medsker

And

put out to all circulators

DO YOU WANT

TESTIFY

Y or N

PRINT YOUR NAME

COMMUNITY

REPRESENTING/AFFILIATION

PRINT YOUR NAME	COMMUNITY	REPRESENTING/AFFILIATION	DO YOU WANT TESTIFY Y or N
Sam Medsker	Fairbanks	Grand Lodge F&AM of Alaska	Yes
<p>is not only figure</p> <p>one the to fine - send else to find a citizen (look into from a state policy part of via - constab)</p> <p>Legal for that address</p> <p>→ Constabularies at current law?</p> <p>How many recall have been successful? → 3 curb cases (municipal elections)</p> <p>How many have not to be held? 1 recall of state elected official</p> <p>in court - organ required before</p> <p>fiscal impact on A.P.O.C. - recall of - have ever to hold</p> <p>That have ever off curvability so.</p> <p>Would be a big fiscal impact - for recall state</p>			

Tring: effort by a division within
 In person or over the phone - **Cost** - get back to **Grades** on this
 several hours training → possibly N-T
 requires for municipal activities

If free for signature? for
So a \$2000 fee?

X Version

Legal spec? → please provide:

See 15.95.496 - Article II Sec 8.

line 9

Sec. 4

When would this thing take place: would this establish some
hurdle in the timeline? - would there be a limit for how
long costs with class

May already be in statute → witness exist

General division → to see how complex or clear that

10-20%

Any times necessary regarding system

Asked for a free speech issue

Sarah Felix A.F.C.

Law needs to address

Balance of interest too

Discusses possible conditions and provisions with

Constitution

Law + legal ops

7P.2. line 8: require laws to create/pass a
new form.

unless conditions signed on P.3 line 20

No 1.2 & 2.3 - what a sign at least into

may be name B.P.C