HB

217

25-LS0696\V
Bannister
4/19/07

CS FOR HOUSE BILL NO. 217(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES HOLMES, Ramras

A BILL

FOR AN ACT ENTITLED

"An Act relating to required onboard disclosures about tours, flightseeing operations, other shoreside activities, shoreside vendors, and visitors bureaus; and providing for an effective date."

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

* **Section 1.** AS 45.50.474(b) is amended to read:

(b) A person or other entity aboard a cruise ship conducting or making a sale of tours, flightseeing operations, or other shoreside activities to be delivered by a vendor or other entity at a future port of call shall disclose, both orally and in writing,

(1) that the onboard sale is a paid promotion by a shoreside vendor;

(2) that other alternatives at different prices and with different features may be available at a port of call;

(3) the address, Internet website address, and telephone number of the existing visitors bureaus at each future port of call; and

(4) if the amount of commission or percentage of the total sale retained or returned to the person **or entity** making **or attempting to make** the sale **exceeds 25 percent of the total cost of the** [. THE PERSON OR ENTITY ABOARD A CRUISE SHIP MAKING OR ATTEMPTING TO MAKE A SALE OF] services or goods provided by a shoreside vendor**, that more than 25 percent of the total sale price is being retained as a commission by the person or entity making the sale** [SHALL DISCLOSE THE ADDRESS AND TELEPHONE NUMBER OF THE SHORESIDE VENDOR IF ASKED BY A CONSUMER. ALL SUCH WRITTEN NOTICE OF DISCLOSURE SHALL BE IN A TYPE NOT LESS THAN 14-POINT TYPEFACE AND IN A CONTRASTING COLOR CALCULATED TO DRAW ATTENTION TO THE DISCLOSURE].

* **Sec. 2.** AS 45.50.474 is amended by adding a new subsection to read:

(e) A written notice of disclosure under (b) of this section must be in a type that is not less than 14-point typeface and in a contrasting color calculated to draw attention to the disclosure.

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

ADOPTED

AMENDMENT NO. 1

Offered in the House BY REPRESENTATIVE RAMRAS
To Draft version CSHB217(JUD) 25-LS0696\V

P. 2, L.2 Delete "25" insert "20"

P.2, L.5 Delete "25" insert "20"

ADOPT

AMENDMENT NO. 2

Offered in the House
To Draft version CSHB217(JUD) 25-LS0696\V

BY REPRESENTATIVE RAMRAS

P.1, L.8 after "in writing" insert ~~"at the point of sale"~~ or

P.1, L.9-10 Delete ~~"paid promotion by a shoreside vendor"~~ and insert ~~"retail/wholesale relationship between the vessel operator and the shoreside vendor."~~

P.1, L.8 - after disclose" delete "both orally and in writing" insert "~~orally or~~ in writing at the point of sale."

FAILED

AMENDMENT NO. 3

Offered in the House
To Draft version CSHB217(JUD) 25-LS0696\V

BY REPRESENTATIVE RAMRAS

P.1, L.8 after "future" insert "public"

P.2, L.11 Insert a new Sec. 2 to read "For the purpose of this statute, a public port does not include a private destination resort."

- Private port no other options
- Not a tour operator

H N
D N
N
C I
S A
L N
R Y

AMENDMENT #4 Adopted HOLMES

Page 2, line 12

Insert new section 2:

"AS 45.50.474(c) is amended to read: (c) Each violation of this section constitutes an unfair trade practice under AS 45.50.471 [, AND SHALL RESULT IN A PENALTY OF NOT MORE THAN $100 FOR EACH VIOLATION]"

Renumber as necessary

AMENDMENT #5 W/D Holmes

Page 1, lines 9 to 10

Amend to read:

"**1) That the onboard sale results in a commission paid by the shoreside vendor;**"

Renumber as necessary

AMENDMENT #6 Adopt HOLMES

Page 1, line 5

Insert new section:

"AS 45.50.474 is amended to read: (a) A person may not conduct a promotion on board a cruise ship that mentions or features a business in a state port that has paid something of value for the purpose of having the business mentioned, featured, or otherwise promoted, unless the person conducting the promotion clearly and fully discloses orally and in all written materials used in the promotion that the featured businesses have paid to be included in the promotion. **If the value paid by the business is a commission of more than 10% of any single sale, the disclosure shall also state that more than a 10% commission is being retained by the person or entity making the promotion, and that other alternatives may be available at a port of call; and the disclosure shall provide the address, Internet website address, and telephone number of any existing visitors bureaus at each future port of call.** All such written notice of disclosure shall be in a type not less than 14-point typeface and in a contrasting color calculated to draw attention to the disclosure"

Renumber as necessary

ADOPT

AMENDMENT NO. 7

Offered in the House
To Draft version CSHB217(JUD) 25-LS0696\V

BY REPRESENTATIVE RAMRAS

P.1, L.9-10 Delete "paid promotion by a shoreside vendor" and insert "retail/wholesale relationship between the vessel operator and the shoreside vendor, that results in a percentage of the sale retained by the cruise ship."

NFIB
The Voice of Small Business®

Alaska

April 19, 2007

The Honorable Lindsey Holmes
Alaska State Capitol Building
Juneau, Alaska 99801

RE: CSHB 217 (EDT)

Dear Representative Holmes,

We appreciate your willingness to assist Alaska's small business owners with the unfairness created in the disclosure section of the Cruise Ship Initiative. The proposed committee substitute to HB 217 is generally helpful to those small businesses.

We would point out that several parts of Section 1 that are significantly unfair to small business owners.

1. Page 1, lines 11 and 12, require that information be made available that "other alternatives may be available for a **lower price**." This suggests that the offered activity is excessively high priced. It does not recognize the quality of the activity nor that it may be lower priced than alternatives. This should be changed to reflect that other alternatives might be available without a required judgment that may or may not be valid.

   We would recommend that "for a lower Price" be replaced with. "at differing prices and quality."

2. Page 1, lines 13 and 14 and page 2 lines 1 and 2, require contact information for all competitors that have not paid for promotional consideration. It basically says that if any operator has a promotional or commission arrangement, all vendors get the benefit by the requirement of this disclosure at no cost. That is clearly unfair to those who use cruise ships as booking agents or pay promotional fees.

   The current language only requires the disclosure of the address and telephone number of the specific shoreside vendor if asked by the consumer. Thus, even the disclosure of the visitor bureau is a significant change to the initiative.

   We would recommend that "and a list of tours, flight seeing operations, or other shoreside activities listed with the visitors bureaus" be removed.

3. Page 2, lines 3 through 8, require disclosure of any commission for shoreside activities exceeding 33%. While this is an improvement from current language in the initiative, we maintain our concern that this type of disclosure is not applied to like

National Federation of Independent Business — ALASKA
P.O. Box 34761 • Juneau, AK 99803 • 907-723-6667 • denny.dewitt@nfib.org

businesses elsewhere by law and remains an inappropriate invasion of a business' proprietary information.

The cruise ship season is almost upon us. NFIB would encourage the proposed changes be made in the Judiciary Committee and that it be promptly moved to the House Floor for consideration. It is imperative for small and independent businesses that we resolve this problem prior to the beginning of the season.

Sincerely,

Dennis L. DeWitt
Alaska State Director
National Federation of Independent Business

cc: Representative Jay Ramras, Chair, Judiciary Committee
Representative Nancy Dahlstrom
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg

Alaska State Legislature

House of Representatives

Alaska State Capitol
Juneau, Alaska 99801-1182
1-907-465-4919 (phone)
1-888-478-4919 (toll free)
1-907-465-2137 (fax)

Interim Address
716 West Fourth Avenue
Anchorage, Alaska 99501-2133
(phone) 1-907-269-0120
(fax) 1-907-269-0122

Representative Lindsey Holmes
District 26

SPONSOR STATEMENT
CS for HB 217 (JUD): Tourism Disclosures and Notices

The Judiciary CS for HB 217 makes important changes to the version that passed out of the Special Committee on Economic Development, Trade and Tourism. First, it changes lines 11-12 to require disclosure of "alternatives at different prices and with different features," instead of "alternatives at a lower price. This change is important because not all tours sold off the cruise ships are cheaper, nor do they offer precisely the same experiences. Second, this CS removes from lines 13-14 the requirement that the cruise ships provide a list of alternative tours. The requirement of a list was redundant because Visitor's Bureaus list tours along with their contact information already. Finally, the new CS requires disclosure when commission rates on tours are over 25% instead of over 33%. This change reflects agreement between vendors and the initiative sponsors on what constitutes a commission high enough to require disclosure.

HB 217 addresses important concerns Alaskan small businesses have regarding the disclosure section of Ballot Measure 2: "The Cruise Ship Initiative". The goal of the disclosure section was originally to increase disclosure requirements to promote fair competition between local businesses. As written, the law on disclosure will not promote competition, and has the potential to be punitive to local Alaskan businesses that offer tours to cruise line passengers. HB 217 will amend the language from the initiative to promote competition between all Alaskan tour businesses, and still require honest disclosure by the cruise lines.

HB 217 would maintain the requirement that sales agents onboard cruise ships to inform passengers that the tours sold onboard are a paid promotion. Under HB 217 the sales agents would also have to let passengers know that different tours also may be available at future ports of call, and then provide the contact information for the visitor's bureaus in each port as a tool to book those tours independently.

Additionally, HB 217 amends the commission rate disclosure of the original language to require cruise lines to disclose when commission rates are excessively high, while maintaining the privacy of the exact commission rate for any business. This would protect the proprietary information of our local Alaskan tour companies, and still hold cruise lines accountable to maintain reasonable commission rates, protecting consumer rights.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB217-LAW-CFB-4-20-0
Bill Version: HB 217
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Law

Title: An Act relating to tourism disclosures and notices.
RDU: Civil
Component: Commercial & Fair Business

Sponsor: REPRESENTATIVE(s) HOLMES
Requester: House Judiciary
Component No.:

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

The bill modifies the disclosure requirements for shipboard promotions of tours, flightseeing and other shoreside activities under AS 45.50.474 of the Unfair Trade Practices and Consumer Protection Act. There would be no fiscal impact on the Department of Law.

Prepared by: Robert Meiners, Admin. Services Mngr. Phone 465-5427
Division: Administrative Services Division Date/Time 4/20/07 4:00 PM
Approved by: Robert Meiners for Talis Colberg, Attorney General Date 4/20/2007
Agency: Department of Law

(Revised 9/18/2006 OMB)

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB217-COM-OED-04-02-07
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Commerce
Title: Tourism Disclosures and Notices
RDU: Comm Assist & Ec Dev (405)
Component: Office of Economic Development
Sponsor: Holmes, Ramras
Requester: House EDTT
Component No.: 2743

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

This legislation amends AS 45.50.474(b) to provide an alternative to the requirement to disclose commission rates that tour operators pay to have their tours sold onboard the ships. This legislation does not impact the operations of the department.

Prepared by: Bill Allen, Development Manager
Phone: 907 465 5478
Division: Office of Economic Development
Date/Time: 4/2/07 1:03 PM
Approved by: Emil Notti, Commissioner
Date: 4/2/2007
Agency: Commerce, Community, and Economic Development

[redacted] HOUSE COMMITTEE REPO[redacted]

(7)
Date Referred to Committee: April 18, 2007 **FURTHER REFERRALS:**

Date of Committee Action: April 25, 2007

The JUDICIARY Committee considered: **HB 217**

HOUSE BILL NO. 217 **TOURISM DISCLOSURES AND NOTICES**

"An Act relating to required onboard disclosures and displays about tours, flightseeing operations, other shoreside activities, and visitors bureaus; and providing for an effective date."

Recommends it be replaced with [ ] HCS *or* [✓] CS *for* HB217 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [✓] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LAW				✓

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero
CGA				✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	Brenberg	—			
	LYNN			X	
	Coghill			✓	
	RAMRA	X			
	Holmes	X			
Chair:				X	
Chair:					

ALASKA TRAVEL INDUSTRY ASSOCIATION

Resolution
In support of HB 217

"An Act relating to required onboard disclosures and displays about tours, flightseeing operations, other shoreside activities, and visitors bureaus, and providing for an effective date."

WHEREAS, the visitor industry is an important economic engine of Alaska's private sector; and,

WHEREAS, travel and tourism expenditures in Alaska represent more than $1.5 billion annually; and,

WHEREAS, the visitor industry represent more than 40,000 jobs annually; and,

WHEREAS, the visitor industry has substantial opportunity for continued growth; and,

WHEREAS, the cruise industry delivers almost 1,000,000 visitors annually to Alaska; and,

WHEREAS, a vital part of the cruise and tour visitor's experience is shore excursions and land tours; and,

WHEREAS, the Cruise Ship Ballot Initiative passed in August of 2006, requires disclosure of commissions and proprietary business information; and,

WHEREAS, this aspect of the Cruise Ship Ballot Initiative will harm Alaskan owned and operated tour businesses; and,

WHEREAS, This legislation, HB 217, corrects serious flaws in the law created by the over-broad ballot initiative and it provides consumers with useful information, but not proprietary information about individual Alaskan tour operators,

THEREFORE, BE IT RESOLVED, that the ALASKA TRAVEL INDUSTRY ASSOCIATION BOARD OF DIRECTORS is in support of the passage of HB 217 because it implements an alternative means of communicating the cruise line and shore excursion operator business relationship.

Signed: _____
Ron Peck, President & COO, Alaska Travel Industry Association

ALASKA ANCHORAGE CONVENTION & VISITORS BUREAU

ANCHORAGE CONVENTION & VISITORS BUREAU
BOARD OF DIRECTORS

RESOLUTION 2007-01

A Resolution in support of House Bill 217

WHEREAS, Alaska's tourism industry and small businesses contribute heavily to the state's economic well-being; and,

WHEREAS, the disclosure law as written in Ballot Measure 2 has the potential to be extremely punitive to Alaska businesses that offer tours to cruise line passengers; and,

WHEREAS, the required disclosure would expose the price structures of these businesses, leading to unfair price undercutting; and,

WHEREAS, House Bill 217 would offer an alternative to businesses, especially those that contract with the cruise lines, to provide an alternative method of disclosure.

NOW THEREFORE be it resolved that the Board of Directors of the Anchorage Convention & Visitors Bureau supports House Bill 217 as a measure that will both protect and enhance Alaska tourism businesses.

Approved on this, the 30th day of March, 2007.

ATTESTED BY:

Dave Karp
Chair

Bruce Bustamante
President & CEO

524 West Fourth Avenue • Anchorage, Alaska • 99501-2212 • T: 907-276-4118 • F: 907-278-5559 • Experience Wild Adventure: Explore www.anchorage.net

Southeast Exposure
P.O. Box 9143
Ketchikan, AK 99901
907-225-8829

April 2, 2007

Dear Lindsey Holmes,

Southeast Exposure has been in business since 1986 providing quality sea kayak trips to the cruise lines that come Ketchikan. Since we started, we have seen the birth of countless new and successful tour businesses that bring revenue to our city. When the cruise passengers want to know what sort of commission the cruise lines receive, I always tell them. But at the same time I point out what kind of commission retail sales take. Value wise an experience such as seeing the natural wonders of Alaska there is very little comparison.

I think that a stable commission would be fair, but then again, why should I be able to dictate this? However, since the cruise lines are private entities, I think their rights are the same as ours to keep that information to themselves. Should a guest care to know, I think they should be given that information at the discretion of the party asked. But as far as whether they should be REQUIRED to give that information, I do not think there is any precedent in our democratic free enterprise society such as the proposed 14 point font printed on the ticket. I would go out on a limb and say this would not be legal to require a company to disclose to all their profits. That would be a little akin to telling Southeast Exposure to publish our profits in the local newspaper.

It is not just that we do business with some of the cruise lines, and not that I am a huge fan of all their policies, it is just the principal of the matter.

Thank you so much for your initiative in this fundamental matter.

Betsey Burdett, owner
Southeast Exposure

907-225-8829

Allen Marine Tours
Ketchikan Division
50 Front Street, Suite 209
Ketchikan, Alaska 99901
907-225-8100

April 2, 2007

Dear Representative,

I am writing this letter in support of House Bill 217 that is scheduled for a hearing tomorrow evening. I strongly urge you to support House Bill 217.

Ballot Measure 2, "The Cruise Ship Initiative" includes a provision that requires cruise lines to disclose the rate of commission received on the sales of shore excursions sold onboard their vessels. I find this particularly unfair and absolutely un-American. Our economy in the United States is based on the system of capitalism which is characterized "by private or corporate ownership of capital goods and by prices, productions, and distribution of goods **that are determined mainly by competition in a free market".** This original provision would violate that principle of free enterprise and severely impact a particular sector of companies that sell their tours onboard these cruise ships.

I live in Ketchikan and have worked in Alaska since 1985. In 2004 I made a transition from the fishing industry to the tour industry. I was grateful there was a viable cruise ship industry which had spawned a proliferation of businesses that provide opportunities for local folks to remain in Alaska to live and work. Allen Marine is just such a family-owned operation and the epitome of just such a business. They have worked very hard over the course of 35 years to create and maintain a mutually beneficial relationship with the cruise line companies who provide marketing expertise and exposure. For these tour companies, a 'forced disclosure' would create an obvious economic disadvantage. Allen Marine and similar tour companies should not now be penalized for the diligent work and committed effort that has infused Juneau, Sitka, Ketchikan and other Alaskan communities with much needed revenue these past several decades. When I fished for a living, I was not obligated to disclose the wholesale price of shrimp or crab to my prospective customers. It is unreasonable and patently ridiculous to ask these tour companies to disclose the wholesale price of their tours to their consumer now. Alaska will be setting a terrible precedent and mining an already level playing field.

Please vote yes for HB 217.

Sincerely,
Amanda Painter
Allen Marine Tours, Ketchikan

James Waldo

From: Ethan Tyler [ETyler@ciri.com]
Sent: Monday, April 02, 2007 2:11 PM
To: Rep. Lindsey Holmes
Subject: HB217

Hello Ms. Holmes,

My name is Ethan Tyler, and I am an employee of Alaska Heritage Tours based in Anchorage, Alaska We own Prince William Sound Cruises and Tours, and Kenai Fjords Tours, both partners with the cruise ship industry

I would like to express my support for HB217, as the mandated disclosure of private pricing structures that we have with the Cruise Lines is an unfair practice. By passing HB217, and allowing the Cruise Lines to disclose that they have a business relationship with my company, and provide alternatives, it allows us to keep confidential commission and price structures private.

I am certainly available for comment, please don't hesitate to contact me with any questions.

Best regards,

Ethan Tyler
Sales Manager, Marine Operations
Kenai Fjords Tours / Prince William Sound Cruises and Tours

Alaska Heritage Tours
2525 C St.
Anchorage, AK 99503
907-263-5524
907-265-4530 Fax
907-529-0156 Cell

James Waldo

From: R.B. Henderson Jr. [rbartelow@mac.com]
Sent: Monday, April 02, 2007 11:58 AM
To: Rep. Lindsey Holmes
Subject: H.B.217

I would like to voice my support of H.B. 217.

Chilkat Guides Ltd. is in the business of providing shore excursions to the cruise Lines. We are one of the largest employers in the area. The Cruise Ship Ballot Measure as written is potentially very damaging to our business.

In any business the pricing structure of it's products has the right to be held in confidence so as not to be used unfairly against that business by one of it's competitors. Imagine if state procurment laws said that all contract proposals from right handed people must be published in a conspicuous location so that all left handed people can see them before submitting their own proposals. This is what we are 'ace with with the present Cruise Ship Ballot Measure.

The Cruise Ship Ballot Measure as written is discriminating against our business. It will do nothing but etard tour sales on board he curise ships, which will hurt our business, and any down tu.n in our business causes unemployment and underemployment, and hurts the economy of our community.

I believe that the framers of the Cruise Ship Ballot Measure thought that they were doing the local tour operators a favor by including this provision. But, well meaning as they may have been this part of the measure will do nothing but damage our businesses.

Please support the passage of H.B 217. Correct the impending discrimination against our businesses.

Thanks you for your consideration,
Bart Henderson
Chilkat Guides,Ltd.
Haines, Ak.

NFIB
The Voice of Small Business®

Alaska

March 24, 2007

The Honorable Lindsey Ho
Room 405
Alaska State Capitol Buildi
Juneau, Alaska 99801

RE: House Bill 217

Dear Representative H s

On behalf of the Alaska apter of tional Federation of Independent Business, I wish to express ou ort for Bill 217. The Alaska Chapter of the National Federation of Ind ber th over 2,500 members is the largest small-business advocacy gr up the sta

HB 217 would protect pro form ndors while providing cruise ship passengers wit to shop for alternative providers of shoreside activ This will as e informed of options without forcing shoreside bu itive position c mpared to those do not use cruise ships as book

ne

D ni eWitt
Alas e Director
Pacific deration of Independent Business

cc: Representative Mark N air, House Special Committee on Economic Development, Trade a
Representative Gatto
Representative Johanse
Representative Kohring
Representative Lynn
Representative Doll
Representative Doogan

National Fede d
P.O. Box 34761 • Junea 9 ident Business – ALASKA
907.723.6667 • denny.dewitt@nfib.org

March 23, 2007

Dear Representative Holmes,

I am writing in support of HB217 regarding the revision of Measure 2, the disclosure of cruise line mark ups of shore excursions. I own Snorkel Alaska in Ketchikan. This is our seventh year in business and we employ 7 people each summer. I also worked on board Norwegian Cruise Line for seven years in the Shore Excursion Department.

For the past seven years Snorkel Alaska has sold our tour exclusively through the cruise lines with no independent sales. We like this arrangement as we save money in advertising and staffing. The ships handle all of our bookings for us so we can focus on providing quality tours. I am very happy with the rate that the ship pays us for our services. With a tour as silly sounding as snorkeling in Alaska we need the representation and sales efforts of the cruise lines to stay in business. Yes, they mark up our tour for their efforts and that is fine with me. As with any business goods or services are purchased at a wholesale rate and then marked up for retail sale. I know of no business in America that has to post their mark up in 14 point font and contrasting color. How can this be legal?

The law as it now stands targets us unfairly as a group. The independent tour operators that support this new disclosure law have the same opportunity to offer their tours to the cruise lines that I have. They choose not to or perhaps they don't meet the criteria as set forth by the cruise lines. They have a choice to meet the criteria by providing a quality experience and complying with insurance and other requirements or not. Cruise ship passengers also have the choice of booking through the ship or independently. Booking through the ship offers piece of mind. The cruise lines have evaluated the operator and made sure they maintain insurance and provide a quality experience. Also, if the tour runs late the ship will stay in port until all the tours are back. Cruisers can save some money by booking independent tours but they lose that piece of mind. They are adults and can make those decisions for themselves.

Please support this revision to Measure 2. It could mean the failure of my business if it's not passed.

Sincerely,

Fred Drake

Fred Drake - Owner
Snorkel Alaska

P.O. Box 8772 Ketchikan, AK 99901 Phone/Fax: 907-247-7783 E-mail: snorkelalaska@kpunet.net

Experience Alaska Tours

P.O. Box 23343
Ketchikan, Alaska 99901
Phone: 888-320-9049
E-mail: info@lumberjacksports.com
www.lumberjacksports.com

Dear Representative Holmes,

I am writing to encourage support for House Bill 217 presented Representative Lindsey Holmes. While this bill does not address all of the problems with the constitutional and discriminatory language found in Measure 2, it does give some relief to local businesses that have been egregiously harmed

The area of Measure 2 that HB217 addresses is an attack on our rights as American/Alaskan businessmen to conduct standard wholesale contract negotiations that have historically stood the test of time. Nowhere in the United States of America can this type of legislation be found, it attacks the foundations of the free market principles our founding fathers themselves conducted business under and by. To force a small defined group of businesses to be subject to such a discriminatory law is unjust. If this law was to cover all retailer/wholesaler relationships in all of Alaska then my words would be self serving. My request for your support is based on what is a right of freedom, a freedom for each business to choose a business plan and strategy, and then compete in the open market. There are tough decisions to be made if you choose to be an Independent or Wholesaler, but the choice remains up to the businessmen and there ability to succeed

Measure 2 clearly has language designed to hurt the cruiselines at the cost of local businessmen, HB217 is an honest opportunity to correct this wrong

Thank you for your support

Sincerely,

Rob Scheer

Rob Scheer

P.O. Box 23343 • Ketchikan, AK 99901 • info@lumberjacksports.com

The Great Alaskan Lumberjack Show

The Legend Lives On!

Dear Representative Holmes,

I am writing to encourage support for House Bill 217 presented Representative Lindsey Holmes. While this bill does not address all of the problems with the constitutional and discriminatory language found in Measure 2, it does give some relief to local businesses that have been egregiously harmed

The area of Measure 2 that HB217 addresses is an attack on our rights as American/Alaskan businessmen to conduct standard wholesale contract negotiations that have historically stood the test of time. Nowhere in the United States of America can this type of legislation be found, it attacks the foundations of the free market principles our founding fathers themselves conducted business under and by. To force a small defined group of businesses to be subject to such a discriminatory law is unjust. If this law was to cover all retailer/wholesaler relationships in all of Alaska then my words would be self serving. My request for your support is based on what is a right of freedom, a freedom for each business to choose a business plan and strategy, and then compete in the open market. There are tough decisions to be made if you choose to be an Independent or Wholesaler, but the choice remains up to the businessmen and there ability to succeed

Measure 2 clearly has language designed to hurt the cruiselines at the cost of local businessmen, HB217 is an honest opportunity to correct this wrong.

Thank you for your support

Sincerely,

Rob Scheer

Rob Scheer

Toll Free: 888-320-9049 • 907-225-9050 • Fax: 907-247-9050

March 24, 2007

Representative Lindsey Holmes
State of Alaska
State Capitol #405
Juneau, AK 99801

Dear Representative Holmes,

This business was organized in 2003, based on research that identified growing visitor interest in experiencing Alaska rain forest and wildlife in a natural setting. Before investing in the 40 acres of mostly forested land that we developed, the concept for Alaska Rainforest Sanctuary was presented to the major cruise lines. It was only after receiving their commitments to sell our product that we invested over $2 million in property acquisition, forest trail building, elevated boardwalks, construction of a forest/wildlife interpretive center, support facilities, and the restoration of a historic sawmill situated on part of our property.

Since opening the sanctuary in 2004, we have hosted tens of thousands of cruise ship passengers. Based on comment cards that we get back, our operation is producing very satisfied guests. Last season we provided employment for 43 persons.

None of this would have been economically feasible without the promotion and advance bookings provided by the cruise lines. This is now threatened by AS 45.50.474. We know that sales will be seriously impacted if there is no relief from the "onboard disclosures and display" provision of this statute.

116 Wood Road, Ketchikan, Alaska 99901 Phone: 907-225-5503

This provision of the statute is discriminatory and harmful to the large number of established Alaska businesses serving the shore excursion needs of cruise ship passengers. No such disclosures are required of any other class of Alaska businesses.

We appreciate your involvement with House Bill #217 and urge the Legislature to pass this much needed amendment to the statute.

Sincerely,

Len Laurance
Marketing Director

Copy: Rep. Kyle Johansen
Rep. Peggy Wilson
Rep. Bill Thomas
Sen. Bert Stedman
Sen. Kim Elton
Sen. Albert Kookesh

Chilkat River Adventures, Inc. (River Adventures)

P.O. Box 556
Haines, Ak. 99827

Phone: 800-478-9827
Fax: (907) 766-2051
Karen's Cell: 314-0037
E-mail: riveradventures@aptalaska.net

Dear Representative Coghill,

My husband and I own and operate a tour company in Haines, and have been in business since 1991. We started out with one boat and sold our tour to independents that visited our community. Each year from 1991 through 1993 my husband had to go to the North Slope, or go to logging camps to find work in the winter. I worked one winter in Juneau at a temporary State job because there was little or no work, available in Haines. We did this because we were not making enough money in the summer season to sustain us through the winter months. By 1994 we realized that we would not be able to continue our business if we did not expand and try to get sold on board the cruise ships that were coming to our area, simply, we just needed more volume. We were fortunate enough to get a Rural Development Loan, expand our business and get picked up by the cruise lines.

Our company takes visitor's into the wilderness by jet boat and they come back with a better understanding of the Alaskan wilderness and a greater appreciation for Alaskan residents and our lifestyles. We love what we do and appreciate people who spend their hard earned money to come to Alaska as visitor's.

This past October the voters passed Ballot Measure 2, an Initiative that is commonly referred to as the Cruise Ship Head Tax. There is a part of the Initiative that directly affects us, which is the disclosure statement. If this disclosure statement doesn't get amended, it will force the cruise lines to tell their customer what the percentage of mark up is on every excursion tour sold on board, both orally and in writing. This will give that person private information about my tour pricing, just by doing simple math.

We wholesale our product to the cruise line. This is a totally different price than I sell to the independent traveler. The cruise line mark up my wholesale price so that they can pay for operating costs for the shore excursion department, advertising and other costs associated with shore excursions. With the cruise line marketing the cruises and our shore excursions, they can reach a much larger volume of people than I could ever reach, if I were to do my own marketing. For this reason alone, I am more than happy to allow them to keep a percentage of the on board sale price of my tour. What I am very uncomfortable with is the fact that they may be forced to disclose the percentage of mark up for all to see, including my competitor. This information will be readily available for anyone to obtain.

A law that requires any business to disclose the markup of a wholesale product is not only ridiculous but unreasonable and goes against the very foundation of free enterprise. There are no other businesses that I know of that buys wholesale products and then is required to "disclose both orally and in writing" the percentage that they have marked the product up and they must put the written notice in 14 point typeface and contrasting color.

I believe that when the people passed this [illegible] that [illegible] did not fully understand, nor did some of them even read it in its entirety. People have admitted to me that they didn't even know about the disclosure statement that was in this initiative. They just saw it as a tax on cruise ship passengers. Once again, tax them or tax me, which would you choose?

I encourage you to support HB217 to protect businesses like ours and ask you to defend free enterprise by righting the wrong that has been done by this injustice.

How far can the Legislature go in amending an Initiative? I have included my rationale in favor of amending this Initiative.

The Supreme Court has cited three factors in determining how far the Legislature can go:

1. ***The scope of the subject matter***. "[T]he broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative." This Initiative was extremely broad and very far reaching which should allow more latitude in amending it.

2. ***The [illegible] general purpose***. A court "must consider whether the general purpose of the [illegible] is the same as the [illegible] purpose of the initiative." I believe that the general purpose rule applies in HB217 [illegible] even more beneficial to the customer because it gives them clear direction for alternative tour[illegible] should they decide to not purchase the tour on board, and it provides the customer with the contact information of the [illegible] so they can easily make their own arrangements.

3. ***Similar means***. Courts will consider the degree to which "the means by which that [common] purpose is effectuated are the same in both the legislation and the initiative." But the means adopted need ***not*** be identical; they simply must "address[] the subject matter in similar ways." Courts will consider whether a change in the means "vitiate[s] the aims of the initiative" or instead "ma[kes] those aims more feasible of achievement." I believe that HB217 achieves this goal as well. It addresses the subject matter in similar ways by stating that the shore excursions are a paid promotion and alternative tours may be found ashore in each port of call.

Thank you for your time and consideration and I sincerely hope that you will support HB 217.

Karen M. Hess / V.P.

Taquan Air

March 24, 2007

Representative Lindsey Holmes
State of Alaska
State Capitol #405
Juneau, AK 99801

Dear Representative Holmes,

No where else in the world is it mandated by government that the wholesale cost or net price of a service be disclosed and displayed aboard cruise ships. And of course no other type of business in Alaska is required to reveal the mark-up or base cost of a service or commodity, except those providing shore excursions to cruise lines.

Taquan Air has invested heavily in purchasing and completely rebuilding seven DeHavilland Beaver floatplanes, including an FAA approved modification to provide larger windows and more spacious seating, sound cancelling headsets, and state of the art Capstone cockpit technology. We are a certified participant in the pioneering Medallion Foundation air safety program and provide the highest insurance coverage in the industry.

This is what it takes to qualify to be sold aboard cruise ships. Passengers are offered high quality excursions, which reflects well on the ports of call and the state. Displaying both the net cost and selling price of excursions aboard ship will drive business ashore to vendors who do not have to meet the same standards.
This will be disruptive to commerce, confusing to passengers, and create a negative image for the state.

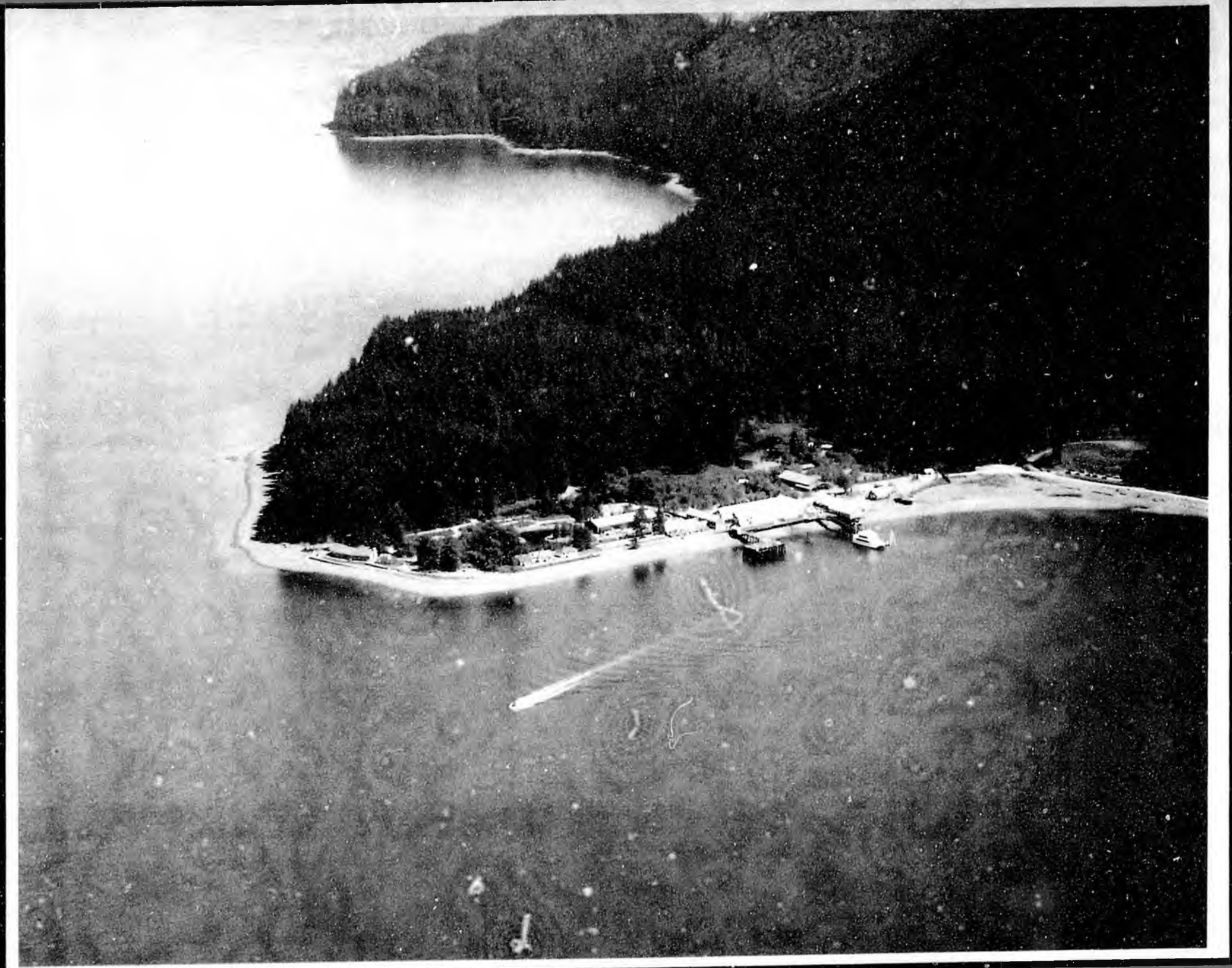
Thank you for sponsoring HB217, which will go a long way to solving the problem. The ultimate solution would be to eliminate the disclosure and display provisions of AS 45.50.474 altogether and let commerce be transacted like it is for all other types of businesses.

Sincerely,

Brien Salazar
President and CEO

Copy: Rep Kyle Johansen
Rep. Peggy Wilson
Rep. Bill Thomas
Sen. Bert Stedman
Sen. Kim Elton
Sen. Albert Kookesh


Hooneh
1.5 miles
15P



Alaska CANOPY

March 24, 2007

Representative Lindsey Holmes
State of Alaska
State Capitol #405
Juneau, AK 99801

Dear Representative Holmes,

I am a life long Alaskan who joined with two other Ketchikan residents in 2005 to introduce the first zip line or canopy course to the state. It was after experiencing similar activities in other countries that we felt this would be attractive to Alaska cruise passengers. The cruise lines agreed to support the enterprise, so we accelerated our development plan and opened a zip line course in Ketchikan that same year.

With high demand and satisfaction levels, we developed a second zip line course in Juneau for 2006. This has also proven very popular. Last year we hosted thousands of cruise passengers at our Ketchikan and Juneau facilities and employed 80 persons. Guests experience the rain forest from a different perspective and are exhilarated by the challenge

The disclosure requirements of AS 45.50.474 (b) will have a negative impact on our business and could threaten it's the economic viability. HB 217 will minimize the negative effect of the current statute . Thank you for introducing this bill We urge the Legislature to pass this healing legislation.

Sincerely,

Kris Singstad

Kris Singstad
General Manager & Vice President

Copy: Rep. Kyle Johansen
Rep. Peggy Wilson
Rep. Bill Thomas
Sen. Bert Stedman
Sen. Kim Elton
Sen. Albert Kookesh

P.O. Box 5425, Ketchikan, Alaska 99901 Phone: 907-247-5503

Alaska Canopy Adventures
406 S Franklin St #210
Juneau, AK 99801
Tel: 907-523-2920
Fax: 907-523-4820
www.alaskacanopyadventures.com

Dear Representative,

We ask you to please support HB 217 and the Alaska Travel Industry. By supporting this measure you have will have an opportunity to protect an industry that has been damaged by an anti-business special interest group that succeeded in deceiving Alaskan residents. Support HB 217 and business in Alaska!

Regards,

Mike Cooney
Alaska Canopy Adventures
mike@alaskacanopyadventures.com

FOUR SEASONS MARINE SERVICES

P.O. BOX 211267
AUKE BAY, ALASKA 99821
PHONE: (907) 790-6671
FAX (907) 790 6672

March 26, 2007

Representative Lindsey Holmes
State Capitol, #405
Juneau, AK 99801

Dear Representative Holmes:

I am writing in support of House Bill 217, which introduces additional wording to the recently passed cruise ship initiative. HB 217 specifically addresses the requirement that cruise lines disclose actual commissions paid by Alaskan vendors of shore excursion products. The intent of the current wording related to commissions is unclear, but if put into practice will have negative consequences for Alaskan tour operators and cause confusion on the part of the visitor.

Four Seasons Tours sells whale watching shore excursion products to a number of cruise ship companies in the port of Juneau. We have invested many years and considerable financial resources to build our business, and our marketing is based on the methods used worldwide to sell products aboard cruise ships. We provide a service both to the cruise lines and the ultimate consumers who enjoy our excursions. The commission margins earned by the cruise companies guarantee a smooth, seamless delivery of these products to the ship's customers, ensure a required level of safety, and pay for advertising and marketing costs. We are able to focus our attention on offering a safe, high quality product without diffusing our efforts and resources on advertising and marketing.

We strongly believe the wording as it stands in the recently adopted initative is an onerous and punitive requirement. There is no precedent that I am aware of, requiring such disclosures of tourism product margins, anywhere. I don't think it's appropriate or fair to require our company to disclose its net price. Further, I cannot see any benefit to the visitor to have access to that information. We believe that HB 217 offers a better way to provide travelers with tour information for each port rather than simply requiring tour operators to disclose pricing information. Without options, the consequences of required price disclosures will surely compromise tour quality and the overall experience of the Alaska cruise customer. Independent travel agents and wholesalers are not required to publicly disclose commissions, and we see no reason to require it of cruise ship companies who provide the same type of service.

We support the amended wording included in HB 217, and feel that it gives the ultimate consumer (the visitor) information related to the fact that vendors do sell their services to cruise lines for a price lower than retail, and provides access to the local visitor's bureau for further information. We urge your collegues in the Legislature to support and vote in favor of this bill.

Sincerely,

Carole J. Tallman
Director, Sales & Marketing

cc: Representative Neuman , Economic Dev., Trade and Tourism Committee Chair

FOUR SEASONS MARINE SERVICES

P.O. BOX 211267
AUKE BAY, ALASKA 99821
PHONE: (907) 790-6671
FAX: (907) 790 6672

March 28, 2007

Representative Lindsey Holmes
State Capitol, #405
Juneau, AK 99801

R.E.: HB 217

Dear Representative Holmes:

Our company, Four Seasons Tours sells whale watching trips to cruise ships in the port of Juneau. We have spent many years and invested a lot of money to build our business, based on the model of marketing methods used worldwide to sell tours aboard cruise ships. The commissions collected by the cruise companies guarantee a smooth, seamless delivery of tours to the ship's customers, and pay for advertising and marketing costs. We can focus our attention on offering a quality tour without spending time and money on advertising and marketing. The Cruise ship companies are then able to guarantee a level of service and availability that is more difficult for a cruise passenger to accomplish with independent purchasing, which adds value for the customer.

The primary purpose of Proposition 2 was to impose a head tax. That is what the media focused on, and the public debates centered around. And it is clear to me in discussion with other voters, that most people were unaware of the implications of the other five sets of requirements in the legislation, in addition to the imposition of a head tax. The other five are unrelated fields of wastewater monitoring, gambling taxes, establishing "ocean rangers", encouraging lawsuits, and commission disclosure to customers. The only common thread is that they were clearly designed to apply more rules and restrictions on cruise ships. Our Alaskan owned company suffers, as a consequence.

The last one of those many unrelated requirements is for ships to disclose the wholesale price of our tour to their end customer on the ship. This is the equivalent of passing a law saying independent tour brokers in any community would have to disclose the wholesale price of tours they sell. I don't think that kind of legislation would ever pass if it were it introduced in the legislature. For one, it's not necessary – why would that be required? Who and what are protected by this? The free market controls prices, that's the way it works in our country. Further, it interferes with our relationship with our retailer, the cruise ship company. In essence, we are penalized with this intrusive requirement for choosing to sell through a cruise ship company, by having our volume pricing levels exposed to competitors.

We support the fix to this problem proposed in HB 217. It provides the intent of informing visitors they are paying commissions on board, and even directs them to alternative sources of tours. We are hopeful you and your colleagues in the Legislature will pass this bill.

Sincerely,

Loren Gerhard
Vice President – Marine Operations
cc: Representative Neuman , Economic Dev., Trade and Tourism Committee Chair

James Waldo

From: Rep. Lindsey Holmes
Sent: Wednesday, March 28, 2007 5:00 PM
To: James Waldo
Subject: FW: Please Support HB217

From: Kerry and Joyce Town [mailto:canalmarine@aptalaska.net]
Sent: Wednesday, March 28, 2007 11:29 AM
To: Rep. Lindsey Holmes
Subject: Please Support HB217

We would like to ask for you to **please support HB217**. This is very important to the survival of our towns and businesses. I feel that this is totally out of hand having a sector of businesses reveal their bottom line price and their profit. The customer (tourist) are not buying our business therefore I don't believe they need to know, or want to know how much everyone is making. They just want to have the experience of a life time. And, that they can come back and do it again.
Thank you for your time.

Kerry and Joyce
Canal Marine and Oceanside RV
Haines Alaska
907-766-2437
www.oceansiderv.com
greatview@oceansiderv.com

James Waldo

From: Rep. Lindsey Holmes
Sent: Wednesday, March 28, 2007 5:00 PM
To: James Waldo
Subject: FW: HB217

From: Vy Zartman [mailto:zartman6@yahoo.com]
Sent: Wednesday, March 28, 2007 11:27 AM
To: Rep. Lindsey Holmes
Cc: zartman6@yahoo.com
Subject: Re:HB217

Vyonne Zartman
P.O. Box 905
Haines, AK 99827
E-mail: zartman6@yahoo.com

Dear Representative Holmes,

This past fall, Ballot Measure 2 was passed, known as the Cruise Ship Head tax. In it, there is a disclosure statement that forces a Tour Business to disclose the amount of commission or percentage of their sale. I disagree with this, what other business has to disclose their wholesale price or mark-up orally and in writing, the grocery stores or the service st 'ions? No, I don't think so. Anyway, I feel this is unfair and should be amended. There should be a choice between the old and new requirement.
I support HB217.

Thank you,

Vyonne Zartman

Allen Marine Tours
P.O. Box 1049
Sitka, Ak. 99835

Phone: (907) 747-8100
Fax: (907) 747-4819
jdunlap@allenmarine.com

Dear Representative Holmes,

I support my family through my work in the Alaska visitor industry. I am employed as a manager for Allen Marine Tours, based in Sitka. Our company, which has been in business since 1967, operates passenger vessels throughout SE Alaska. During the peak of the operating season our company employs over 200 people; most of them are full-time Alaska residents. Over 90% of our customers come to us as cruiseship visitors. It has taken 37 years of hard work to build the good working relationship we presently have with the cruiseship industry, and without this relationship our business would not exist.

This past October the voters passed Ballot Measure 2, an Initiative commonly referred to as the Cruise Ship Head Tax. There is a part of the Initiative that directly affects us, which is the vendor disclosure statement. If this disclosure statement does not get amended, it will force all cruiselines to inform their customers, both orally and in writing, the amount of commission retained by the seller on every excursion tour sold on board. This unfair *forced* disclosure requirement would enable any person, or any business competitor, to know the wholesale price of Allen Marine's tour programs.

Virtually every business in the United States operates according to the principles of free enterprise, and I can think of no examples where companies are required to disclose their wholesale pricing to their customers and competitors. When I purchase any product in this country I do not expect the business to have any obligation to inform me how much they paid for the product or to disclose how much profit they have built into the retail price. Why should this be expected of my business? To force this on Alaska tour operators – just because they do business with cruiselines – is patently unfair and completely contradicts the principles of free enterprise.

I also feel that Alaskans voters (the few who were actually aware this disclosure statement requirement was tacked onto the Initiative) were misled as to the purpose of this section. The authors of this Initiative claimed the disclosure statement requirement was included for the purpose of informing *unknowing* cruiseline customers that the cruiselines are charging a commission for the tours they sell. Does anyone really believe that a cruiseline selling tours is providing this service for free? I highly doubt it. Everyone who travels knows that any business providing this kind of service – whether it be a travel agent, a tour broker or a cruiseline – is charging a commission for making these arrangements.

Thank you for your time and consideration. I sincerely hope you will defend free enterprise, and help ensure the future viability of good businesses like Allen Marine Tours, through your support of HB 217

Sincerely,

John Dunlap
Vice President
Allen Marine Tours

From: Jim Collins [mailto:jcollins@allenmarine.com]
Sent: Thursday, March 29, 2007 12:16 PM
To: Rep. Lindsey Holmes
Subject: *****SPAM***** In support of HB 217

Allen Marine Tours - Juneau

PO Box 211609
Auke Bay, AK 99821
(907) 789-0081

March 29, 2007

Dear Representative Lindsey Holmes,

I am writing in strong support of House Bill 217 and I urge you to support it as well

Ballot Measure 2 as it is currently written will discriminate against, and harm, every Alaska tour company that operates tour programs advertised and sold aboard cruiseships. The disclosure statement language in this legislation would require the cruiselines to reveal their tour vendor's wholesale pricing strategy to competitors. That pricing knowledge will be utilized to provide a clear business advantage to the companies that are not legally forced to disclose their own wholesale pricing strategy

Allen Marine is an Alaskan family-owned and operated tourism business.
For the past 35 years we have been showing visitors to Alaska everything that is special about the Alaska wilderness and wildlife. To a large extent, everything we have learned about operating this business is self-taught and learned through hands on experience.

Whether or not Ballot Measure 2 was truly meant as a direct attack on the Alaskan tourism companies, we have great concern that this legislation, in its present form will cause irreparable harm to our business

Myself and the approximately 80 other people who work for Allen Marine here in Juneau hope that you will voice our fear and concern about the intended or unintended effects of Ballot Measure 2.

Sincerely,

Jim Collins
Allen Marine Tours – Juneau
(907) 789-0081 xt. 18
jcollins@allenmarine.com

James Waldo

From: Rep. Lindsey Holmes
Sent: Thursday, March 29, 2007 11:49 AM
To: James Waldo
Subject: FW: re HB 217

From: Dot Wilson [mailto:dotw@gci.net]
Sent: Thursday, March 29, 2007 11:14 AM
To: Rep. Lindsey Holmes
Subject: re HB 217

Representative Holmes: This letter supports the changes made to the Cruise Ship Initiative as outlined in HB 217

As a small business owner that does tours in the summer, I would like to tell you that our company does NOT have a contract with the tour ships. Nor have we ever had. It is true that in the early years we had to work hard to build our clientele without aid from the Tour ships. But we have done so successfully.

When we started doing helicopter tours in 1994 our offerings were not sufficiently different from other helicopter companies for the tour ships to add us as a client. We did what all businesses do. We offered service and quality to our customers. For the last several years we have reached out capacity for tours and have not have to worry about the percentages out competitors paid the tour ships.

I realize the initiative language cannot be changed, but I think HB 217 will be fairer than the current initiative. Businesses by nature are competitive and to take away the competitive opportunity hurts the public and the private businesses by interfering with the free enterprise system that has built our country

Dot Wilson
Coastal Helicopters

Cell: 907-321 0288

James Waldo

From: Rep. Lindsey Holmes
Sent: Thursday, March 29, 2007 11:49 AM
To: James Waldo
Subject: FW: HB217

From: Mike Wallisch [mailto:akfish@gci.net]
Sent: Thursday, March 29, 2007 9:28 AM
To: Rep. Jay Ramras; Rep. John Coghill; Rep. Ralph Samuels; Rep. Max Gruenberg; Rep. Lindsey Holmes; Rep. Mark Neuman; Rep. Carl Gatto; Rep. Kyle Johansen; Rep. Vic Kohring; Rep. Bob Lynn; Rep. Andrea Doll; Rep. Mike Doogan
Subject: HB217

Dear Representatives,

My wife Sydnie and I have owned and operated a tour company in Sitka since 1993 and have been founding partners in a second tour company in Juneau since 2004. Combined, our companies represent over 35 direct employees or subcontractors who reside in the respective communities.

We encourage you to support HB217. The portion of Ballot Measure 2 that HB217 addresses is a punitive measure directed at one specific segment of the tourism industry. It rode the coat tails of a much broader measure and I doubt that standing on its own, it would have passed a vote. Frankly, I find it hard to believe it could be considered legal. I doubt most voters realized the hidden damage that Ballot Measure 2 held for small business.

Cruise line passengers are not forced to book tours exclusively through the cruise lines nor are they led to believe that the cruise line offerings are their one and only avenue to participate in shore side activities in the towns they visit. Virtually everyone who travels knows there are multiple options in terms of activities and tour providers. All one needs to do is spend 5 minutes on the internet and every available option in any town chosen is presented, cruise line or independent. I think our business is typical of most businesses that work with the cruise lines in that we bid our tour products to the cruise lines on an annual basis. If I am required to publicly disclose my wholesale price structure, I am placed at a disadvantage with my competitors. I can't think of **ANY** example where one segment of private industry is penalized in such a fashion.

I urge you to support HB217.

Thank you for your time,

Mike & Sydnie Wallisch
Alaska Adventures Unltd. & Southeast Sportfishing

James Waldo

From: Rep. Lindsey Holmes
Sent: Thursday, March 29, 2007 11:49 AM
To: James Waldo
Subject: FW: Support HB 217

-----Original Message-----
From: Christy Tengs [mailto:christytengs@hotmail.com]
Sent: Thursday, March 29, 2007 10:14 AM
To: Rep. Lindsey Holmes
Subject: Support HB 217

Dear Representative Holmes:

We own the Pioneer Bar and Bamboo Room Restaurant in Haines, Alaska. We struggle every year to stay open year-round in an economically depressed town. Cruise ship business is crucial to us. Anything that hurts our local tour operators directly affects our bottom line.

Please support HB 217. It is the only palatable alternative to the unjust requirements in Ballot Measure 2.

Thank you very much.

Bob and Christy Fowler

Allen Marine Tours
Ketchikan Division
50 Front Street, Suite 209
Ketchikan, Alaska 99901
907-225-8100

March 28, 2007

Dear Representative,

I am writing in support of House Bill 217 and I strongly urge you to support it as well.

I am writing to you as a citizen of Ketchikan, and as a member of a community that clearly made its voice heard on Ballot Measure 2 – we said "No". And of the many reasons we said no, the section that is amended by HB 217 was one of the main reasons.

I work for an Alaska family-owned business that not only services cruise ship passengers, we take independent travelers on marine tours; and we offer parts and service to local marine operators; and we build vessels that are used locally and across the nation. Our operations not only support local families and businesses, but we help support a vital economic driver of Southeast Alaska - Tourism.

By instituting this section of Ballot Measure 2 without amendment by HB 217 the government of the state of Alaska will be flying in the face of the building blocks of this nation – Free Enterprise. The definition of Free Enterprise is: Business governed by the laws of supply and demand, not restrained by government interference, regulation or subsidy. In a free market, government intervention in economic matters are limited to regulating against force and fraud among market participants. To require the public disclosure of wholesale rates for a select portion of the business community not only forces them into an economic disadvantage, but also infers a level of "force" or "fraud" within the community. I certainly do not believe that any of my neighbor businesses, nor the sales managers with the cruise lines are forcing or defrauding any of our visitors. And if the government of the state of Alaska feels that it is appropriate to require tour sellers to publish their wholesale rates for services and products to cruise ship passengers, then it would only be equitable for compliance of ALL businesses selling services and products to cruise ship passengers. The t-shirt seller must place a sign above his rack with his wholesale price, the hot-dog kart vendor must make his wholesale price available to the cruise ship passenger, the corner drug store must place a wholesale price tag on the shampoo the cruise ship passenger purchases. This may seem extreme and simplistic, but I am only trying to demonstrate the discriminatory aspect of this portion of the legislation. Anyone who owns and/or operates a business understands the damage this piece of legislation can do to a companies ability to conduct fair business.

Most of us in the hospitality and tourism industry do our jobs because we love to share the uniqueness and beauty of our home town and home state with visitors from far and near. Rather than create more barriers to the enjoyment of Alaska, let's work together to continue to make Alaska a great place to visit and to do business.

I would like to recognize and thank Representative Holmes for sponsoring this legislation. On behalf of the approximately 30 people who work here at Allen Marine Tours in Ketchikan, I urge you to support HB 217.

Sincerely,
Laurie Booyse
Allen Marine Tours Ketchikan

James Waldo

From: Steve Judd [steve@alaskatravel.com]
Sent: Monday, April 02, 2007 4:46 PM
To: Rep. Craig Johnson
Cc: Rep. Lindsey Holmes; Sen. Lesil McGuire
Subject: HB 217

Dear Representative Holmes,

I wanted to express my gratitude for your leadership in regards to HB 217, the commission disclosure bill. I have been employed in the Alaska tourism industry for the past 23 years, and have lived in Anchorage since 1966. The Alaska Tourism industry has provided me and my family many opportunities over my career - having started out as a seasonal H.S. staff member for Princess Cruises in 1983 to my present position as President of Alaska Tour & Travel, a locally owned and operated company.

As you know, the cruise ship ballot initiative poses a significant threat to Alaskan businesses that work with the cruise lines. The commission disclosure requirement creates a very concerning precedent to other business relationships as the same principle could be applied to almost any other business relatinship between companies. The required disclosure exposes the price structures of these local businesses such as ours, which could lead to unfair price undercutting, with all Alaskan tourism businesses suffering as a result.

HB 217 offers an alternative that would allow a choice between disclosing commission rates (as under current law), or disclosing that the tours featured onboard a cruise ship pay for "on board promotion", and a statement reminding passengers that they are free to book alternative tours on their own along with information to help them do so. This legislation does not have a financial impact on the state's budget.

This is an important issue to the visitor industry and many small Alaskan owned and operated businesses, and for that reason I thank you again for working to move this legislation forward. Please feel free to call me if you have any questions or comments.

Best Regards,

Steve Judd

CC: Senator McGuire
Representative Johnson

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Steve Judd
President
Alaska Tour & Travel/The Park Connection 9170 Jewel Lake #202 Anchorage, AK 99502
www.alaskatravel.com steve@alaskatravel.com
907-245-0912 (phone)
907-245-0400 (fax)

Hm address:
2412 Fantail Circle
Anchorage, AK 99515
907-349-8698

O·R·S·O

Brews Brothers, LLC
737 West 5th Ave.
Anchorage, AK 99501
Phone (907) 7[illegible]761 Fax (907) 792-3740

April 3, 2007

Representative Holmes,

This week the House Economic Development, Trade and Tourism Committee will consider HB217, the commission disclosure bill. I would very much appreciate you giving support to HB217 in this committee. As it is written, the ballot initiative poses a significant threat to Alaskan businesses that work in tourism and with the cruise lines. The required disclosure exposes the price structures of these local businesses, which could lead to unfair price undercutting, with all Alaskan tourism businesses suffering as a result.

HB 217 offers an alternative that would allow a choice between disclosing commission rates (as under current law), or disclosing that the tours featured onboard a cruise ship pay for on board promotion, and a statement reminding passengers that they are free to book alternative tours on their own along with information to help them do so. This legislation does not have a financial impact on the state's budget.

Please note the following organizations resolved to oppose this disclosure provision on Alaska businesses:
Alaska State Chamber of Commerce
Anchorage Assembly
Anchorage Chamber of Commerce
Anchorage Convention and Visitors Bureau
Anchorage Downtown Partnership
Alaska Travel Industry Association

Representative Holmes as this is an important issue to the visitor industry and many small Alaskan owned and operated businesses statewide. I hope you will be supportive of moving this legislation forward.

Please feel free to call me if you have any questions or comments.

Sincerely,

Chris Anderson
Brews Brothers, LLC dba Glacier BrewHouse & ORSO

FOUR SEASONS MARINE SERVICES

P.O. BOX 211267
AUKE BAY, ALASKA 99821
PHONE (907) 790-6671
FAX (907) 790-6672

March 28, 2007

Representative Lindsey Holmes
State Capitol, #405
Juneau, AK 99801

R.E.: HB 217

Dear Representative Holmes:

Our company, Four Seasons Tours sells whale watching trips to cruise ships in the port of Juneau. We have spent many years and invested a lot of money to build our business, based on the model of marketing methods used worldwide to sell tours aboard cruise ships. The commissions collected by the cruise companies guarantee a smooth, seamless delivery of tours to the ship's customers, and pay for advertising and marketing costs. We can focus our attention on offering a quality tour without spending time and money on advertising and marketing. The Cruise ship companies are then able to guarantee a level of service and availability that is more difficult for a cruise passenger to accomplish with independent purchasing, which adds value for the customer.

The primary purpose of Proposition 2 was to impose a head tax. That is what the media focused on, and the public debates centered around. And it is clear to me in discussion with other voters, that most people were unaware of the implications of the other five sets of requirements in the legislation, in addition to the imposition of a head tax. The other five are unrelated fields of wastewater monitoring, gambling taxes, establishing "ocean rangers", encouraging lawsuits, and commission disclosure to customers. The only common thread is that they were clearly designed to apply more rules and restrictions on cruise ships. Our Alaskan owned company suffers, as a consequence.

The last one of those many unrelated requirements is for ships to disclose the wholesale price of our tour to their end customer on the ship. This is the equivalent of passing a law saying independent tour brokers in any community would have to disclose the wholesale price of tours they sell. I don't think that kind of legislation would ever pass if it were it introduced in the legislature. For one, it's not necessary – why would that be required? Who and what are protected by this? The free market controls prices, that's the way it works in our country. Further, it interferes with our relationship with our retailer, the cruise ship company. In essence, we are penalized with this intrusive requirement for choosing to sell through a cruise ship company, by having our volume pricing levels exposed to competitors.

We support the fix to this problem proposed in HB 217. It provides the intent of informing visitors they are paying commissions on board, and even directs them to alternative sources of tours. We are hopeful you and your colleagues in the Legislature will pass this bill.

Sincerely,

Loren Gerhard
Vice President – Marine Operations
cc: Representative Neuman, Economic Dev., Trade and Tourism Committee Chair

March 29, 2007

State Representative Lindsey Holmes
State Capitol, #405
Juneau, AK 99801

Dear Ms. Holmes:

It was a pleasure to meet with you in late January and I enjoyed our discussion on tourism related issues and in particular on the impacts of Proposition #2 (Cruise tax). On behalf of the Anchorage Convention & Visitors Bureau (ACVB) and the more than 1,250 member businesses we represent, I am writing this letter in support of HB 217. This bill is imperative to the economic well-being of small businesses in the tourism industry, especially those who do business with the cruise lines.

The majority of ACVB's members are small business owners. The disclosure section of Ballot Measure 2 poses a significant threat to Alaska tour operators that contract with the cruise industry. HB 217 can help change the negative impact by offering an alternative that will promote competition between businesses.

Thank you for your work on this bill and your efforts to assist small business owners throughout the state of Alaska.

Sincerely,

Bruce Bustamante
President & CEO

524 West Fourth Avenue • Anchorage, Alaska • 99501-2212 • T 907-276-4118 • F 907-278-5559 • Experience Wild Adventure. Explore www.anchorage.net

907-245-0912 (phone)
907-245-0400 (fax)

Hm address:
2412 Fantail Circle
Anchorage, AK 99515
907-349-8698

A.J. JUNEAU DOCK, LLC.

P.O BOX 8084, KETCHIKAN, AK 99901 ◊ PHONE: (907) 225-0999 ◊ FAX: (907) 247-6042
STREET ADDRESS: 1110 JACOBSEN DRIVE: JUNEAU, ALASKA 99801

Honorable Representative Lindsey Holmes
State Capitol, Room 405
Juneau, AK 99801-1182
907-465-4919

Honorable Representative Andrea Doll
Alaska State Capitol, Room 426
Juneau, AK 99801
907-465-3744

Honorable Representative Beth Kerttula
State Capitol, Room 404
Juneau, AK 99801-1182
907-465-4766

DATE April 2nd, 2007
RE Support of HB 217

Dear House Economic Development, Trade and Tourism Committee

The AJ Dock in Juneau, Alaska is the newest cruise ship dock in Juneau. The dock is privately owned and sees 250,000+ cruise ship passengers per season. The AJ Dock does not sell tours nor does it conduct tours but the cruise ship initiative will still negatively impact dock operations.

Perhaps this is yet another unforeseen consequence of the initiative but there are no "independent" operators selling tours at the AJ Dock. ALL tours from the AJ Dock are previously sold on-board thus every passenger sees the disclosure addressed in HB 217.

We feel that the disclosure requirement places our dock at a competitive disadvantage with the publicly owned city docks also in the port of Juneau. The publicly owned docks offer independent tour sales on shore which do not need to disclose proprietary information. The option of a cruise ship to call a privately owned facility without these sales is a huge competitive advantage over an open access public facility which does not provide this controlled environment. In addition to the harm caused to local vendors that benefit from use of our facility, this initiative has diminished our competitive edge since all tour vendors who pre-sell on board ships that call our facility must disclose proprietary information.

In support of local tour operators and other related Alaskan businesses such as the AJ Juneau Dock LLC please move forward HB 217. Please support changes to the disclosure provision of the Cruise Ship Ballot Measure so that Alaska businesses are not impacted negatively by this section of the initiative.

Best regards,

Drew Green
Dock Manager
AJ Juneau Dock LLC
1110 Jacobsen Drive
Juneau, Alaska 99801
586-1282

James Waldo

From: Jack Cadigan [ceco@alaska.com]
Sent: Saturday, March 31, 2007 10:43 AM
To: Rep. Lindsey Holmes
Subject: HB 217

Re: HB-217

Dear Representative Gatto

As a resident of Alaska for over 40 years, and long-time local businessman, I strongly urge your support of HB 217.

Our family partnership, Cadigan Enterprises, operates a whale-watch/charter fishing 12 passenger inspected vessel, along with several retail businesses. We work within a cooperative known as the □Professional Mariners Group.□ Naturally, any of our tours sold via cruise ships, Travel Agents in the □lower 48,□ or shore-side agents or brokers are all sold including commissions for the agents. These agents are both our advertisers and sales representatives. The amounts and percentage of the sale that these entities are paid varies, of course, just as in TV or print media advertising the rates vary greatly depending on the target market.

I do not believe that ANY Alaskan business of ANY type should be forced to PUBLICLY divulge how much it pays for ANYTHING, including advertising or off-site agent commissions, fees, and expenses as required by the □Head Tax□ initiative.

I particularly reject the selectivity of a law that would single out only those businesses advertising and/or selling their products aboard cruise for divulging costs of such advertising and/or agent sales.

Furthermore, IF such detailed disclosure of gross commission is required, then concomitant disclosure of the agent□s (cruise-ships□) expenses should also be permitted. In this manner cruise ship passengers would be made aware of the fact that that the net profit accruing to the cruise lines is not the same as the total commission paid.

I therefore most strongly urge your support of HB-217.

Very respectfully,

Jack Cadigan
Captain, U.S. Coast Guard (Retired)
General Partner, Cadigan Enterprises
(dba Adventures in Alaska, House of Russia, Nor□Westerly, Waterwheel Plaza)

James Waldo

From: Stan [stan@stephenscruises.com]
Sent: Saturday, March 31, 2007 1:33 PM
To: Rep. Lindsey Holmes
Subject: HB 217

Dear Representative Holmes:

Thanks for putting forward an alternate plan on the section of the cruise ship ballot that deals with disclosure. HB 217 addresses important concerns Alaskan small businesses have about the disclosure section of the Cruise Ship Ballot Initiative. HB 217 corrects a serious flaw that poses a significant threat to Alaskan businesses that deal with the Cruise Ship Industry, which if not corrected could lead to unfair price undercutting, which could end up effecting all Alaskan tourism businesses.

My business, (Stan Stephens Cruises and Wildlife Trips), feels the existing Cruise Ship Ballot Initiative sets a precedent with the disclosure section that could end up effecting all Alaskan businesses. My business should not have to disclose its pricing structure to anyone.

I hope the legislature will pass HB 217 for it does address important concerns Alaskan small businesses have about the disclosure section of the Cruise Ship Ballot Initiative. Stan

James Waldo

From: Kelli Dindinger [KDindinger@bestofalaskatravel.com]
Sent: Friday, March 30, 2007 9:09 AM
To: Rep. Lindsey Holmes
Cc: 'Ron Peck'
Subject: *****SPAM***** HB217

Representative,

HB217 is extremely important to our business. The impacts of the commission disclosure requirement that has recently become law concern me. It doesn't make sense that wholesale rates are disclosed to the consumer. I can't think of any other industry where this is required. No businesses would want their competitors to know how much they charge for a service. This will make it really hard for the little guy to survive, when the big guys could potentially just buy the business by cutting their prices below a profitable amount long enough to put the little guy out of business. That is not good for our economy.

Then there is the issue of having to print the rates in 14pt. font of differing colors. There are good reasons why I charge different prices for the different cruise lines. Some include transportation, while others don't, some buy more of my tours than others, some buy more volume than others, some require extra services. This law would require me to have to print a different brochure for each ship (instead of what we do now which is to print one brochure without pricing information). That will be very expensive and will lock me into the rates. We wouldn't be able to do specials or shoulder season pricing.

Thank you for supporting HB217! This is our chance to mitigate some of the damage that this new law will cause

Sincerely,

Kelli

Kelli Dindinger
President
Alaska Travel Adventures
9085 Glacier Highway Suite 301
Juneau, Alaska 99801
kdindinger@bestofalaskatravel.com
www.bestofalaskatravel.com
main: 907-789-0052
fax 907-789-1749
cell 907-632-8895

James Waldo

From: Chilkoot Lake Tours [chilkootlours@aptalaska.net]
Sent: Thursday, March 29, 2007 11:11 PM
To: Rep. Lindsey Holmes
Subject: HB217

Chilkoot Lake Tours
PO Box 250
Haines, Alaska 99827
(907) 766-3779

e-mail: chilkootlours@aptalaska.net

Dear Representative Holmes,

I am a tour operator here in Haines, Alaska. Our company, Chilkoot Lake Tours has been working with the cruise lines since 1991 as a sold aboard tour.

Last fall when Ballot Measure 2 was passed it also included a part that directly affects my business. If left as written I will have to reprint all promotional material to include my wholesale cost for the public and competitors to see. This is the only time I know of that a business is going to be *required* to post their wholesale cost in order to continue to do business. In addition it has to be printed in 14 point typeface and contrasting color, drawing attention to my pricing and the ships commission added to it. This would seem to be very contentious to cruise passengers, there is no way they are going to miss the breakdown of wholesale cost and commissions when it is so obviously targeted.

The cruise lines market my tour and do all the booking and selling for which they are certainly entitled to a markup. Will all travel agents now be forced to do the same and show what they collect as commission on all their sales? Where will this stop? Buying wholesale, adding a markup is the basis of free enterprise, the customer either likes the price and makes the purchase or doesn't.

Thanks for your time and consideration in this matter, I urge you to support HB217 to allow Alaskans to continue to do business on a level playing field.

Sincerely,

Janis Horton
Chilkoot Lake Tours

James Waldo

From: Anna Neidig [aneidig@alaskatia.org]
Sent: Thursday, March 29, 2007 4:30 PM
To: Rep. Lindsey Holmes
Subject: HB217 - Constituent Comment

Hi Lindsey,

I moved back to the Turnagain neighborhood recently and it's great to see you in this civic role! Thank you for taking on the challenge of leadership in Juneau, and thank you for sponsoring this bill.

Thank you also for supporting ATIA's efforts to increase state funding for tourism marketing (especially marketing dollars targeted to independent travelers).

Most importantly, the travel industry returns net revenue to State coffers and it is a clean, renewable industry. With further investment in this industry we can continue to fund needs throughout Alaskan communities. On the softer side, but also noteworthy: people in the travel industry are happy individuals living a lifestyle they love. The travel industry is good for Alaska and Alaskans on many levels.

My role as a current ATIA employee puts me on the front line talking to business owners across Alaska on a daily basis. I hear time and again from business owners (both members and non-members of ATIA) that they see a direct correlation between our marketing budget and the appetite of visitors to make the long (and expensive) trip to Alaska. I hear this message from a wide variety of small to large business, in all reaches of the state

I also work daily with our members reviewing the quality business leads they receive from ATIA programs, and I see how excited they are to reap the benefits of ATIA's efforts. I also see ATIA, its very active board of directors and a surprisingly large number of active committee participants squeezing every dollar in our budget to maximize ATIA's return on investment.

I am proud to work for an organization that works hard and produces results. Thank you, again, for supporting the issues that are important to our members.

Anna (Garretson) Neidig

Membership & Advertising Sales Manager
Alaska Travel Industry Association (AlaskaTIA)
2600 Cordova Street, Suite 201 Anchorage, AK 99503
Phone (907) 646-3304 · Fax (907) 561-5727
www.alaskatia.org / www.travelalaska.com

James Waldo

From: C.D. McCurry [cdmccurry@ahtna-inc.com]
Sent: Thursday, March 29, 2007 4:22 PM
To: Rep. Lindsey Holmes
Subject: HB 217

Dear Rep. Holmes
My wife and I are in the tourism business and we support your effort to protect our small business from operating disclosures that could cause our competition to gain and unfair advantage.

Thank you for your time and for the bill you submitted.

Sincerely,

C.D. & Kathleen McCurry
Copper Moose B&B
Copper Center, Alaska 99573
Phone 907-822-4244

James Waldo

From: Scott Laird [Scott.Laird@ustravel.us]
Sent: Thursday, March 29, 2007 4:14 PM
To: Rep. Lindsey Holmes
Subject: HB217

Dear Lindsey,

I have received information on your sponsorhip of HB 217 offering an alternative that would allow tour companies to provide a statement saying they are paid commission by the cruise lines for promoting their product

I think it is a compromise in passenger safety to do either. Encouraging or even suggesting passengers book excursions that are not regulated and examined by the cruise companies puts passengers in harms way by going on their own when making their booking choices. Last minute bookings do not give passengers enough time to do research regarding the safety records of the operators they book with; this is research the cruise line has already done for them.

However, I agree with the provisions put forth in HB217, allowing a less invasive channel for allowing tour operators and cruise lines to comply with the law, advising passengers they receive commissions for the promotion of their products onboard.

I am writing to express my support for HB 217, and wish the best of luck in ensuring it's speedy passage.

Best Regards,
Scott Laird
USTravel Leisure Agent
907-786-0196 Direct
Tuesday - Saturday 9AM - 6PM
USTravel Main Hours Monday - Tuesday 9AM - 6PM
Real People Caring About Your Total Travel Experience

Ask me about a Pleasant Holiday in Tahiti.

James Waldo

From: Shirley Laird [slaird@alaskatia.org]
Sent: Thursday, March 29, 2007 4:06 PM
To: Rep. Lindsey Holmes
Subject: HB 217

Hi Lindsey,
I am Shirley Laird, Director of Finance for Alaska Travel Industry Association and I am in your district.

I truly support HB 217 as an alternative to the disclosure section of the Cruise Ship Ballot Initiative. The disclosure requirements
under the Cruise Ship Initiative are wrong. The small tourism industry businesses should not have to disclose this proprietary
information or be burdened with complicated reporting requirements. Competition is tough enough without adding this impediment.

Way to go West High Grad!
Shirley

Shirley J. Laird
Alaska Travel Industry Association
Director of Finance
907-646-3313
slaird@alaskatia.org

James Waldo

From: Tory Korn [tkorn@capefoxtours.com]
Sent: Thursday, March 29, 2007 3:50 PM
To: Rep. Lindsey Holmes
Subject: HB 217

Dear Rep. Holmes:
My name is Tory Korn. I am the General Manager for Cape Fox Tours in Ketchikan. I have been a year round resident in Ketchikan for six years now, but have been in Alaska on and off for ten years. I am writing to support you in your efforts with HB 217. The disclosure of our pricing practices is a serious threat to our ability to effectively compete in an already difficult shore excursion market. Our particular tours rely on high volume numbers to offer the pricing we do too the cruise lines. What we receive back from them is invaluable in regards to the marketing and sales efforts onboard. In addition to that, I feel that it is just plain wrong to have too disclose our pricing to anyone except those we choose to do business with. Thank you for your efforts and please let me know if I can do anything to help you in your efforts.

Kind Regards,

Tory Korn
General Manager
Cape Fox Tours
Phone: 907-225-4846x104
Email: tkorn@capefoxtours.com

James Waldo

From: Christman, Kari [kchristm@erahelicopters.com]

Sent: Thursday, March 29, 2007 3:58 PM

To: Rep. Lindsey Holmes

Subject: Support of HB 217

Ms. Holmes,
My name is Kari Christman and I currently live in Wasilla. I've been a resident of Alaska for 10 years and have worked for Era Helicopters all of those 10 years. The tourism industry is extremely important to me as well as my family. The money that I make through tourism is what provides my family with food on the table and a roof over their head. I support HB 217 because I don't believe that my company or any other company that works with the cruise lines should have to disclose their pricing structure. It's ridiculous to think that a bill could pass that goes against what owning/operating a business is all about.

Kari Christman
Flightseeing Sales & Marketing Manager
Era Helicopters, LLC
Direct 907.266.8450
Toll Free 1.800.843.1947
Fax 907.266.8349
email: kchristman@erahelicopters.com

James Waldo

From: Steve Silverstein [SILVERSTEINS@akrr.com]
Sent: Thursday, March 29, 2007 3:41 PM
To: Rep. Lindsey Holmes
Subject: HB 217

Lindsey:

On a personal level, I appreciate your work on 217. Wendy Lindskoog, of course, speaks for the corporation, but I see it as positive for the industry.

You have been doing a lot of good work in Juneau and I appreciate it.

Best regards,
Steve

Allen Marine Tours
Sitka Division
PO Box 1049
Sitka AK 99835
747-8100
gcushing@allenmarine.com

March 28,2007

Dear Representative Holmes,

I am writing concerning the passage of Ballot Measure 2, the Cruise Ship Head Tax. Contained in that measure is a requirement that forces cruise lines to disclose the rate of commission received on sales of shore excursions aboard their vessels. I strongly oppose the inclusion of this requirement.

I am a lifelong 50-year resident of Sitka. I began commercial fishing as a teenager and continue in that industry on a spare-time basis. I owned and operated a charter fishing business for 15 years during that time as well. For the past 8 seasons I have been a captain and most recently a manager for Allen Marine Tours.

In my years I have not seen a regulation or requirement that flies more squarely in the face of free enterprise than this one.

I have gained a real appreciation for the tremendous amount of work it is to develop and maintain a good working relationship with the various cruise lines coming to our state. Our company provides many thousands of visitors a first-rate, up-close experience to the very best that SE Alaska has to offer. In order to provide that service effectively and efficiently, this finely tuned partnership with the cruise lines needs to exist.

However, if the vendor disclosure requirement is allowed to be applied, everyone, including our competitors, will know our pricing structure. Thus, the very relationship we have worked so hard to develop will actually become our competitive *disadvantage*.

My work in the visitor industry has been and continues to be the mainstay of my family's income. I believe that the disclosure requirement will have a seriously detrimental impact on our company and on my family. On behalf of the approximately 40 people who work here at Allen Marine Tours in Sitka, I urge you to support HB 217.

Sincerely,

Greg Cushing
Allen Marine Tours Sitka
907-747-8100 Ext. 25

James Waldo

From: Jim and Julie Shook [julicandjim@aptalaska.net]

Sent: Thursday, March 29, 2007 1:07 PM

To: Rep. Andrea Doll; Rep. Bob Lynn; Rep. Carl Gatto; Rep. Jay Ramras; Rep. John Coghill; Rep. Kyle Johansen; Rep. Lindsey Holmes; Rep. Max Gruenberg; Rep. Mike Doogan; Rep. Ralph Samuels; Rep. Vic Kohring

Subject: *****SPAM***** HB 217 Support

Dear Representative:
When I heard and later saw the "disclosure" portion of Ballot Measure 2, I was sure that such a blatent and intrusive attack on free enterprise, and the cruise ship and local tour industries (keeping so many communities solvent) would never see the light of day. I was shocked such a thing was actually put before the voters. I was even more shocked when it passed. Many I have spoken to did not understand the ramifications of such a law. How can such a law benefit Alaskans? Does no one in our government see the " Pandora's box" potential of such a law? Should we single out one industry or should we require the same disclosure of doctors, fuel companies airlines and department stores? Try that and see what happens.
I do not see why the biggest recurring impediment to a healthy economy through tourism seems to be our own government. I do not presently work in the tourism industry, but I know how terribly important it is to my community and I count on you to protect it. While HB 217 does not correct the blunder, it is a step in the right direction. Please support HB 217 and encourage others to do so as well.
Jim Shook
Haines, Alaska

James Waldo

From: Chris von Imhof [vonimhof@alyeskaresort.com]
Sent: Tuesday, April 03, 2007 11:42 AM
To: Rep. Lindsey Holmes
Subject: HB 217,

Dear Representative Holmes,

On behalf of Alyeska Resort I would like to thank you for introducing HB 217 and express our strong support.
Thank you,

Chris von Imhof
--

Chris von Imhof
Vice President/CEO
SEIBU ALASKA, INC.
P.O. Box 249
Girdwood, Alaska 99587

Hotel/Resort (907) 754-1111
Fax (907) 754-2290

http://www.alyeskaresort.com

James Waldo

From: JLucas999@aol.com

Sent: Tuesday, April 03, 2007 10:17 AM

To: Rep. Jay Ramras; Rep. John Coghill; Rep. Ralph Samuels; Rep. Max Gruenberg; Rep. Lindsey Holmes; Rep. Mark Neuman; Rep. Carl Gatto; Rep. Kyle Johansen; Rep. Vic Kohring; Rep. Bob Lynn; Rep. Andrea Doll; Rep. Mike Doogan; Rep. Bill Thomas

Subject: Re: HB 217

Dear Representative Ramras

I am writing to urge your support for HB 217. The bill clearly discriminates against businesses such as ours and provides an unfair advantage to our competitors. While it was appears intended as punitive punishment aimed at the cruises lines, the damage will be to the Alaskan businesses and communities that have built and grown their businesses through relationships with those cruise lines.

On behalf of our 45 year-round and 35 seasonal employees, Wings of Alaska and Wings Airways hope that you aide us in protecting our employees and the business we have built over the past 25 years and support this legislation

Sincerely,

John L.Lucas
Chief Financial Officer
Wings Airways
907-789-9863

James Waldo

From: Erickson, Kari (HAL) [KErickson@HollandAmerica.com]

Sent: Tuesday, April 03, 2007 9:49 AM

To: Rep. Lindsey Holmes

Subject: HB 217

Dear Representative Holmes,

I work in the tourism industry in Ketchikan, Alaska and have been an Alaskan resident for 14 years. I began my career in tourism as a seasonal Driver/Guide for Gray Line of Alaska. After graduating from college I was able to move into a full-time year-round position with the company and am currently the Division Manager.

I am in support of HB 217 because it will assist in limiting the negative impacts of an over-broad ballot initiative. It will reduce the amount of proprietary information that vendors doing business with the cruise lines are required to release to consumers and as a result to their competitors. In no other industry is it common practice to disclose net pricing to consumers. A person would never consider walking into a clothing store and asking what the retailer paid for a product to determine whether or not the product is worth the retail rate or not. HB 217 will help to protect businesses from being required to disclose proprietary information while providing consumers with useful information and options.

I appreciate your time and please let me know if you have any questions or require any additional information.

Sincerely,

Kari Erickson
Ketchikan Division Manager
Gray Line of Alaska
152 Eichner Avenue
Ketchikan, AK 99901
907-225-8702 Office
907-617-1713 Cell
kerickson@hollandamerica.com

Representative Holmes:

Its been a while since I sat with you in the living room of my mother-in-law Maryann Rabeau initiating your election bid and stood in the rain the last day of the election primary season on Northern Lights (I was there for Binkley) but it is a pleasure to say hello again and send along some information today in support of changes to the Prop 2 Cruise Ship Initiative as it relates to small business. I was against this part of the original initiative then, and I am against it now. Your effort to look at this is appreciated.

The attached is a letter submitted to the Juneau Empire as printed by them for your information.

If there are other issues you would like to see supported, please let me know.

Mark Miller
Tourism Planner
2600 Cordova Street #201
Anchorage, Alaska 99503
Tel:(907)-646-3310
Fax: (907)-561-5727
www.alaskatia.org

Vote No On Ballot Measure 2

I began working as the State's Tourism Planner several years ago because I wanted to make a difference for tourists and Alaskans. My job is to keep Alaska the place we as Alaskan's all know and love but allow development that can accommodate more tourists.

Why?

Because 85% of the membership of my organization are small businesses that have 5 or less employees, all people that love Alaska and love showing it in a variety of ways that offer scenic beauty, hospitality and adventure. Most of the services they offer are relatively inexpensive, but collectively in a summer they can afford to provide their services and allow a decent living from the income they receive.

Ballot Measure 2, the so-called Cruise Ship Initiative, may seriously hurt those Alaskan's in several ways. First, if they work with a cruise ship company, their business records become public knowledge. Any competitive edge they may have acquired through years of hard work and perseverance will be lost to whoever wants to start a competitive business. I think that's unfair.

Second, the paperwork requirements, special forms, in specific font sizes of specific colors, must be provided to a new cadre of state employees who will track the information provided. Imagine someone requiring you to write your checks for purchases in the grocery left handed, printed on pink checks with purple lettering only? Would you find that a burden? The paperwork requirements of Ballot Measure 2 are similar.

Ballot Measure 2 also requires an "ocean ranger" program placing marine engineers aboard each cruise ship. These rangers will provide redundant information to that already provided and in fact, if you read your voter pamphlet, will end up costing the state over $2.0 million more than the program can generate in fees.

Will people quit coming for $50 more? Studies show there could be a 10 percent drop. That means about 100, 000 less visitors using the services of all those small business ventures statewide. Each visitor spends on average $1,200. Cruisers usually come by cruise ship once and fly or drive on return visits 3 more times for visits. Do the math and realize the economic loss. Staggering.

What number of Alaskans could afford a better lifestyle for those millions lost to the economy year after year all because someone wanted to have an additional $50 for the state? I'd rather see the small businessman benefit from that money and encourage more visitors to come to Alaska than put a new fee into the state general fund.

Additionally, the domino effect through the Alaskan economy could be very painful. To the 30,000 people in the hospitality industry and to all those people they pay for food, groceries and services that may be reduced or not used at all because less money due to fewer visitors, Ballot Measure 2 could be financially devastating.

Please vote no on Ballot Measure 2.

James Waldo

From: Jeremy Gieser [jeremy@gguiding.com]
Sent: Monday, April 02, 2007 7:37 PM
To: Rep. Lindsey Holmes
Subject: Another HB217 Letter of support

Monday, April 02, 2007

Representative Lindsey Holmes
Alaska State Capitol
Juneau, AK 99801

In Support of HB 217

Dear Representative Holmes,

Here are a few points on why HB 217 is a good thing for Alaskan tour businesses:

- It is unfair to target specific businesses and require them to reveal confidential pricing information. Does every Alaskan tour company have to do this? Without an industry standard this creates an unfair competitive advantage and is contrary to the current Private Market practices for the society in which we live.

- Over 70 Alaskan tour companies have created products that are sold aboard the cruise lines in Southeast Alaska alone. Many of theses are small to mid sized businesses (less than 100 employees). House Bill 217 is being introduced to protect local companies like these- it does not protect the cruise lines.

- HB 217 adds language which requires the cruise lines to provide contact information for **local Convention and Visitor's Bureaus**. This is useful information for the consumer as well as a positive for local tour companies both 'sold' and 'not sold' aboard a cruise ship. This additional language supports Ballot Measure Two's intent much better that that of the original language.

- It is acceptable to introduce an addition to a Citizen Initiative as long as it does not constitute a *substantive change*. There is a letter of support from leg legal for the proposed amendment and I would encourage you to look at how HB217 better embraces the original intent of Ballot Measure Two.

I hope you will feel free to contact me with any clarifying questions or concerns.

Yours truly,

Jeremy Gieser

ATIA - Juneau Chapter President
JEREMY@GGUIDING.COM
(907) 586-2666 office
(907) 586-3990 fax
(907) 723-8447 cell

ALASKA TRAVEL INDUSTRY ASSOCIATION

James Waldo

From: Sherry Aitken [smaitken@hotmail.com]
Sent: Monday, April 02, 2007 7:32 PM
To: Rep. Lindsey Holmes
Subject: Fw: Hb 217

Dear Ms. Holmes,

Thank you for your efforts on HB 217 to correct the inequities in the original Initiative.

Warm regards,
Sherry Aitken

----- Original Message -----
From: Sherry Aitken
To: Rep_Ralph_Samuels@legis.state.ak.us
Sent: Monday, April 02, 2007 9:28 PM
Subject: Re: HB 217

Dear Mr. Samuels,

My name is Sherry Aitken. I was born in Ketchikan and raised in Sitka. I have worked the last six years for a locally-owned and operated wildlife tour company in Sitka. Before that I worked in both the airline industry and the commercial fishing industry in Sitka.

I would urge you to support the changes outlined in HB 217. I will not reiterate the many good reasons for this language change as I'm sure you have many letters outlining those excellent arguments. What I would like to do is remind you of what your responsibilities as a representative of this great state encompass.

I have heard comments in the press from some politicians indicating that if the people of this state voted for the original legislation than the legislature should not change it. This could not be more wrong. When you see rules being put into effect that create unintended or perhaps malicious intended results than you have a duty to correct it with legislative action. You were elected to act as a rational representative for the people and to exercise your judgment with integrity.

This initiative could be challenged in the courts but would ultimately be sent back to the legislature to correct or be struck completely down. Why abdicate your duty to act on the people's behalf to the courts? If you do indeed want to honor the voter's wishes than you need to vote for HB 217 to get fair rule-making results for all the citizens of Alaska. I feel sure that my fellow Alaskans did not vote to intrude upon free commerce or unfairly burden local small businesses.

Please vote for HB 217.

Sincerely,
Sherry Aitken

Sherry Aitken
415 Arrowhead St.
Sitka, AK 99835
907.738.3912

ANCHORAGE CHAMBER
of COMMERCE

1016 W. Sixth Avenue, Suite 303
Anchorage, AK 99501

April 6, 2007

Dear Legislator:

The Anchorage Chamber of Commerce today reviewed and supports HB217 regarding the disclosure section of Ballot Measure 2: "The Cruise Ship Initiative".

The tourism industry is important to our state's economy and economic well-being. Of the Anchorage Chamber's 1,200 members, more than 75 percent have fewer than 25 full-time, year-round employees. Many members are directly involved in the industry; many more benefit indirectly.

Ballot Measure 2 as written is punitive to Alaska businesses that offer tours to cruise line passengers because it exposes the price structures of these businesses, leading to unfair price undercutting. The ramifications of such legislation may be detrimental to more Alaska businesses.

To that end, the Anchorage Chamber of Commerce Board of Directors believes HB217, that allows a choice between disclosing commission rates (as under current law) or alternative methods provided in the bill is consistent with the intention of Ballot Measure 2, and we encourage you to support HB217.

Please contact us at president@anchoragechamber.org or (907) 677-7109 with any comments or questions.

Sincerely,

William J. Evans
Anchorage Chamber of Commerce
Board Chairman, 2006-07

Stacy Schubert, IOM
Anchorage Chamber of Commerce
President

cc. Representative Lindsey Holmes

April 24, 2007

Representative Jay Ramras
Chair, House Judiciary Committee
State Capitol Room 118
Juneau, Alaska 99801-1182

Dear Chair Ramras and Members of the Committee,

The Alaska State Chamber of Commerce supports and endorses the efforts to clarify the requirements recently adopted under the cruise ship initiative. The vendor disclosure provision of the cruise ship initiative unfairly penalizes those that benefit most directly from the cruise and visitor industries. HB 217 seeks to rectify the vendor disclosure portion of the passed initiative.

The disclosure provision of the initiative requires Alaska businesses that sell day excursions and products to cruise passengers to reveal their confidential pricing structure. As an Alaska business association, we are concerned with this provision. It is patently unfair in that it requires just one segment of the business community to disclose their proprietary pricing information. No other industry is required to disclose its pricing structure. The provision requiring cruise lines to disclose in big type the commission they earn for selling bus tours, flight-seeing tours and other ground tour packages places these shore-side vendors at a serious competitive disadvantage.

Good business in Alaska should be based on an even playing field for all Alaskan businesses. Under the current passed initiative, some businesses maybe unfairly penalized by providing proprietary business information required under the initiative. The Alaska State Chamber of Commerce lauds the efforts to change this provision of the initiative.

We look forward to a better business climate in Alaska, and we believe HB 217 moves Alaska's businesses in the right direction.

Yours in economic prosperity,

Wayne A. Stevens
President/CEO

ALASKA STATE CHAMBER OF COMMERCE

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Anchorage Daily News

OUR VIEW

Vote yes, then fix it

This may be the only way to get cruise industry to pay something

There is something for everyone to dislike in Ballot Measure 2, the citizens' initiative on Tuesday's primary election ballot to impose new taxes and fees, stricter environmental rules and consumer-disclosure requirements on the cruise ship industry. And there are problems with almost every one of the provisions.

But the indigestion is worth it. That's why we recommend a yes vote. Then get ready for litigation and legislative battles to fix the problems that emerge. After a couple of years, Alaska will be left with a workable, fair set of laws.

Our fear is that unless Alaska stands up and forces the issue this election, the cruise industry will not willingly pay [illegible] and all [illegible] and its almost 1 million passengers a year enjoy while in our state. Though they are very good at donating millions of dollars to charities and other nonprofits, the cruise lines have been equally strong in battling against state and local taxes and fees.

ELECTION 2006

For example, the industry [illegible] a 2005 economic study, claiming in its campaign material: "The cruise industry pays over $42 million annually in taxes to local governments in Alaska." Not quite. Passengers and crew paid an estimated $17.1 million in local sales taxes. Passengers paid an estimated $6.4 million in local head taxes. Cruise lines paid $14.[illegible] million in fees to dock at local ports, essentially reimbursement for costs. That leaves just $4.5 million the cruise companies actually paid from their own corporate pockets in local property taxes and sales taxes.

That doesn't cut it. Not for an industry that profits from carrying a million passengers to Alaska each year. Without Alaska and all that it offers, there would be no cruises.

The $4.5 million is less than the state collects in rental car taxes, a significantly smaller industry.

The ballot measure would amend state law to require that cruise lines pay corporate income taxes on their shipboard profits, just like any other business making money in Alaska. The cruise industry would have been subject to income taxes under a 1998 Alaska Supreme Court ruling, but it successfully lobbied the Legislature and governor's office to adopt a law retroactively exempting it from the tax.

Also, the initiative's $4 fee per passenger to pay for onboard state observers to monitor pollution is [illegible] preventative medicine.

Were those the only issues in the ballot measure, this would be an easy yes vote.

The $46 fee per passenger for the right to come into Alaska might not survive a legal challenge, though a reasonable "head tax" to cover state and city waterfront and passenger-related expenses is appropriate and legally defensible. And the initiative's provision allowing Juneau and Ketchikan to maintain their own passenger fees on top of

The provision requiring cruise lines to disclose in big type the commission they earn for selling bus tours, flightseeing tours and such seems like piling on in a measure already heavily weighted with revenge against the companies.

ships, those costs don't fall on Alaska.

One other reason to dislike the initiative is that it taxes only Outsiders, reinforcing the embarrassing attitude of many Alaskans that everyone should pay taxes but us. The solution to that dilemma is not to defeat this initiative but rather to convince Alaskans that they too should pay something toward the public services they enjoy.

The state constitution prohibits legislators from quickly repealing the initiative if it passes, but it allows them to amend the provisions. Between legislative amendments and some wise court decisions, we hope Alaska and the cruise lines can end up with a reasonable set of laws before too much damage is done to one of our few growing industries.

It's an awful lot in one ballot measure. Maybe too much, and maybe it will cause the industry to threaten cutting back its ships' time in Alaska. It has done just that when cities have imposed or even talked about adopting passenger fees. We believe that's the risk of showing the industry that Alaskans are tired of being taken for granted.

BOTTOM LINE: Ballot Measure 2 looks like the only way to get the cruise industry's attention.

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 April 20, 2007

SUBJECT: CSHB 217(JUD) relating to required onboard disclosures
(Work Order No. 25-LS0696\V)

TO: Representative Jay Ramras
Chair of the House Judiciary Committee
Attn: Jane Pierson

FROM: Theresa Bannister
Legislative Counsel

This memo accompanies a draft of the bill described above. The issues mentioned below are not triggered by the changes you requested for this particular draft.

1. Initiative issue. Although I believe the changes in this bill are better characterized as amendments that would be allowed under art. XI, sec. 6 of the state constitution, please be aware that, because the draft deletes certain requirements of the initiated language, it is still possible that they could be characterized as a repeal of initiative language and prohibited by art. XI, sec. 6.

2. Commerce clause issues. This bill raises an issue under the interstate commerce clause and federal foreign commerce clause in art. I, sec. 8, cl. 3 of the United States Constitution.

3. Foreign affairs issue. This bill raises an issue under the foreign affairs powers (e.g., the making of treaties) given to the president under art. II, sec. 2, cl. 2 of the United States Constitution.

If I may be of further assistance, please advise.

TLB:med
07-259.med

Enclosure

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Sarah Palin, Governor

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-2075

February 26, 2007

The Honorable Bill Stoltze
State House of Representatives
State Capitol, Room 501
Juneau, AK 99801

Re: Amendment of Laws Enacted by Initiati

Dear Representative Stoltze:

During a budget hearing on February 15, 2007, you requested that our office provide you with an analysis on two matters related to voter initiatives. You asked, first, for a summary of the case law on the legislature's authority to amend a law enacted by voter initiative within two years of enactment, and second, for a history of the legislature's amendments to initiatives during those first two years. The reason to examine the legislature's authority to change an initiated law during the first two years that the law is effective is the prohibition in the Alaska Constitution against the repeal of an initiative during those years. Alaska Const., art. XI, sec. 6. This limit on repeal has been interpreted to restrict the legislature's power to amend an initiated law during its first two years even though the Constitution expressly permits amendments to initiated laws at any time.

1. Summary of the case law

The Alaska Supreme Court has addressed the legislature's authority to amend an initiated law in three cases, although it has reviewed the actual exercise of this authority in only one case. The first case in which the Court discussed the subject is *Warren v. Boucher*, 543 P.2d. 731, 737 (Alaska 1975), a case reviewing the legislature's exercise of its authority to void an initiative petition by enacting substantially the same measure in legislation. Alaska Const., art. XI, sec. 4. The power to amend was described as "broad" and "a check or balance against the initiative process." 543 P.2d. at 737.

The Court speculated that the purpose of the power to amend was

> to assure that initiatives which were ill-advised, which might seriously cripple or frustrate the sound workings of government, or which might be impracticable, could be *altered or corrected* rapidly by the legislature. It was obviously intended by the framers that the initiative process should not be permitted to disrupt vital governmental functions or to impose intolerable burdens upon established administrative systems. [*Id.* (emphasis added).]

Two years later, in *Warren v. Thomas*, 568 P.2d 400, 402-03 (Alaska 1977), the Court considered a challenge to the legislature's amendment of laws adopted by initiative. The initiated laws concerned public official financial disclosure, and the legislature amended them soon after they became effective. The amendments moved the deadline for filing financial disclosure reports from February to April of 1975 and excused public officials leaving office from the obligation to file. Although the amended laws differed in many respects from the initiative measure, the Court found that the amendments did not amount to a repeal: "[t]here are considerable language changes, but, these clarify and render the law more precise. The fines for violations of the law have been reduced but the penalties are still significant," and "the amended law still imposes substantial disclosure requirements on public officials and effectuates the intent of the electorate that those in a position of public trust be held to a high standard of financial disclosure." *Id.* at 402. The changes were not found to so vitiate the regulatory scheme "as to 'constitute its repeal.'" *Id.* (quoting *Boucher*, 543 P.2d. at 737). Although it upheld the amendments under review in *Thomas*, the Court clearly viewed the prohibition against repeal as a limitation on the legislature's authority to amend an initiative. For an amendment to be authorized during the first two years of an initiative, it must continue to further the intent of the voters.

The third case in which the Court discussed the legislature's power to amend an initiative was *State v. Trust the People*, 113 P.3d 613, 623 (Alaska 2005). That case concerned the legislature's exercise of its power to supplant an initiative measure by passing a substantially similar law, rather than its power to amend after an initiative is enacted by the voters. Although the Court recognized that the power to supplant is somewhat narrower than the power to amend, the Court relied in part upon its earlier decision in *Thomas*. The Court characterized *Thomas* as holding that "amendments to popularly-initiated legislation must still 'effectuate the intent of the electorate,' and an amendment that 'so vitiates an act passed by initiative as to constitute its repeal' is not acceptable." *Id.* at 623 (quoting *Thomas*, 568 P.2d at 403).

In *Trust the People* the Court identified three factors relevant to determining whether a proposed initiative and legislation were substantially the same. Although this

test was developed with regard to the power to supplant, rather than the somewhat broader power to amend, the test may also be helpful in determining whether proposed changes would continue to promote the same goals of the electorate in enacting the initiative. First, the scope of the subject matter is important: "The broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative," *Id.* at 620-21 (quoting *Boucher*, 543 P.2d. at 736), and conversely, "the simpler and more focused a law is, the fewer details that can be adjusted without effecting a fundamental change in the measure's purpose and effect." *Id.* at 621. Second, whether the general purpose of the amended initiative would be the same as the original is important. Clues to the purpose of the initiative can be found in the text of the initiative measure, the ballot summary for the measure, and the arguments published in connection with it, such as the supporters' statement in the voter's pamphlet. *Id.* at 622. Third, the Court examines whether the initiative and proposed legislation employ the same means to accomplish its purpose. The means can be similar, rather than identical, so long as they truly accomplish the goals of the initiative measure. *Id.*

In *Trust the People*, the Court applied the test to determine whether a proposed initiative restricting the governor's power to appoint a temporary United States Senator should be supplanted by legislation retaining that authority temporarily until the results of a special election to fill the vacancy could be certified. The Court found that the scope of the initiative was narrow, filling a vacancy, and that its purpose, to eliminate the governor's appointment power, was significantly different from the purpose of the legislation, which provided for the governor to retain this authority. In addition, the means chosen to fill the vacancy, particularly with regard to the role of the governor, were dissimilar. The Court concluded that the proposed initiative and the legislation were not substantially the same and held that the legislation did not supplant the proposed initiative.

2. History of legislative amendments during the first two years of an initiative measure's enactment

Our research discovered few amendments to initiated laws during the first two years of their enactment. We found two, in addition to the 1974 public official financial disclosure initiative enacted in 1974 and examined in *Thomas*, 568 P.2d 400, that was discussed previously. The legislature adopted a number of amendments to a 1998 initiative on the medical use of marijuana. A copy of 1999 Inf. Op. Att'y Gen. (May 24; 883-99-0037) (providing an analysis of the bill amending the initiated law) is attached for your information.

The legislature also amended the gas line initiative enacted in 2000 by changing the definition of "project." An analysis of that bill is also attached. In addition, various

"housekeeping" amendments to sections enacted by the gas line initiative were made by the 2003 "revisor's bill." CSSB49(STA) (secs. 54, 55, 56, 57 & 58, ch. 35, SLA 2003). These amendments are by definition minor and corrective and do not change the meaning of any law. AS 01.05.031.

If you have additional questions or further assistance is required, please do not hesitate to contact me.

Sincerely,

Talis J. Colberg
Attorney General

Enclosures

cc w/enc: John Bitney, Legislative Liaison, Office of the Governor
AAG D. Behr, Legislation & Regulations, Acting Legislative Liaison,
Office of the Attorney General

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3500
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May 24, 1999

The Honorable Tony Knowles
Governor
P. O. Box 110001
Juneau, AK 99811-0001

Re: HCS CSSSSB 94(FIN) -- Relating to the Medical Use of Marijuana
A.G. file no: 883-99-0037

Dear Governor Knowles:

At the request of your legislative director, Pat Pourchot, we have reviewed HCS CSSSSB 94(FIN), relating to the medical use of marijuana.

The medical marijuana law enacted by voter initiative in the 1998 general election contained ambiguous language, and as a result contained a large number of provisions that make the law difficult to administer, difficult to enforce, and difficult to interpret. These problems could not have been envisioned by the voters.

The goal of this Administration was to fix the problems in the voter initiative in order to make the law work, that is, to give effect to the intent of the voters to allow marijuana to be used to address debilitating medical conditions under appropriate controls.

In assessing HCS CSSSSB 94(FIN) (hereafter referred to as SB 94), it is helpful to bear in mind that the legislature heard a great deal of testimony about the potency and profitability of marijuana. In addition to consistent police testimony that marijuana grown in Alaska is among the most potent grown anywhere in the world, the legislature took testimony from medical marijuana users. In particular, the House Judiciary Committee heard very compelling testimony from a user who described how, in the last few months, he was able to stop using prescription narcotic pain medications by substituting marijuana. This individual testified that he had been taking an amount of narcotics that would likely kill an ordinary person who had not built up a level of tolerance to the drugs. He also indicated that marijuana of this quality sells for $500-600 per ounce, which was supported by police testimony that Alaska-grown marijuana often sells for $4,000-5,000 per pound, or more. Thus the testimony showed that marijuana is a powerful drug capable of producing similar pain-killing effects as narcotics, and creating an enormous profit potential, all of which supported the

legislature's desire that medical use of marijuana remain under appropriate controls and not be subject to abuse.

Legal Standard

Under art. XI, sec. 6, of the Alaska Constitution, a voter initiative cannot be repealed for two years, but may be amended at any time. Alaska case law holds that the legislature has broad authority to "substitute its judgment for that of the proponents of an initiative." *Warren v. Boucher*, 543 P.2d 731, 737 (Alaska 1975). There seems to be a sliding scale analysis, such that "[t]he broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative." Medical use of marijuana is a fairly narrow topic, so we should assume for purposes of this analysis that a court will look more closely at any amendments than they would if the subject matter were broader. Nevertheless, the legislature can amend an initiative if the amendments "preserve its basic structure and purpose . . . ." *Warren v. Thomas*, 568 P.2d 400, 404 (Alaska 1977). As discussed more fully below, we believe that the amendments to the initiative made by this bill are valid because a court will find that they are certainly much more than a "hollow gesture" toward medical use of marijuana. 543 P.2d at 739.

Moreover, much of the original initiative still remains. For example, the proponents of the initiative specifically did not require a prescription by the physician, so as to avoid what they characterized as the practice in other states in which the federal authorities threatened action against doctors writing such prescriptions. SB 94 retains this provision and requires only that the physician consider other approved medications and treatments. By not requiring a formal prescription, SB 94 avoids an argument that the amendment is simply a "subterfuge to frustrate the ability of the public to obtain consideration and enactment" of a law allowing use marijuana for medical purposes. *Id.*

Main Changes made to the Initiative

The Department of Health and Social Services, Department of Public Safety, and Department of Law identified several changes needed to make the medical marijuana law work, and SB 94 addressed most of these issues. The issues that were important to this Administration were:

- Recognize that marijuana, like other prescription drugs, should be a controlled substance, regardless of how it is used.
- Prohibit patients from selling or distributing marijuana.
- Limit the number of patients who can be supplied marijuana by the same person.
- Require mandatory registration with the Department of Health and Social Services.

- Limit possession to one ounce and six plants.

- Allow police to take action in medical marijuana cases just as with misuse of a prescription for a narcotic drug, and make the legal burden of proof for medical marijuana consistent with that applied to other drugs.

- Allow access to the registry in criminal investigations.

Each of these points is discussed below and analyzed in terms of the legal standard set out above.

Marijuana Should Be a Controlled Substance, Regardless of How It Is Used. The medical marijuana initiative provides that marijuana used for medical purposes is not a "controlled substance." AS 11.71.190(b). This seemingly insignificant change has serious legal consequences because many other state laws depend on the phrase "controlled substance." For example, it is a crime to possess a firearm while under the influence of alcohol or a controlled substance. AS 11.61.210(a)(1). Thus, because medical marijuana is no longer a "controlled substance," a patient intoxicated on marijuana could lawfully possess and use a firearm. Although the laws relating to driving while intoxicated use a different definition of controlled substance, and thus we believe that a patient can be convicted for driving after using marijuana, an attorney for the legislature has written an opinion that suggests that it is possible a court would not allow prosecution or conviction for driving while intoxicated.

By continuing to treat marijuana as a "controlled substance," SB 94 takes into consideration the potential for abuse of the drug, while at the same time allowing it to be used to address debilitating conditions. This change does not repeal the initiative.

Prohibit Patients from Selling or Distributing Marijuana. The medical marijuana initiative contains an oddly worded provision that would allow registered patients to sell or give marijuana to anyone else, as long as the registered patient did not know that the buyer was not eligible to be registered. AS 17.37.040(a)(3). The legislature heard testimony that this could lead to the problem encountered in California, where retail outlets, euphemistically called "marijuana clubs," sprung up after the medical marijuana initiative was enacted in that state.

There was legislative testimony that the price of marijuana in California clubs ranged from $20 to $120 for one-eighth of an ounce, thus offering a product selling for nearly $1,000 per ounce. One large marijuana club in San Francisco had profits of $1 million per month before it was shut down. Although California authorities were able to close that business, it appears that the Alaska medical marijuana initiative would allow selling by patients.

SB 94 takes into consideration the potential for abuse of the drug and making a profit on its use, while at the same time allowing it to be used to address debilitating conditions. This change does not repeal the initiative.

Limit the Number of Patients Who Can Be Supplied Marijuana by the Same Person. The initiative is silent as to the number of patients who can be supplied marijuana by a single caregiver. If one person is allowed to supply marijuana to multiple patients, at least two problems are created. First, the designated caregiver would be allowed to possess one ounce plus six plants for each patient, thus allowing large growing operations, and the caregiver could transport and distribute multiple ounces of marijuana. Second, the caregiver would almost certainly have a large profit-making incentive and could easily take advantage of patients, as was done in the California marijuana club selling marijuana for triple the price of gold. SB 94 also prohibits convicted felony drug offenders from being caregivers and raises the minimum age for caregivers to 21, which is consistent with laws relating to possession of alcohol.

SB 94 also changed the definition of "primary caregiver," so as to give patients a broader choice of persons to assist them in obtaining marijuana. Moreover, the bill also eases a restriction in the initiative by allowing each patient to have a primary caregiver, as well as an alternate caregiver who can take the place of the primary caregiver in that person's absence. Thus, while SB 94 imposes some different requirements on caregivers in light of the potential for abusing the drug and making a profit on its use, at the same time the bill allows patients additional flexibility to designate "caregivers."

The changes to the laws on caregivers do not repeal the initiative.

Mandatory Registration. The marijuana initiative allows patients to register with the Department of Health and Social Services, but does not require it. From a quick reading of the initiative, it is not immediately apparent that persons are allowed to use marijuana for medical purposes even if they have not registered with the Department of Health of Social Services. Yet a careful legal review discloses that this is the result. AS 17.37.030(a).

The optional registration was described in testimony by many police administrators as a serious practical problem for the police. If a person tells a police officer that he or she is possessing marijuana for medical purposes, but is not registered, the officer has two choices, neither of which is acceptable: the officer can seize the marijuana and arrest the person, thus possibly depriving someone of a substance the person legitimately needs for medical care, or the officer can let the person go on his or her way, thus in essence overlooking a criminal act if the person cannot legally use the substance.

The prime sponsor of the initiative testified that some persons with debilitating conditions may choose not to register because they believe it is a violation of their privacy. However,

those fears should be allayed because the application process for registration does not require the patient to disclose the nature or symptoms of their condition. Moreover, the police will not have access to the registry for general investigative purposes and will be allowed access only to confirm that a person who claims to be registered is in fact registered. Mandatory registration is a protection for patients, because the police will be able to determine immediately that they can lawfully use marijuana for medical purposes.

Mandatory registration also cures unintended problems that arise because the initiative treats registered users differently from unregistered users in several ways. One of the examples of this different treatment is that registered patients cannot use marijuana in public. AS 17.37.040(a)(2). Yet there is no similar restriction for unregistered users. Unregistered persons who uses marijuana in public can therefore do so freely, as long as they can show they have a medical need to use marijuana. This difference in treatment is hard to justify, and thus a registered patient is likely to be able to convince a court that it is a denial of equal protection of the laws, and a restriction on their right to use marijuana, that a registered patient is prohibited from doing in public what an unregistered person can do. Without mandatory registration, the initiative would allow marijuana to be openly used in public, which could lead to a backlash against the law.

Even though SB 94 requires registration for all marijuana users, whereas the initiative makes registration optional, we do not believe this change can be characterized as a repeal of the initiative as lawful medical use of marijuana is still permitted under the bill.

Limit Possession to One Ounce and Six Plants. SB 94 limits patients to possessing one ounce plus six plants of marijuana. The one-ounce-plus-six-plants limit is contained in the original ballot initiative that enacted the medical marijuana provisions, and thus is current Alaska law. AS 17.37.020(a). As such, it is presumptively valid. Because SB 94 adopts that same limit, it would also be presumed to be valid by the courts.

The ballot proposition goes on to provide, however, that patients can possess more than one ounce and six plants if they can prove by a preponderance of the evidence that a greater amount is "medically justified." AS 17.37.020(b). SB 94 does not adopt this exception.

Although the prime sponsor of the ballot initiative testified that some patients want to have more than one ounce plus six plants, there was no testimony before any committee that explained why that is so from a medical perspective. One medical marijuana user who testified in House Judiciary Committee did not register any objection to the one-ounce-plus-six-plants limit. Indeed, there was evidence presented that this is a large amount of marijuana for personal use for medical purposes.

There was testimony in committee hearings that the *average* mature marijuana plant seized by the Alaska State Troopers in 1998 provided four ounces of dried and usable marijuana, that

is, the dried leaves, buds and seeds, with roots and stalks removed. There was also testimony in the House HESS Committee from a Fairbanks police officer who participated in the investigation of one of the largest marijuana growing operations, where plants tended by a skilled grower were up to 10 feet tall and yielded up to two pounds of marijuana each.

The three mature marijuana plants allowed by SB 94 provide an average of 12 ounces of usable marijuana. The committee testimony showed that the three other plants provide an average of three more ounces, for a total of 15 ounces of usable marijuana in plant form. Thus the testimony establishes that one ounce plus six plants, on average, yields one pound of usable marijuana.

The House Judiciary Committee heard testimony from a user of marijuana for medical purposes, who indicated that his medical needs required one ounce of marijuana every 10 days. The House HESS Committee heard testimony from a federal official who indicated that each marijuana cigarette uses about one-half gram of marijuana, thus yielding 56 cigarettes per ounce. The federal official's testimony assumed a duration of effectiveness lasting only two hours per cigarette, which means a person would need eight cigarettes per day to stay under the influence of marijuana for 16 hours, or essentially all their waking hours. Even at this unrealistically high rate of consumption of low-grade marijuana, one ounce would last a week for a heavy user of marijuana for medical purposes.

The testimony before the legislature thus shows that a patient with one ounce plus six plants has, on average, access to 16 ounces of marijuana, which provides a constantly regenerating 16-week supply, even if they use it at a rate that keeps them intoxicated all the time. There was no evidence, and no testimony, that this amount is not adequate for patients for medical purposes.

The portion of the ballot initiative that allows more marijuana if the patient proves it is "medically justified" raises two primary issues. The first issue is the practical difficulty created for police officers if every patient is allowed to possess a different amount of marijuana, depending upon what the patient can later show in court. Testimony by police officials showed that the best approach for both police officers and patients is a clear "bright line" rule that establishes a set amount that can be possessed. This was a matter of policy for the legislature to consider.

The second issue revolves around the "medical justification" that would authorize more than one ounce plus six plants. While this can be characterized as a question of medical care, it appears that this, too, was a policy matter for the legislature.

In terms of actual *medical* justification, a patient needs only enough marijuana for his or her immediate use. Anything more than that is not a matter of medical *need*, but a matter of convenience for the patient or the patient's caregivers.

It may very well be the case that possessing four ounces of usable marijuana, or eight ounces, or possessing 12 plants or 24 plants is more convenient for the patient than one ounce plus six plants. But there was no testimony in any committee that there is any possible *medical* justification for greater amounts than one ounce plus six plants. The issue for the legislature, then, was whether the increase in convenience outweighs the risks in allowing greater amounts of marijuana to be freely possessed, grown, and transported by patients and caregivers. Whether to allow more marijuana than one ounce plus six plants therefore appears to be a pure policy question for the legislature, rather than a medical one.

Given the testimony before the legislature about the potency and profitability associated with marijuana, we believe that a court would find that the one-ounce-plus-six-plants limit in SB 94, with no provision for possession of greater amounts, is a proper exercise of the legislature's authority to amend the medical marijuana law.

Allow Police to Take Action in Medical Marijuana Cases Just As with Misuse of a Prescription for a Narcotic Drug, and Make the Legal Burden of Proof for Medical Marijuana Consistent with That Applied to Other Drugs. The medical marijuana initiative gave registered patients immunity from arrest, prosecution, and conviction for any offense related to medical use of marijuana, even if the patient possessed more than the legal limit of marijuana. AS 17.37.030(b). Even if the state had evidence that the person possessed a large amount of marijuana, police and prosecutors could take no action. Although the prime sponsor of the initiative has indicated that this was not the intent of the initiative, it is certainly the plain meaning of the initiative. SB 94 removes this provision, and thus allows the police to make arrests just as they would with any other misused prescription drug: if it a felony offense, they can arrest if there is probable cause to believe that a crime has been committed, and if it is a misdemeanor offense the offense must also have been committed in the officer's presence. SB 94 also removes similar restrictions on the authority of police to seize and forfeit evidence, thus allowing general Alaska law to control those actions.

SB 94 brings the medical marijuana law into conformity with other laws that make it an "affirmative defense" if a person seeks to rely on a statutory exemption to otherwise illegal conduct. For example, the concealed handgun law requires the registered person to prove he or she is registered and that the carrying of the handgun conformed to the law. More directly to the point, however, Alaska law for many years has required that users and dispensers of controlled substances have the burden of proving by a preponderance of the evidence that they are entitled to any exemption or exception in the controlled substances laws. AS 11.71.350. Thus SB 94 puts medical users of marijuana in exactly the same position as users of prescription drugs.

Given that this allocation of burden of proof does not appear to unduly restrict access to prescription drugs, it is not a repeal of the marijuana initiative. Similarly, it is not a repeal to remove the practical impediments to police officers, by allowing them to use general laws relating to arrests and forfeiture actions, just as they can with any other prescription drug.

Allow Access to the Registry in Criminal Investigations. This Administration favored a provision allowing police access to the registry in the course of a criminal investigation. SB 94, however, retains the language in the initiative that allows access only if a person claims to be a registered patient or caregiver. We believe that this level of confidentiality will interfere with some police investigations, and make police investigative efforts more difficult. The Administration may wish to consider requesting amendments in the future if this proves to be unworkable or not in the state's best interest.

Other Changes. SB 94 changes the medical standard for a physician to recommend marijuana to a patient, by requiring the doctor to consider other approved medications and treatments. With new pain killers coming on the market all the time, as well as the availability of new nausea medications and FDA-approved synthetic THC (delta-9-tetrahydrocannabinol, the active ingredient in marijuana), it would seem to be sound medical practice to consider these other approved alternatives before advising a patient to use an unregulated substance of unknown purity and potency.

Although SB 94 does change the medical standard, by requiring doctors to consider other approved medications before recommending marijuana, this is certainly a much more flexible standard than expressed in a recent report by the Institute of Medicine of the National Academy of Sciences, and it does not constitute a repeal. The sponsor of SB 94 circulated information to legislative committees about the report, which stated that, given the health risks associated with smoked marijuana, short-term use of marijuana by certain patients was justified only if the "failure of all approved medication to provide relief has been documented." *Marijuana & Medicine: Assessing the Science Base* (Recommendation 6), National Academy Press, Washington, D.C., 1999.

A long-time Alaska physician testified in the House HESS Committee and stated that in his experience almost all requests for marijuana for medical purposes come not from patients with terminal illnesses, but from patients with chronic conditions who will be using marijuana indefinitely. The physician testified that research showed marijuana has seven times the amount of tar and other potentially cancer-causing substances as cigarettes and that there was therefore the potential (although specific research had not been done) that marijuana presented seven times the cancer risk of cigarettes. Thus the legislature certainly had an adequate record upon which to make a change in the standard to be applied by physicians, and the change in the medical standard does not repeal the initiative.

In addition to tightening up the medical marijuana law, SB 94 relaxed some requirements of the initiative. First, it allowed marijuana to be transported by patients and caregivers. The marijuana initiative defined medical use of marijuana to include transportation of marijuana. The initiative went on to say that registered patients could not "engage in medical use of marijuana" in public. This meant that marijuana could not be transported. Although this provision might have been struck down as unconstitutional (as discussed above), the law might very well have imposed a practical burden on patients and caregivers. Second, as discussed above, although SB 94 limits each

caregiver to supplying marijuana to only one patient (except in unusual circumstances), the bill also eases restriction in the initiative by allowing each patient to have a broader ranger of persons from which to choose caregivers and to designate a primary caregiver as well as an alternate caregiver who can take the place of the primary caregiver in that person's absence. These relaxed requirements also do not repeal the initiative.

In conclusion, in our opinion the changes to the initiative do not violate the constitution, either singly or in their totality, because they do not constitute a repeal of the initiative. Instead, the amendments appear to be a proper exercise of the legislature's broad authority to "substitute its judgment for that of the proponents of an initiative." *Warren v. Boucher*, 543 P.2d 731, 737 (Alaska 1975). The amendments to the initiative, though numerous, still "preserve its basic structure and purpose . . . ." *Warren v. Thomas*, 568 P.2d 400, 404 (Alaska 1977).

SB 94 has an immediate effective date if it is enacted into law.

Conclusion

The bill addresses legal concerns raised by law enforcement and the Department of Health and Social Services.

Sincerely,

Bruce M. Botelho
Attorney General

BMB:DJG:jf

STATE OF ALASKA

DEPARTMENT OF LAW

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May 19, 2004

The Honorable Frank H. Murkowski
Governor
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

Re: HB 417 -- amending the definition of "project" in the act establishing the Alaska Natural Gas Development Authority
Our File: 883-04-0044

Dear Governor Murkowski:

At the request of your legislative director, we have reviewed HB 417, which expands the definition of "project" in the act establishing the Alaska Gas Development Authority ("ANGDA") to include a possible gas pipeline terminus at tidewater at a point on Cook Inlet. Before this addition, the definition of "project" included only a terminus at tidewater at a point on Prince William Sound and a spur line from Glennallen to the Southcentral gas distribution grid. This bill has an immediate effective date under AS 01.10.070(c) so, if you sign the bill into law, it would become effective at 12:01 a.m. Alaska Standard Time on the day after you took that action.

The Alaska Natural Gas Development Authority is a public corporation housed in the Department of Revenue. ANGDA was created by public initiative when voters passed Proposition 3 during the November 5, 2002 election. The establishing legislation is codified at AS 41.41.010 - AS 41.41.990. This bill amends the definition of project in AS 41.41.990(3) to read:

> (3) "project" means the gas transmission pipeline, together with all related property and facilities, to extend from the Prudhoe Bay area on the North Slope of Alaska **either** to tidewater at a point on Prince William Sound and the spur line from Glennallen to the South Central gas distribution grid **or to tidewater at a point on Cook Inlet** and includes

> planning, design, and construction of the pipeline and facilities as described in AS 41.41.010(a)(1)-(5). [Language in bold added by this bill.]

The Alaska Constitution art. XI, sec. 1 provides that the people may propose and enact laws by initiative. Although an initiated law may not be repealed by the legislature within two years of its effective date, Alaska Const. art. XI, sec. 7 provides that an initiated law may be amended at any time. The Alaska Supreme Court has stated that the legislature has broad authority to vary the terms of an initiated law after its adoption. *See Warren v. Boucher*, 543 P.2d 731, 737 (Alaska 1975). The addition of a new project for ANGDA to consider is a proper exercise of that broad authority and does not constitute a repeal of the initiated legislation.

In summary, we see no legal or constitutional problems presented by this bill.

Sincerely,

for Gregg D. Renkes
Attorney General

GDR:LHH:tag

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▷
Warren v. Boucher,Alaska 1975

Supreme Court of Alaska
Clifford E. WARREN, Appellant,
v.
H. A. (Red) BOUCHER and State of Alaska, Appellees.
No. 2315.

Nov. 28, 1975

Plaintiff sued for declaratory and injunctive relief to compel lieutenant governor to place initiative proposal on ballot, although lieutenant governor had determined that initiative was void since substantially similar to an act of the legislature. The Superior Court, Third Judicial District, Anchorage, Victor D. Carlson, J., rendered summary judgment for defendant and plaintiff appealed. The Supreme Court, Connor, J., held that the statute permitting lieutenant governor to determine substantial similarity between act and proposal is not an unconstitutional delegation of judicial power to the executive and that the measures were substantially similar within constitutional provision permitting legislature to void an initiative by passing a substantially similar measure.

Affirmed.

Erwin, J., dissented and filed opinion in which Burke, J., joined.

West Headnotes

[1] **Statutes 361 ⇐301**

361 Statutes
361IX Initiative
361k301 k. Initiative in General. Most Cited Cases

Constitutional provisions for determination of election contests as prescribed by law and defining "by law" as identical with "by the legislature," gave legislature power to enact method of determining whether act and initiative provision are substantially the same, so as to void initiative. AS 15.45.210, Const. art. 5, § 3, art. 11, § 4, art. 12, § 11.

[2] **Constitutional Law 92 ⇐70.1(1)**

92 Constitutional Law

92III Distribution of Governmental Powers and Functions
92III(B) Judicial Powers and Functions
92k70 Encroachment on Legislature
92k70.1 In General
92k70.1(1) k. In General. Most Cited Cases
Court is disinclined to pass judgment on means selected by legislature to accomplish legitimate purposes unless such means clearly violate Constitution.

[3] **Constitutional Law 92 ⇐80(1)**

92 Constitutional Law
92III Distribution of Governmental Powers and Functions
92III(C) Executive Powers and Functions
92k78 Encroachment on Judiciary
92k80 Powers, Duties, and Acts Under Legislative Authority
92k80(1) k. In General. Most Cited Cases

Statutes 361 ⇐302

361 Statutes
361IX Initiative
361k302 k. Constitutional and Statutory Provisions. Most Cited Cases
Statute authorizing lieutenant governor to determine whether act is substantially the same as initiative proposal, so as to void initiative, is not unconstitutional delegation of judicial function to executive officer. AS 15.45.210, Const. art. 11, § 4

[4] **Constitutional Law 92 ⇐12**

92 Constitutional Law
92II Construction, Operation, and Enforcement of Constitutional Provisions
92k11 General Rules of Construction
92k12 k. In General. Most Cited Cases
Purposes and intentions of framers of Constitution must be inferred from language of Constitution itself with careful regard for apparent aim framers had in mind.

[5] **Statutes 361 ⇐301**

361 Statutes
361IX Initiative
361k301 k. Initiative in General. Most Cited Cases
Under constitutional provision permitting legislature to void initiative petition by enacting "substantially the same measure," legislature's discretion is reasonably broad, there is substantial similarity if in the main the act achieves same general purposes as initiative and accomplishes purpose by means or systems which are fairly comparable, it is not necessary that the two measures correspond in minor particulars or even as to all major features and the broader the reach of the subject matter, the more latitude must be allowed legislature. Const. art. 11, § 4

[6] **Statutes 361 ⇐301**

361 Statutes
361IX Initiative
361k301 k. Initiative in General. Most Cited Cases
Legislative act relating to election campaigns was substantially similar to initiative proposal relating to campaign contributions, expenditures, and their limitations, despite differences between the measures, and act effectively displaced initiative. AS 15.13.010 et seq., 15.45.210; Const. art. 11, § 4.

***731** Clifford E. Warren, pro se.

Timothy G. Middleton, Asst. Atty. Gen., Anchorage, Norman C. Gorsuch, Atty. Gen., Juneau, for appellees.

Before RABINOWITZ, C. J., and CONNOR, ERWIN, BOOCHEVER and BURKE, JJ.

*732 OPINION

CONNOR, Justice.

This case raises issues regarding the initiative procedure in Alaska. Specifically, it is concerned with the process and conditions, if any, by which enactments of the legislature can operate to prevent an initiative from appearing on the ballot.

I

The procedural history antedating this appeal is undisputed. Prior to the regular 1974 session of the Alaska legislature, an initiative petition entitled "An Act relating to campaign contributions, expenditures, and their limitations" was filed with the lieutenant governor. During that session, the legislature enacted Ch. 76, SLA 1974. That act is entitled, "An Act relating to the election campaigns, and providing for an effective date."

Pursuant to AS 15.45.210,[FN1] the lieutenant governor, H. A. (Red) Boucher, sought to determine whether the act and the initiative were substantially the same. An opinion of the attorney general, Norman C. Gorsuch, was sent to the lieutenant governor in a letter dated June 17, 1974. The attorney general's opinion was that the measures were substantially the same and, therefore, the initiative was void. The lieutenant governor concurred and notified the initiative committee that the initiative would not appear on the ballot.

FN1. AS 15.45.210 provides:

"If the lieutenant governor, with the formal concurrence of the attorney general, determines that an act of the legislature that is substantially the same as the proposed law was enacted after the petition had been filed, and before the date of the election, the petition is void and the lieutenant governor shall so notify the committee."

This case was initiated on June 25, 1974, when Clifford E. Warren filed a "Complaint for Declaratory Judgment" in the superior court. Warren sought a preliminary injunction requiring the lieutenant governor to place the initiative on the primary ballot of August 27, 1974, or alternatively, on the general election ballot.

Oral argument was heard on June 28, 1974, and the preliminary injunction was denied.

On July 16, 1974, Warren brought a petition for review to this court. The petition was initially denied, but on motion for reconsideration review was granted and, on August 20, 1974, we remanded the case to the superior court with directions to proceed to a final determination of the action as expeditiously as possible.

On September 6, 1974, Judge Carlson granted summary judgment for defendants in a memorandum decision. From that judgment this appeal has been taken.

II

Warren offers two significant arguments in contending that the initiative should be placed before the voters. He asserts that:

(1) AS 15.45.210[FN2] is unconstitutional because the legislature has improperly delegated a judicial function to an executive officer;

FN2. Id.

(2) Ch. 76, SLA 1974 and the initiative are not substantially similar.

Several additional arguments are offered by appellant, though not all of them warrant extended analysis.

III

Appellant strongly urges that AS 15.45.210 improperly delegates to the lieutenant governor the duty of determining, in the first instance, whether an act and an initiative are "substantially the same." He argues that this law violates the separation of powers doctrine by vesting the construction of constitutional language in an executive officer of the state, rather than in *733 the courts.[FN3] The statute, enacted in 1960, provides:

FN3. Warren also contends that AS 15.45.210 violates Alaska Constitution, Art. III, Sec. 22:

"All executive and administrative offices, departments, and agencies of the state government and their respective functions, powers, and duties shall be allocated by law among and within not more than twenty principal departments, so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may be established by law and need not be allocated within a principal department."

"Determination of void petition. If the lieutenant governor, with the formal concurrence of the attorney general, determines that an act of the legislature that is substantially the same as the proposed law was enacted after the petition had been filed, and before the date of the election, the petition is void and the lieutenant governor shall so notify the committee."

Obviously, the statute was enacted to effectuate Art. XI, Sec. 4, of the Alaska Constitution. That provision states:

"Initiative Election. An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void."

[1] At the outset, we note that Art. XI, Sec. 4, does not expressly confer on any branch or agency the power to determine whether an act and an initiative are "substantially the same." However, Alaska Constitution, Art. V, Sec. 3, declares in part:

"There procedure for determining election contests, with right of appeal to the courts, shall be prescribed by law."

Alaska Constitution, Art. XII, Sec. 11, provides, in part: "As used in this constitution, the terms 'by law' and 'by the legislature,' or variations of these terms, are used interchangeably when related to law making powers."

We conclude that these constitutional provisions, when read in harmony, give the legislature the power to enact a method of determining whether two provisions are "substantially the same," as used in Art. XI, Sec. 4, of the Alaska Constitution.

[2] The legislature has expressly delegated its power in this regard to the lieutenant governor,[FN4] subject to review by the courts.[FN5] In reviewing that delegation of power, we reiterate that we are disinclined to pass judgment on the means selected by the legislature to accomplish legitimate purposes, unless such means clearly violate the Constitution. DeArmond v. Alaska State Development Corp., 376 P.2d 717, 724 (Alaska 1962).

FN4. See AS 15.45.210, n. 1, supra.

FN5. AS 15.45.240 provides:

"Any person aggrieved by a determination made by the lieutenant governor may bring an action to have the determination reviewed within 30 days of the date on which notice of the determination was given by any appropriate remedy in the superior court."

Courts in modern times have been reluctant to declare legislation unconstitutional on the ground of improper delegation of power.[FN6] Indeed, Professor Louis L. Jaffe, in commenting on the United States Supreme Court's attitude toward such challenges, has noted:

FN6. See generally, Jaffe, An Essay on the Delegation of Legislative Power, 47 Colum.L.Rev. 359 and 561.

(1947).

"The Court has given the Congress a latitude broad enough for almost any administrative experiment presently believed necessary." [FN7]

FN7. Id. at 581.

*734 And Professor Kenneth C. Davis has stated:

"We have learned that the danger of tyranny or injustice lurks in unchecked power, not in blended power." [FN8]

FN8. K. Davis, Administrative Law Text s 1.08, at 25 (1972).

This does not mean that the legislature has an unlimited right to delegate its responsibilities. But where it would be impractical or cumbersome for the legislature to undertake the task in question, a limited delegation, subject to appropriate review, has been upheld. [FN9]

FN9. See e.g., Union Bridge Co. v. United States, 204 U.S. 364, 387, 27 S.Ct. 367, 51 L.Ed. 523 (1907); Meadowlark Farms, Inc. v. Ill. Pollution Control Bd., 17 Ill.App.3d 851, 308 N.E.2d 829, 832 (1974); Lemmger v. Alger, 316 Mich. 644, 26 N.W.2d 348, 352 (1948).

[3] Turning to the case at bar, the legislature has divested itself of a fact finding task which has no direct relation to that body's law making functions. Comparative analysis of varying pieces of legislation can be an arduous and time consuming endeavor. We find that the delegation in this case is based on sound practical considerations.

In delegating the responsibility to the lieutenant governor,[FN10] the legislature has assigned the task to the person who is in charge of administering and supervising the conduct of all state elections.[FN11] In addition, the lieutenant governor performs extensive ministerial functions related to the initiative process.[FN12] Thus, the legislature has delegated its authority to a logical governmental officer.

FN10. The delegation initially went to the secretary of state, but that office was supplanted by the creation of the lieutenant governor's post in 1970.

FN11. See AS 15.15.010 et seq.

FN12. See AS 15.45.010 et seq.

The delegated function, in this instance, is definitionally narrow. The lieutenant governor, aided by the attorney general, must make a simple factual determination. Are two documents substantially the same in their content? In carrying out this determination, the lieutenant governor is not formulating policy. The framers of the Alaska Constitution have already decided that an initiative is void if legislation, which is substantially the same, exists. By determining whether two documents are substantially the same, the lieutenant governor is simply effectuating constitutional policy.

Similar non-discretionary delegations have been upheld in other jurisdictions.[FN13] The Alaska legislature has expressly afforded an aggrieved party the right to judicial review.[FN14] In these circumstances, we hold the delegation of power in AS 15.45.210 to be both reasonable and constitutional.

FN13. See, e.g., Adams v. Bolin, 74 Ariz. 269, 247 P.2d 617, 627-28 (1952); Hodges v. Dawdy, 104 Ark. 583, 149 S.W. 656, 658-59 (Ark.1912); Lemmger v. Alger, 316 Mich. 644, 26 N.W.2d 348, 352 (1948); Schmidt v. Gronna, 68 N.D. 488, 281 N.W. 57, 60 (1938); Brazelll v. Ziegler, 26 Okl. 826, 110 P. 1052 (1910); White v. Welling, 89 Utah 335, 57 P.2d 703, 705 (1936).

Cf. Union Bridge Co. v. United States, 204 U.S. 364, 385-86, 27 S.Ct. 367, 51 L.Ed. 523 (1907); Meadow Lark

Farms, Inc. v. Illinois Pollution Control Bd., 17 Ill.App.3d 851, 308 N.E.2d 829, 832 (Ill.App.1974); Joseph E. Seagrams & Sons, Inc. v. Hostetter, 45 Misc.2d 956, 258 N.Y.S.2d 442, 451 (Sup.Ct.1965)

FN14. See n. 5, supra.

IV

Warren also urges that the superior court erred in ruling that the initiative and the act are "substantially the same."

In his memorandum decision of September 6, 1974, the trial judge undertook to define the phrase "substantially the same," as used in Article XI, Sec. 4, of the Alaska Constitution. He concluded that the phrase is broad enough to include a statute which "treats the same problem as that sought to be reached by the proposed initiative." He then granted summary judgment for the state because he found that *735 the statute and the initiative "attempt to reach the same results, more effective election campaigns."

In reaching his definition, the trial judge relied, in part, on commentary which accompanied the Constitutional Convention Committee's Proposal No. 3, concerning initiatives and referendums. That proposal, in pertinent part, stated:

"... Laws proposed by the initiative shall be submitted to the voters by ballot title at an election not later than 180 days after the adjournment of the legislative session following the filing of the petition, unless the legislature enacts the measure initiated during the session. ..." (emphasis added)

The commentary, which did not refer to any specific phrase within Proposal No. 3, stated: "If the legislature adopts a measure that is the subject of the initiative, the measure does not have to be submitted to the people."

Subsequent to the introduction of Proposal No. 3, several amendments to it were made. Article XI, Sec. 4, now reads:

"An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void." (emphasis added)

In view of the changes which this provision underwent after its introduction, we find the committee commentary which guided the trial court to be less than conclusive. As we stated in Walters v. Cease, 388 P.2d 263, 266 (Alaska 1964):

"While such a statement might have been a valuable aid for ascertaining the intention of the convention with respect to the constitutional provision then under consideration, it loses any value it may have had because Proposal No. 3 was later amended so as to materially change its meaning." (footnotes omitted)

The committee proposal was first taken up by the constitutional convention as a committee of the whole. Later the proposed article was considered a number of times through floor discussions of some length, and numerous amendments were adopted. However, there is no helpful discussion of what was the intended scope of the words "substantially the same measure." Thus the ultimate construction of this critical language devolves upon this court.

[4] Our dissenting colleagues rightly observe that the article on direct legislation was the subject of extensive debate at the constitutional convention. They read the term "substantially the same measure" as permitting legislative displacement of an initiative only within rather narrow confines. However, we find nothing in the legislative history of the article, or in the vigorous floor debates thereon, which points to an agreed upon meaning or a consciously adopted definition of what this critical language should mean. Many views were expressed by individual delegates, but these expressions do not in this instance provide a reliable guide to what the constitutional convention as a whole intended by the adoption of the phrase in question, or what it meant to the voters who ratified the constitution. In order to interpret this language we must analyze its functional relationship to other constitutional provisions. We must infer the purposes and intentions of the framers from the language of the constitution itself, with careful regard for the apparent aims which the framers had in mind. FN15

FN15. The dissent refers to the frustrations experienced by Alaskans under territorial government, and the deeply felt need for self-government which led to convening the constitutional convention as part of the statehood movement. Nothing in that background, however, has any direct bearing on how the term "supstantially the same measure" should be interpreted.

*736 The words "substantial" or "substantially" are relative, inexact terms. Their meaning is quite elusive. Application of Scroggins, 103 Cal.App.2d 281, 229 P.2d 489 (1951). The meaning of such terms can be derived only by reference to all the circumstances surrounding the context in which they are used. Atcheson, T. & S.F. Ry. v. Kings County Water District, 47 Cal.2d 140, 302 P.2d 1, 3 (1956). So here, we believe that the term "substantially the same measure" must be viewed against the total structure contemplated in Art. XI of our constitution in the matter of direct legislation.

It is evident that the framers wanted to avoid a constitutional system in which any and all types of law could be enacted by direct legislation. Thus they placed a number of specific restrictions upon its use. Art. XI, Sec. 4, states:
"The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation. The referendum shall not be applied to dedications of revenue, to appropriations, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health, or safety."

A less absolute, more relative restriction on the use of the initiative comes about by reason of the language which must be construed in the case at bar. By providing that the legislative enactment of substantially the same measure could have the effect of voiding an initiative, the framers empowered the legislature to cut off initiated legislation from consideration and vote by the general public. The manner in which Art. XI, Sec. 4, was amended in the constitutional convention makes this clear. The original proposal at the convention would have required that an initiative could be voided only by legislative enactment of "the measure initiated." Read literally, this would require that the language of both measures be identical. However, as discussed above, the final constitutional language requires merely that "substantially the same measure" be enacted by the legislature in order to void an initiative petition.

It is clear that the legislative act need not conform to the initiative in all respects, and that the framers intended that the legislature should have some discretion in deciding how far the legislative act should differ from the provisions of the initiative. The question, of course, is how great is the permitted variance before the legislative act becomes no longer substantially the same.

[5] Upon reflection we have concluded that the legislature's discretion in this matter is reasonably broad. If in the main the legislative act achieves the same general purpose as the initiative, if the legislative act accomplishes that purpose by means or systems which are fairly comparable, then substantial similarity exists. It is not necessary that the two measures correspond in minor particulars, or even as to all major features, if the subject matter is necessarily complex or if it requires comprehensive treatment. The broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative.

We are fortified in this understanding of the constitutional language, and the intention of the framers, by a companion provision of the constitution. Under Art. XI, Sec. 5, an initiative, once enacted, cannot be repealed by the legislature within two years of its effective date. But it may be amended at any time. Here, as with Art. XI, Sec. 4, a considerable change occurred in the constitutional convention in the language first proposed and that finally adopted. Committee Proposal No. 3 (Committee on Direct Legislation, Amendment*737 and Revision, December 9, 1965), provided:
"No law passed by initiative may be vetoed by the Governor nor amended or repealed by the legislature for a period of three years."

The final constitutional provision states in pertinent part: "An initiated law ... is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time ..."

The constitution thus vests broad authority in the legislature to vary the terms of an initiated law, after its adoption, by the process of amendment. This power amounts to a check or balance against the initiative process. No doubt the legislature was given this power to assure that initiatives which were ill-advised, which might seriously cripple or frustrate the sound workings of government, or which might be impracticable, could be altered or corrected rapidly by

the legislature. It was obviously intended by the framers that the initiative process should not be permitted to disrupt vital governmental functions or to impose intolerable burdens upon established administrative systems. To this end the legislature was given the ability to substitute its judgment for that of the proponents of an initiative.[FN16]

> FN16. The discussions on the floor of the constitutional convention reveal a belief by a number of framers that a countervailing consideration would act as a balance against legislative arbitrariness in this respect. It was believed that the natural desire of many legislators to be re-elected, or at least to demonstrate creditable performance as public officials, would cause them to think carefully before amending an initiative out of existence, because of the effect which such action might have on the electorate in the future.

What is significant to us here is the effect which the amendatory power of the legislature has upon our interpretation of the words "substantially the same measure." For if the legislature has broad power of amendment, it follows that it has broad power to change an initiative by an enactment covering the same subject as the initiated measure. In short, we must interpret Art. XI, Sec. 4, broadly and not narrowly as to the scope of legislative power. We, of course, are not passing here on the question of whether an amendment so vitiates an act passed by initiative as to constitute its repeal.

Turning now to the initiative and legislative act before us, it is clear that they both cover the same general subject matter. Both are aimed at the control of election campaign contributions and expenditures. The main points of similarity in the two measures are these: The amount a candidate may spend on his campaign is limited; contributions and expenditures must be reported; contributions of $100 or more under the act, and all contributions under the initiative, must be reported; the persons covered include candidates for governor, lieutenant governor, and state legislature;[FN17] criminal misdemeanor penalties are imposed for the violation of the respective provisions of both measures;[FN18] acceptance of anonymous contributions is prohibited; a responsible campaign treasurer must be appointed by each candidate; certain violations under each measure work a forfeiture of nomination or election; required reports must be made available for inspection by the public; and provision is made for citizen enforcement of the law, by court action under the initiative, and under the act by a complaint to the election*738 campaign commission and appeal to the supreme court.

> FN17. The initiative covers all municipal elections. The act permits a municipality to exempt itself from the coverage of the law. The initiative covers candidates for Congress, while the act does not. It should be noted that candidates for federal office are regulated extensively by the federal election campaign disclosure act passed in 1972. See 2 U.S.C. ss 431-454.

> FN18. AS 15.13.120(a) imposes penalties of up to one year of imprisonment or a fine up to $5,000 for violation of the act. We do not view the act, as does the dissent, as eliminating almost all individual penalties for enforcement.

Under the initiative a watchdog committee is created, composed of three members of each major political party and three independent persons, plus one member from any other recognized political party. The ultimate appointive authority as to the committee is in the governor. Under the act there is created an election campaign commission. The governor appoints to the commission two members from each major political party, and they select by majority vote a fifth member.

There are certain points of contrast between the two measures. The initiative places most of the supervisory and administrative responsibilities on the lieutenant governor. The act places these functions in the election campaign commission. The initiative requires commercial advertisers to file reports of political advertising; the act does not require this. The initiative attempts to place out-of-state contributors under the jurisdiction of the Alaska courts; the act is silent on this subject.[FN19] The act defines and regulates political groups formed to support or oppose a political candidacy; the initiative does not reach such groups. Under the act a $1,000 limit is placed upon individual contributions; the initiative imposes no limit. Under the initiative candidates for governor and lieutenant governor cannot use more than 40% of their expenditures for "communications media." The act contains no such limitation.

> FN19. This does not mean that out-of-state contributions go unregulated. Under the act these contributions must be reported, they may not exceed $1,000 in the aggregate per annum for any one candidate, and it is a criminal offense to accept a contribution in violation of the act. See AS 15.13.040, .070, and .120(a)(6).

The dissent views the act as eliminating all subpoena or investigatory power of the watchdog committee. However, the act, AS 15.13.030, requires that the commission must receive and hold open for public inspection the reports filed under the act. The commission is empowered to adopt regulations necessary to effectuate and clarify the act, and to conduct investigations of claimed violations of the act. AS 15.13.030(10) and 120(d). If the commission finds that violations have occurred it must report them to the attorney general for action. The attorney general may, of course, obtain subpoenas by resort to grand jury proceedings. We do not view the act as hampering investigation and prosecution of prohibited activities. Therefore, the elimination of the watchdog committee's subpoena power does not, in our opinion, create a significant difference between the two measures.

We are unable to accept the view, expressed in the dissent, that enforcement of the act will be less effective because violations must be referred to the attorney general. The practical or political problems posed by that method of enforcement, as contrasted with the watchdog committee envisaged by the initiative, may not in actuality operate as a serious barrier to enforcement. To some extent such problems inhere in the process of criminal prosecution generally. The countervailing forces are an aroused public opinion and the constitutional obligation resting on the executive to see that the laws are faithfully executed. These forces are operative in the porcessing of criminal matters of all types. We will not assume that practical or political considerations will frustrate effective enforcement.

The act does not place limitations on media spending, does not impose reporting requirements on media, does not require permits for media advertising, and does not provide for the reporting of surplus funds collected, in the same manner as does the initiative. But that is not to say that these subjects are unregulated. Under AS 15.13.110(d) all persons supplying services to any candidate must maintain a record of each transaction and must file appropriate reports with the commission. While the act does not limit the amount of media *739 spending, it does limit total spending by any candidate. Surplus funds will be reported under AS 15.13.110 which requires that a report shall be filed on December 31 of each year for expenditures and contributions not reported earlier in that year.

That the act contains no requirement for equal charges by media and equal time to candidates is moderated in part by applicable federal law. Under 47 U.S.C. Sec. 315(a)(2) a broadcasting licensee must afford equal opportunity to all other candidates for a given office. [FN20]

FN20. See Red Lion Broadcasting Co. v. Federal Communications Commission, 395 U.S. 367, 89 S.Ct. 1794, 23 L.Ed.2d 371 (1969), for an exposition of the fairness doctrine, which is distinct from the statutory equal time requirement.

The power of the watchdog committee to delay certification of candidates or to bring charges requiring a delay of certification has been eliminated in the act. But the act declares void the nomination or election of a candidate who violates the act, and provides for an expeditious judicial procedure to determine such cases.

Both measures control the total amount of expenditures by candidates as to primary and general elections. The specific amounts limited in each measure vary. As to the candidates for governor and lieutenant governor the amounts work out nearly the same.[FN21] As to candidates for the House the initiative limits expenditures to $6,000, while the act limits them to about $7,000. The initiative limits Senate campaign expenditures to $8,000, while the formula used under the act results in a limit of about $14,000.

FN21. The proposed initiative, Sec. 2(a)(1) limits expenditures by or on behalf of a candidate for governor or lieutenant governor to exactly $125,000. The legislative enactment, AS 15.13.070(f)(1) utilizes a formula which limits expenditures by or an behalf of a candidate for governor or lieutenant governor to ◆40 cents times the total population of the state according to the latest United States census figures. ◆ The official United States Decennial Census, last taken in 1970, sets the population of the State of Alaska at 302,173. Thus candidates for governor and lieutenant governor would be restricted to expenditures of $120,869.20 under the legislative act, as compared with $125,000 under the proposed initiative.

In short, the statute is not a hollow gesture toward the regulation of election campaigns. It sets up workable machinery to ensure compliance. Quite possibly the legislature felt that an election campaign commission could better handle the prescribed administrative and supervisory duties than could the lieutenant governor, and that such a commission would

be more effective than the watchdog committee contemplated by the initiative. In making such a choice the legislature would not be vitiating the aims of the initiative but making those aims more feasible of achievement.

Various other differences can be found in the two measures, but they are not significant enough to make a material difference in our decision.

Viewing the two measures as a whole we find that they accomplish the same general goals. They adopt similar, although not identical, functional techniques to accomplish those goals. The variances in detail between the measures are no more than the legislature might have accomplished through reasonable amendment had the initiative become law. Nothing is present here to suggest that the act was a subterfuge to frustrate the ability of the public to obtain consideration and enactment of a comprehensive system to regulate election campaign contributions and expenditures.[FN22] No doubt other changes will be made in the law, in response to newly perceived needs and in the light of experience gained in the administration of the act. The same would be true had the initiative been placed upon the ballot and become law.

> FN22. On the contrary, a number of differences between the initiative and the act can be explained by the possibility that the legislature might have regarded certain features of the initiative to be subject to constitutional attack or to be practically unworkable. We do not, however, express an opinion on the constitutionality of any of the particular provisions of either measure.

*740 [6] It is our opinion that substantial similarity exists between the two measures. The act effectively displaced the initiative. The lieutenant governor was correct in withholding the initiative from the ballot. We affirm the judgment of the superior court.

Affirmed.

ERWIN and BURKE, JJ., dissent.
ERWIN, Justice, with whom BURKE, Justice joins, dissenting.
I dissent.

The power of initiative and referendum is the basic recognition that under our republican form of government the ultimate political power exists with the people and not in some legislative body.[FN1] These provisions permit the people to enact laws when the legislature refuses to act, or repeal acts of the legislature which are unpopular or unfair. Moreover, it is an additional check and balance on the governmental process because it acts upon the legislative awareness that such power exists with the people.[FN2]

> FN1. 2 Alaska Constitutional Convention Proceedings, 931-975. See particularly the statements of Delegates Marston and Taylor, 959-961, before defeat of the motion to delete all reference to referendum in the article on 973.

> FN2. Fischer, Alaska Constitutional Convention, 79-81 (University of Alaska Press, 1975).

One set of critics at the constitutional convention claimed, however, that its limitations make it less than effective as a popular tool of government. They argued that the requirement of obtaining a large number of signatures from residents in order to put the issue before the voters significantly limited the use of the initiative process in all but a few cases.[FN3]

> FN3. Id. at 79.

Now the majority opinion further restricts this process by countenancing substantial legislative limitation of the initiative procedure. When this court determines that the legislature may decide how much of the legislation supported by the people they want, the basic political right of initiative disappears, for it is not the will of the people that is paramount, it is the will of the legislature.

I find that the minutes of the Alaska constitutional convention and the commentary thereon are not as limited as the

majority opinion indicates.

The initial proposal filed by the Committee on Direct Legislation contained the following language:

Laws proposed by the initiative shall be submitted to the voters by ballot title at an election not later than 180 days after the adjournment of the legislative session following the filing of the petition, unless the legislature enacts the measure initiated during the session. [FN4]

FN4. 6 Alaska Constitutional Convention Proceedings, 19.

In the accompanying commentary the committee explained the content of the legislative enactment in the following term:

If the legislature adopts a measure that is the subject of the initiative, the measure does not have to be submitted to the people. (emphasis added) [FN5]

FN5. Id. at 23; 2 Alaska Constitutional Convention Proceedings, 929.

The discussion and amendment of this initiative proposal was perhaps the most extensive and hotly contested [FN6] of the entire constitution, covering 7 1/2 days of proposals and conter proposals. [FN7] This discussion included an extensive debate on the power to amend as being the power to amend and not the power to destroy. [FN8]

FN6. Fischer, supra note 2, at 79-81.

FN7. 2 Alaska Constitutional Convention Proceedings, 928-1200, 3 Alaska Constitutional Convention Proceedings, 2960-2993.

FN8. 2 Alaska Constitutional Convention Proceedings, 1173-1177.

*741 Subsequently the convention changed the proposal to provide as follows:

A referendum petition may be filed at any time. The secretary of state shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void. [FN9] (emphasis added)

FN9. Section 4, Article XI, Alaska Constitution.

The majority opinion finds this constitutional history inclusive and suggests that it may be supportive of the conclusion that the convention intended to give wide latitude to the legislature to change the initiative. I find it supports the exact opposite conclusion because of the extensive debate on the convention floor concerning the need for the initiative process, which was the subject of public hearings during the Christmas recess of the constitutional convention.

Further, the political climate of Alaska preceding, during and after the constitutional convention does not support a theory of distrust of the popular electorate of the legislation it would sponsor. Alaska's history is replete with instances of frustration to get an absentee government in Washington to deal with pressing problems. [FN10] In fact, such inaction was the greatest single boost to statehood. The members of the Alaska constitutional convention understood, more than most, the necessity of the initiative process for unpopular acts for without it, the long years of struggle to achieve local control over our political destiny would have been cheapened.

FN10. Gruening, Many Battles, pp. 281-396 (Liveright 1973); Gruening, The State of Alaska, Chapter 28, "Self Government: The Quest for Statehood," p. 460 (Random House 1954).

In this case the legislature took the initiative title and enacted a measure which clearly was more politically palatable to them, but which is definitely not "substantially the same" as the initiative sponsored by the people.

In reviewing the referendum and the statute, I find that of the 19 separate sections of the initiative, only six are the same as the statute, and as part of the six I am including the section dealing with the powers and duties of the watchdog committee and the reporting system, which is only 50% of that stated in the initiative.

Seven sections have been eliminated entirely by the statute. This includes:

1. All references to United States senators and congressmen.[FN11]

FN11. Section 2 of Initiative.

2. Coverage of local elections is changed to local option.[FN12]

FN12. Section 18 of Initiative.

3. The requirement that out-of-state contributors submit themselves to Alaska jurisdiction.[FN13]

FN13. Section 13 of Initiative.

4. Almost all individual penalties for enforcement of the provisions of the act.[FN14]

FN14. Sections 7 and 19 of Initiative.

5. All subpoena or investigatory power of the watchdog committee.[FN15]

FN15. Section 4 of Initiative.

6. All limitations on media spending.[FN16]

FN16. Section 2 of Initiative.

7. All requirements for equal charges by media and for equal time to candidates.[FN17]

FN17. Section 16 of Initiative.

8. Almost all reporting requirements by media, as well as all requirements that permits be obtained before media advertising is undertaken by a candidate.[FN18]

FN18. Section 5, 6 and 15 of Initiative.

9. All requirements for the reporting and disposition of surplus funds collected.[FN19]

FN19. Section 10 of Initiative.

*742 10. Most definitions and the statement of purpose.[FN20]

FN20. Sections 1 and 20 of Initiative.

In addition, the dollar amount of expenditures has been changed in every instance to a higher figure.

Governor/Lt.			
Governor	$125,000	to	$130,000
House	6,000	to	7,500
Senate	8,000	to	15,000[21]

FN21. Section 2 of Initiative. The majority refers to the last decennial census of 1970 to suggest $120,000 as the figure for Governor. However, constantly new census figures are validated to show changes for federal-state revenue sharing purposes. The latest figures for 1975 make the $130,000 figure conservative.

Whereas the initiative required the disclosure of persons who contributed in excess of $50 to a candidate, the measure passed by the legislature requires only contributors of $100 or more need to be identified and reported.[FN22] Moreover, every section dealing with failure to report, false reports, or perjury in reporting has been deleted, together with those provisions which provide for substantial fines for all people who refuse access to the records of a candidate.[FN23] In addition, all sections permitting citizens to sue to enforce the provisions of the initiative have been eliminated.[FN24]

FN22. Section 9 of Initiative.

FN23. Section 7 of Initiative.

FN24. Section 19 of Initiative.

All power of the watchdog committee to delay certification fo candidates or to being charges requiring a delay of certification has been eliminated,[FN25] as has the power of the court to declare the second highest vote-getter elected where expenditure violations were found.[FN26]

FN25. Section 3 of Initiative.

FN26. Section 19 of Initiative.

Additionally, the legislature removed most enforcement teeth by requiring that any violation found by the commission must be referred to the Attorney General for a decision of whether or not the violator would be prosecuted.[FN27] The discretion to prosecute is an area of intense controversy, but such clearly depends upon factors outside the issue of whether or not a violation has occurred.[FN28] Such things as the manpower of the office, the priority of work, and the seriousness of other problems[FN29] can combine to make enforcement of this area somewhat improbable. To these practical problems is added a political reality which casts shadows over the decision to prosecute or not to prosecute. The Attorney General is appointed by the Governor, thus there is an unknown political factor which can effect the decision where the candidate or issue is one approved by the political party in power.

FN27. AS 15.13.120(d).

FN28. See Public Defender Agency v. Superior Court of Third Judicial District, 534 P.2d 947, 949-951 (Alaska 1974), for a discussion of the Attorney General's discretion to decline prosecution in child support cases.

FN29. Fischer, supra note 3, at 949.

While the act does not explain how the watchdog committee will obtain evidence of violations without investigative or subpoena power, the statute is clear that there is no method of delaying certification or removing a candidate who is in violation without a court proceeding.[FN30] Further, any case for voiding the election filed by the Attorney General must then be heard by the Supreme Court of Alaska as an original proceeding,[FN31] rather than in the normal way of all other

cases in the District or Superior Court. Since the Supreme Court must sit as five judges, it is a cumbersome body to hear fact disputes, particularly in view of its divided geographic situs and other work load. This process becomes even more cumbersome and somewhat questionable if constitutional rights of jury trial in certain cases[FN32] and *743 statutory rights [FN33] to appeal all cases to the Supreme Court are considered.

FN30. AS 15.13.120(b).

FN31. AS 15.13.120(b).

FN32. See Baker v. City of Fairbanks, 471 P.2d 386, 401-402 (Alaska 1973), for a discussion of cases where jury trial is required.

FN33. AS 22.05.010.

The initiative recognized these problems by permitting the commission and private parties to bring suit to enforce its provisions and gave to the committee investigative and subpoena power to insure compliance. The elimination of these provisions goes to the heart of the enforcement provision and leaves, to a large extent, an illusory remedy. The initiative and the measure passed by the legislature have the same title and some similar reporting requirements, but by no stretch of the imagination are they substantially the same.[FN34]

FN34. The only similar section found in AS 15.13.010-110 provide for
(1) a monitoring committee (.020 to .030);
(2) the reporting of contributions over $100.00 (.040);
(3) the registration of groups and the appointment of a treasurer (.050 and .060);
(4) limitations of spending by candidates in various races (.070);
(5) certain reporting requirements of contributors and a schedule for candidates (.080 to .110).
Additionally, the legislature added a tax credit of $50.00 from state income tax for political contributions. Also, publication of an election pamphlet containing background information on the candidates, costing each House candidate $25.00 and each Senate candidate $50.00.

The majority attempts to excuse the need for a number of the deleted sections by noting that certain federal reporting requirements or court decisions make them unnecessary. While disregarding the proposition that federal laws can provide effective regulation for Alaska elections when all complaints must be filed in Washington, D.C., I submit that this argument misses the point. The question is not whether the provisions are wise, but whether the legislative act is substantially the same as the initiative. It is for the people to provide the decision in situations such as this because the legislature failed to act until prodded by the electorate. By their inaction the legislators simply lost their ability to challenge the utility of the provisions. Their only power was to nearly duplicate the initiative, for that is just what the words "substantially the same" mean.

The majority's final suggestion that the powers and duties referred to in several of the eliminated sections can be implied from other provisions of AS 15.13 flies in the face of two canons of construction which have been adopted in almost every jurisdiction: (1) criminal statutes are to be strictly construed, and (2) where there has been a material change in language of an act, it is presumed that the legislature intended to indicate a change in legal rights and obligations thereunder.[FN35]

FN35. See Horack, Sutherland Statutory Construction, Vol. 1, s 1950, p. 412-414 (3rd Ed. 1943).

I agree with the implication of the majority opinion that the sections eliminated affect the workings of the commission and various other provisions throughout the statute. However, I am unable as a matter of logic to find the flexibility in the act passed by the legislature to cover the gaps left by those sections deleted from the original initiative.

I would reverse the decision of the trial court and remand this case with instructions to place the initiative on the ballot of the next general election.

Alaska 1975.

Warren v. Boucher
543 P.2d 731

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C
Warren v. Thomas,Alaska 1977.

Supreme Court of Alaska.
Clifford E. WARREN, Appellant,
Frank Harris, Intervenor,
v.
Lowell THOMAS, Jr., Lieutenant Governor and the State of Alaska, Appellees.
No. 2919.

Sept. 2, 1977.

Action was brought in which plaintiff sought to prevent legislature's amendments to conflict of interest law, which was enacted by **initiative**, from becoming effective. The Superior Court, Third Judicial District, Anchorage, Eben H. Lewis, J., granted state summary judgment, and plaintiffs appealed. The Supreme Court, Connor, J., held that (1) legislature has broad powers to amend law enacted by **initiative**, and (2) amendments did not effect a "repeal" of the initiated law in violation of state constitutional provision.

Affirmed.

West Headnotes

[1] **Constitutional Law 92 ⇐12**

92 Constitutional Law
92II Construction, Operation, and Enforcement of Constitutional Provisions
92k11 General Rules of Construction
92k12 k. In General. Most Cited Cases
Constitutional provision should receive a reasonable and practical interpretation in accordance with common sense.

[2] **Statutes 361 ⇐133**

361 Statutes
361IV Amendment, Revision, and Codification
361k132 Acts Which May Be Amended
361k133 k. In General. Most Cited Cases
Legislature has broad powers to amend a law enacted by **initiative**. Const. art. 11, §§ 6, 7.

[3] Statutes 361 ⟹158

361 Statutes
361V Repeal, Suspension, Expiration, and Revival
361k158 k. Implied Repeal in General. Most Cited Cases
Implied repeal of an act is disfavored and will be limited to that which is necessary to carry out intent of legislature

[4] Statutes 361 ⟹170

361 Statutes
361V Repeal, Suspension, Expiration, and Revival
361k170 k. Re-Enactment or Revival of Act Repealed. Most Cited Cases
If it is reasonable to do so, provisions of a law enacted by **initiative** or portions thereof which are repealed and reenacted in a modified form are to be considered as a continuation of the original law which is to be construed with the amendments

[5] Statutes 361 ⟹164

361 Statutes
361V Repeal, Suspension, Expiration, and Revival
361k160 Implied Repeal by Act Relating to Same Subject
361k164 k. Repeal by Amendatory Act in General. Most Cited Cases
Legislature's amendments, which pertained to conflict of interest law enacted by **initiative**, which had effect of repealing certain portions of such law, which involved several language changes clarifying and rendering the initiated law more precise but which permitted such law to continue to impose substantial disclosure requirements on public officials and to effectuate electorate's intent that those in position of public trust be held to high standard of financial disclosure, did not effect a "repeal" of the initiated law in violation of state constitutional provision. AS 39.50.010 et seq., 39.50.020(b), 39.50.060(a), 39.50.070, 39.50.150, Const. art. II, § 6

*400 Clifford E. Warren, pro se.
Rodger W. Fegues, Asst. Atty. Gen., and Avrum M. Gross, Atty. Gen., Juneau, for appellees.

Before BOOCHEVER, Chief Justice, and RABINOWITZ, CONNOR and BURKE, Justices.

OPINION

CONNOR, Justice.
This appeal concerns the 1975 amendments by the legislature to AS 39.50, Alaska's conflict of interest law which was enacted by **initiative**.

On August 27, 1974, an **initiative** entitled "An Act relating to conflict of interest of public officials" was passed by the people of Alaska. Under article XI, s 6 of the Alaska Constitution the **initiative** became effective ninety days after the election results were certified, that is, on December 11, 1974. On February 8, 1975, the legislature amended the law to provide that the disclosure statements of certain public officials were to be filed on April 1, 1975, rather than February 9, 1975. The amendment also provided that officials who left office on or after December 11, 1974, and before April 1, 1975, were *401 not required to file a statement. See Ch. 2, SLA 1975 (effective February 8, 1975). The law was amended and revised again in the spring of 1975, effective April 1. See Sec. 28, ch. 25, SLA 1975. It is entitled "An Act relating to conflict of interest; and providing for an effective date." The amendment changed the date for filing the financial statements from April 1, 1975, to April 15, 1975. See AS 39.50.150.

Clifford E. Warren originally filed this action to challenge certain regulations passed in connection with, and revisions made to, the conflict of interest law. He subsequently filed an amended complaint seeking to prevent the 1975 amendments to the law from becoming effective. Warren then filed a motion for summary judgment seeking to have the amendments declared void. A hearing was held on April 21, 1976, and summary judgment was granted in favor of the state. [FN1] This appeal follows.

FN1. Mr. Frank Harris, a proponent of another **initiative**, intervened to challenge the legislature's power to amend an initiated statute, but has not filed an appearance on appeal.

Warren raises two important issues concerning the constitutionality of the legislature's action:

1. Whether the legislature has the power to amend a law enacted by the **initiative** procedure;

2. Whether the amendments to the **initiative** constitute a repeal of the initiated law in violation of article XI, s 6 of the Alaska Constitution.

Several additional arguments are raised but do not warrant extensive discussion. [FN2]

FN2. Warren argues that by changing the date of compliance from 60 days after the effective date of the law (February 6, 1975) to April 1, 1975, the legislature changed the effective date of the law itself. This argument lacks merit since the extension of time in which public officials must file their disclosure statements has nothing to do with the date that the **initiative** itself became law. That occurred on December 11, 1974, and was not affected by the February amendment. See Alaska Const. art. XI, s 6.

Warren also argues that a considerable number of legislators have not complied with the disclosure requirements. He was under the impression that the disclosure statements were due on the day the **initiative** became law and, therefore, when the new legislators took office on January 20, 1975, they were in noncompliance with AS 39.50. However, the disclosure statements were not due until February 9 (April 15 as amended).

Article XI, s 1, of the Alaska Constitution provides that the people of Alaska may "propose and enact laws by the **initiative**." Article XI, s 6 provides:

"If a majority of the votes cast on the proposition favor its adoption, the initiated measure is enacted. If a majority of the votes cast on the proposition favor the rejection of an act referred, it is rejected. The lieutenant governor shall certify the election returns. An initiated law becomes effective ninety days after certification, is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time. An act rejected by referendum is void thirty days after certification. Additional procedures for the **initiative** and referendum may be prescribed by law."

[1] According to this plain language the legislature may not repeal a law passed by **initiative** for two years, but may pass an amendment at any time. We interpret this provision in accordance with the general principle of statutory construction that a constitutional provision should receive a reasonable and practical interpretation in accordance with common sense. [FN3] Cottingham v. State Board of Examiners, 134 Mont. 1, 328 P.2d 907, 915 (1968); 2A Sutherland, Statutory Construction, s 49.03 (4th *402 ed. Sands 1973). [FN4] Moreover, it has been held that in the absence of a specific restriction the legislature may **amend or repeal** a law passed by **initiative**. [FN5]

FN3. Warren correctly points out that the statements of delegates at the constitutional convention concerning the provisions for the **initiative** and referendum process have limited usefulness as interpretative aids. In Warren v. Boucher, 543 P.2d 731, 735 (Alaska 1975), we recognized that the many views expressed by individual delegates coupled with the numerous revisions of the **initiative** and referendum articles militate against using convention minutes as interpretative guides. Moreover, there was less than a general consensus concerning the virtues of direct legislation. See V. Fischer, Alaska's Constitutional Convention 79-81 (1975).

FN4. Accord, Calif. Employment Comm'n v. Municipal Court, 62 Cal.App.2d 781, 145 P.2d 361, 363 (1944); Opinion of the Justices, 308 Mass. 619, 33 N.E.2d 275, 279 (1941); State v. Babcock, 175 Minn. 103, 220 N.W. 408, 410 (1928); see Application of Pioneer Mill Company, 53 Haw. 496, 497 P.2d 549, 552-53 (1972).

FN5. Cottingham v. State Board of Examiners, 134 Mont. 1, 328 P.2d 907, 913 (1968); Zilesch v. Polk County, 107 Or. 659, 215 P. 578, 582 (1923); cf., e.g., Staples v. Bishop, 225 Ark. 936, 286 S.W.2d 505 (1956). See also Adams v. Bolin, 74 Ariz. 269, 247 P.2d 617 (1952). See generally 6 McQuillin, The Law of Municipal Corporations s 21.03 (3d ed. 1969); Annot., 33 A.L.R.2d 1118, 1121 (1954), and cases collected.

therein.

In Cottingham, supra, the Montana Supreme Court recognized that the legislature's plenary power to **amend or repeal** legislation passed by **initiative** must not contravene "an express limitation or prohibition of the Constitution of either Montana or the United States." Id. 328 P.2d at 913. In Alaska such a limitation is contained in art. XI, s 6, with respect to the power to repeal.

[2] In Warren v. Boucher, 543 P.2d 731, 737 (Alaska 1975), we recognized that the legislature is vested with broad authority to amend laws enacted by the people through the **initiative** process. Warren, however, argues that Warren, supra, reaffirms the intent of the framers of the Alaska Constitution that the legislature may interfere with the **initiative** process by amending an initiated law only where it creates a potential danger to the operation of governmental functions [FN6] The issue presented in that case is different than that presented here. There we were concerned with whether the legislature had short-circuited the **initiative** process by passing a law that was substantially the same as the proposed **initiative**. But, as we recognized, the legislature has broad powers to amend an **initiative** [FN7]

FN6. There was considerable concern over whether the Alaska Constitution should contain any provisions for **initiative** and referendum. See V. Fischer, supra. In order to protect the machinery of government, certain limitations were placed upon the use of the **initiative** and referendum, see art. XI, s 7, though otherwise the citizens of Alaska and the legislature are coequal. Zilesch, supra, at 582.

FN7. We stated

"The final constitutional provision states in pertinent part

"An initiated law ... is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time ... "

The constitution thus vests broad authority in the legislature to vary the terms of an initiated law, after its adoption, by the process of amendment. This power amounts to a check or balance against the **initiative** process. No doubt the legislature was given this power to assure that **initiatives** which were ill-advised, which might seriously cripple or frustrate the sound workings of government, or which might be impracticable, could be altered or corrected rapidly by the legislature. It was obviously intended by the framers that the **initiative** process should not be permitted to disrupt vital government functions or to impose intolerable burdens upon established administrative systems. To this end the legislature was given the ability to substitute its judgment for that of the proponents of an **initiative**.

What is significant to us here is the effect which the amendatory power of the legislature has upon our interpretation of the words "substantially the same measure." For if the legislature has broad power of amendment, it follows that it has broad power to change an **initiative** by an enactment covering the same subject as the initiated measure. In short, we must interpret Art. XI, Sec. 4, broadly and not narrowly as to the scope of legislative power. We, of course, are not passing here on the question of whether an amendment so vitiates an act passed by **initiative** as to constitute its repeal."

543 P.2d at 737.

[3] The central issue in the case at bar is whether the legislature has exceeded that broad power by passing an amendment which so vitiates the **initiative** as to "constitute its repeal." Id. at 737. Warren argues that the changes are so drastic that they make a mockery of the law, that the trial court erred in concluding the legislation was merely "housekeeping," and that the amendments to AS 39.50 amount to a repeal of the law. We disagree. "(A)n amendment of an act operates as a repeal of its provisions to the extent that they are materially changed by, and rendered repugnant to, the amendatory act." *403 Meyers v. Board of Suprs. of Los Angeles County, 110 Cal.App.2d 623, 243 P.2d 38, 42 (1952), see also W. R. Grasle Company v. Alaska Workmen's Comp. Board, 517 P.2d 999 (Alaska 1974). The implied repeal of an act is disfavored and will be limited to that which is necessary to carry out the intent of the legislature. John Hancock Mut. Life Ins. Co. v. Haworth, 68 Idaho 185, 191 P.2d 359, 363 (1948); 1A Sutherland, Statutory Construction, s 23.09 (4th ed. Sands 1972). See also 6 McQuillin, Law of Municipal Corporations s 21.09 (3d ed. 1969) (repeal of ordinances by implication disfavored). In the case at bar, one section [FN8] and two subsections [FN9] were expressly repealed in 1975 when the legislature amended the initiated law. Sec. 26, ch. 25, SLA 1975.

FN8. AS 39.50.140 (penalties for accepting bribes)

FN9. AS 39.50.040(b)(6) (duty of trustee of blind trusts to file for trustor); AS 39.50.030(c) (exemption from

compliance by Alaska Supreme Court because of profession)

[4] Other sections were impliedly repealed by virtue of inconsistent amendatory provisions [FN10] However, this does not necessarily mean that the act as a whole was repealed. When AS 39.50 was amended certain of its provisions or portions thereof were repealed and reenacted in a modified form. [FN11] Where it it reasonable to do so, these provisions are considered to be a continuation of the original law which is to be construed with the amendments. Green v. State, 462 P.2d 994, 1000 (Alaska 1969); 1A Sutherland, supra, s 22.33 at 191, accord, e. g., Security Life and Accident Company v. Heckers, 177 Colo. 455, 495 P.2d 225, 227 (1972); John Hancock Mut. Life Ins. Co., supra, 191 P.2d at 362.

FN10. For example, under AS 39.50.060 the penalties for violations were changed from $500-$5,000 to $100-$1,000 and from a period of up to one year's imprisonment to a period of up to six months.

FN11. E. g., AS 39.50.020(b).

[5] Of course there remains the question whether the amendments so emasculate the law that it is effectively repealed. We conclude that they do not. There are considerable language changes, but these clarify and render the law more precise. The fines for violations of the law have been reduced but the penalties are still significant. See AS 39.50.060(a) and AS 39.50.070. Finally, the amended law still imposes substantial disclosure requirements on public officials and effectuates the intent of the electorate that those in a position of public trust be held to a high standard of financial disclosure.

Warren challenges the state's reliance on State v. Meyers, 51 Wash.2d 454, 319 P.2d 828 (1957), in support of its argument that the amendments to AS 39.50 do not effectively repeal this law. In Meyers, supra, the people of Washington passed an **initiative** providing for the redistricting of the state, using the census tract rather than the election precinct as the unit of population for the purpose of informing senatorial and legislative districts. This was in an effort to cure legislative noncompliance with the constitutional provision on apportionment and to better reflect the population configuration of the state. The legislature amended the **initiative** by reinstating the use of the election precinct. This action was challenged as violating the state constitutional prohibition against the repeal, but not the amendment, of initiated laws. On appeal the Washington Supreme Court found the amendment to be valid. Defining the words "to amend" broadly, the court said that an "amendment may effectually supplant or destroy the original charter, and institute a new policy altogether." Id., 319 P.2d at 831. The dissent argued that the legislature's action emasculated the theory of the **initiative** and thwarted the constitutional process. Id., 319 P.2d at 840. Nevertheless, the majority opinion concluded that the legislature properly exercised its discretion in determining that the precinct method was more suitable. Id., 319 P.2d at 834.

As Warren argues, there is much merit in the dissent in Meyers as to the scope of the legislature's power to amend laws enacted by **initiative**, but we are not presented with *404 a similar case. The amendments to AS 39.50, which preserve its basic structure and purpose, fall far short of the drastic changes made to the apportionment scheme by the Washington legislature.

For the purposes of this appeal it is unnecessary for us to decide at what point an amendment might be so drastic as to constitute a repeal of an initiated law in violation of the Alaska Constitution. In this case the amendments only reduced the penalties for violation of the law and clarified some of the language. We are of the opinion that such an amendment did not constitute a repeal of the initiated law.

AFFIRMED.

Alaska 1977.
Warren v. Thomas
568 P.2d 400

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113 P.3d 613
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(Cite as: 113 P.3d 613)

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Briefs and Other Related Documents
State v. Trust the PeopleAlaska,2005

Supreme Court of Alaska.
STATE of Alaska, Loren Leman, Lieutenant Governor, and Gregg D. Renkes, Alaska Attorney General, Appellants,
v.
TRUST THE PEOPLE, the Initiative Committee Sponsoring 03SENV, consisting of Eric Croft, Harry T. Crawford, Jr., and David Guttenberg, Appellees.
No. S-11288.

May 27, 2005

Background: Initiative committee sought review of denial of certification by Lieutenant Governor to place proposed initiative on ballot that would have restricted governor's power to temporarily appoint United States senators. The Superior Court, Third Judicial District, Anchorage, Mark Rindner, J., ordered Lieutenant Governor to certify initiative for inclusion on ballot. The State appealed.

Holdings: The Supreme Court, Carpeneti, J., held that

(1) proposed initiative was not "substantially the same" as legislation that addressed the same topic, and therefore proposed initiative was not void, and

(2) constitutionality of proposed initiative was not ripe for review before next election.

Affirmed.
West Headnotes
[1] **Appeal and Error 30 ⇐842(1)**

30 Appeal and Error
30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k838 Questions Considered
30k842 Review Dependent on Whether Questions Are of Law or of Fact

30k842(1) k. In General. Most Cited Cases

The appellate court reviews questions of state and federal constitutional law using its independent judgment.

[2] Statutes 361 ⇐302

361 Statutes

361IX Initiative

361k302 k. Constitutional and Statutory Provisions. Most Cited Cases

The appellate court liberally construes state constitutional provisions that apply to the initiative process, particularly provisions concerning subject matter limitations, but liberal construction of federal constitutional provisions is not appropriate.

[3] Statutes 361 ⇐303

361 Statutes

361IX Initiative

361k303 k. Matters Subject to Initiative. Most Cited Cases

Proposed initiative that would have restricted the governor's power to temporarily appoint a United States senator was not "substantially the same" as legislation that addressed the same topic, and therefore proposed initiative was not void; proposed initiative would have completely removed from the governor all power to make temporary appointments to the office of United States Senator, and ensured that such decisions would be made by the voters, while the legislation preserved in all cases the governor's power to make such temporary appointments. Const. Art. 11, § 4.

[4] Statutes 361 ⇐303

361 Statutes

361IX Initiative

361k303 k. Matters Subject to Initiative. Most Cited Cases

A three part test is used to determine whether a proposed initiative and legislation are substantially the same, thereby rendering void the proposed petition: the court first determines the scope of the subject matter, and affords the legislature greater or lesser latitude depending on whether the subject matter is broad or narrow; the court next considers whether the general purpose of the legislation is the same as the general purpose of the initiative; and finally, the court must consider whether the means by which that purpose is effectuated are the same in both the legislation and the initiative. Const. Art. 11, § 4.

[5] Constitutional Law 92 ⇐46(1)

92 Constitutional Law

92II Construction, Operation, and Enforcement of Constitutional Provisions

92k44 Determination of Constitutional Questions

92k46 Necessity of Determination

92k46(1) k. In General. Most Cited Cases

Constitutionality of proposed initiative to restrict the governor's power to temporarily appoint a United States senator, by ensuring that such decisions were left to the voters, was not ripe for review before the next election, although the State asserted that the initiative contravened the Seventeenth Amendment to the federal Constitution, providing that the legislature of any state may empower the governor to make temporary appointments of United States senator; pre-election review could be extended only to subject-matter restrictions that arose from Alaska law, and that specifically addressed the initiative process, or to proposals that were clearly unlawful under controlling authority. U.S.C.A. Const. Amend. 17.

*614 Joanne M. Grace, Assistant Attorney General, Anchorage, and Gregg D. Renkes, Attorney General, Juneau, for Appellants.

Peter J. Aschenbrenner, Aschenbrenner Law Offices, Inc., Fairbanks, and Jeffrey M. Feldman, Feldman & Orlansky, Anchorage, for Appellees.

Peter J. Maassen, Ingaldson, Maassen & Fitzgerald, Anchorage, for Amicus Curiae Alaska Public Interest Research

Group.

Before: BRYNER, Chief Justice, MATTHEWS, EASTAUGH, FABE, and CARPENETI, Justices.

OPINION

CARPENETI, Justice.

I. INTRODUCTION

Because of the need for resolution of the issues raised in this case before the election, we issued our Order on August 20, 2004, with an opinion to follow. This is that opinion.[FN1]

FN1. The Order provided:

Trust the People, an initiative committee, submitted an initiative that proposed to determine the manner in which vacancies in Alaska's two United States Senate seats would be filled, after some delay in the certification process, Trust the People filed suit against Lieutenant Governor Loren Leman. The Lieutenant Governor eventually denied certification of the initiative, determining that the Seventeenth Amendment of the United States Constitution prohibited enactment of the proposed law by initiative. Following oral argument on the issue, Superior Court Judge Mark Rindner ruled that the constitutionality of the initiative should not be considered unless and until the voters enact the initiative into law, accordingly, he held that the Lieutenant Governor erred by denying certification of initiative and ordered him to certify the initiative. Pursuant to the superior court's order, the initiative was certified, it was subsequently placed on the ballot for the November 2004 statewide general election.

On June 5, 2004 House Bill (H.B.) 414, "An Act relating to filling a vacancy in the office of United States senator, and to the definition of "political party", and providing for an effective date" was enacted into law. On June 15, 2004 the Lieutenant Governor removed the initiative from the ballot and the state moved to dismiss this appeal as moot on the grounds that H.B. 414 and the initiative were substantially the same, and that the initiative was therefore void under article XI, section 4 of the Alaska Constitution. Trust the People filed a separate case in superior court seeking a declaratory judgment that the proposed initiative must be placed on the November ballot. On July 8, 2004 we issued an order in which we informed the parties that we would consider the issue of substantial sameness when we considered the merits appeal involving the Seventeenth Amendment from the first superior court action. Oral argument was held before this court on July 21, 2004.

IT IS ORDERED:

1. The law enacted to supplant the initiative (HB 414) is not substantially the same as the initiative because (1) it provides that the governor will fill a senate vacancy by appointment, whereas the initiative provides that all vacancies will be filled by popular election, and (2) eliminating gubernatorial appointments from the process of filling senate vacancies is a primary objective of the initiative. Therefore, the initiative is not void, and the state's motion to dismiss this appeal as moot is DENIED.

2. Judge Rindner did not err in declining to consider whether the initiative violates the Seventeenth Amendment unless and until it is approved by the voters and in ruling that the lieutenant governor wrongfully denied certification of the initiative. The general rule is that a court should not determine the constitutionality of an initiative unless and until it is enacted. There are two exceptions to this. First, where the initiative is challenged on the basis that it does not comply with the state constitutional and statutory provisions regulating initiatives, courts are empowered to conduct pre-election review. Second, courts are also empowered to conduct pre-election review of initiatives where the initiative is clearly unconstitutional or clearly unlawful. Neither exception applies to this case. The first exception does not apply because the present challenge does not involve state constitutional and statutory provisions regulating initiatives. The second exception does not apply because the initiative is not clearly unconstitutional: whether the Seventeenth Amendment permits or precludes lawmaking by initiative with respect to filling senate vacancies presents an open and fairly debatable constitutional question. The decision of the superior court, deferring review of the initiative and directing the lieutenant governor to certify the initiative, is AFFIRMED.

3. The initiative entitled "An Act Relating to Filling a Vacancy in the Office of United States Senator" (03-SENV) shall be placed on the ballot.

4. An opinion will follow.

A citizens' group obtained sufficient signatures to place on the November 2004 ballot an initiative restricting the governor's power to temporarily appoint a United States senator. This case concerned whether the initiative should go before the voters.

*615 The Alaska Constitution provides that if the legislature enacts legislation that is "substantially the same" as a proposed initiative, the initiative is void. Because the legislature enacted legislation that addresses the same topic, the lieutenant governor removed the initiative from the ballot. This case first required us to determine whether the legislation is "substantially the same" as the initiative so as to render it void under the Alaska Constitution. We decided this question in the negative. Because we concluded that the principal purpose of the initiative is to completely remove from the governor all power to make temporary appointments to the office of United States senator, while the effect of the legislation is to preserve in all cases the governor's power to make temporary appointments to that office, we held that the legislation is not "substantially the same" as the initiative.

The Seventeenth Amendment to the United States Constitution provides that "the legislature" of any state may empower the governor to make a temporary appointment of a United States senator when a vacancy occurs in that office. The state argues that this power is reserved to the Alaska State Legislature and may not be exercised by the people through the initiative. The initiative sponsors respond that this dispute is not subject to resolution before the election; they claim that it will only be ripe for decision if the initiative passes. Thus, the case required that we determine whether pre-election review of the initiative is appropriate under our law. We decided this question also in the negative. We concluded that pre-election review may extend only to subject-matter restrictions that arise from Alaska law and that specifically address the initiative process or to proposals that are clearly unlawful under controlling authority. Because the proposed initiative meets neither of these tests, we held that it should go before the voters and that the state's Seventeenth Amendment challenge was premature.

Accordingly, we directed the lieutenant governor to place the initiative on the November ballot.

II. FACTS AND PROCEEDINGS

In Alaska the people's right to enact legislation by initiative is guaranteed by article XI of the Alaska Constitution, which states: "The people may propose and enact laws by the initiative, and approve or reject acts of the legislature by the referendum." [FN2] Once an application for a proposed initiative has been signed by one hundred qualified voters, it is filed with the lieutenant governor, who must certify the initiative if he finds it in the proper form. [FN3]

FN2. ALASKA CONST., art. XI, § 1. There are certain subject matter limitations on the people's power to enact initiatives. Initiatives "shall not be used to dedicate revenue, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation." ALASKA CONST., art. XI, § 7. The proposed initiative now before the court does not implicate any of these limitations.

FN3. ALASKA CONST., art. XI, § 2.

On September 4, 2003, an initiative committee named Trust the People sought to exercise the power granted by article XI. The committee submitted an initiative application for a proposed bill entitled "An Act Relating to Filling a Vacancy in the Office of United States Senator" (03-SENV, also referred to as "the initiative"). The proposed initiative was intended to repeal former AS 15.40.010, which gave the governor the power to fill a vacancy in the office of United States senator by appointment. Under the prior law, if thirty months or less remained in a vacating senator's term, the governor's appointee would serve as senator for the remainder of the term. When the initiative was submitted, AS 15.40.010 provided:

When a vacancy occurs in the office of United States senator, the governor, at least five days after the date of the vacancy but within 30 days after the date of the vacancy, shall

(1) appoint a qualified person who, if the predecessor in office was nominated by a political party, has been, for the six months before the date of the vacancy, and is, on the date of appointment, a member of the same political party as that which nominated the predecessor in office to fill the *616 vacancy temporarily until the vacancy is filled permanently by election; and

(2) by proclamation and subject to this chapter, call a special primary election and a special election to fill the vacancy

for the remainder of the term of the predecessor in office if the predecessor's term would expire more than 30 calendar months after the date of the vacancy.[FN4]

FN4. *See* Ch. 4, § 1, SLA 2002. This statute was amended on June 5, 2004 by H.B. 414. *See* Ch. 50, SLA 2004.

Under the proposed initiative, all vacancies in the office of United States senator must be filled by the voters in a special election and the governor would have no power of appointment. Under the proposed initiative there could be no incumbency advantage because no temporary appointment would be permitted. The procedural aspects of the special election (timing, term limits, primaries, etc.) would mirror the current method by which vacancies in the office of United States representative are filled by special election.[FN5] We set out the proposed initiative in its entirety in the margin.[FN6]

FN5. *See* AS 15.40.140-.220.

FN6. *Section 1.* AS 15.40.140 is amended to read:
Sec. 15.40.140. Condition and time of calling special election. When a vacancy occurs in the office of United States senator or United States representative, the governor shall, by proclamation, call a special election to be held on a date not less than 60, nor more than 90, days after the date the vacancy occurs. However, if the vacancy occurs on a date that is less than 60 days before or is on or after the date of the primary election in the general election year during which a candidate to fill the office is regularly elected, the governor may not call a special election.
Section 2. AS 15.40 is amended by a adding a new section to read:
Sec. 15.40.165. Term of elected senator. At the special election, a United States senator shall be elected to fill the remainder of the unexpired term. The person elected shall take office on the date the United States Senate meets, convenes, or reconvenes following the certification of the results of the special election by the director.
Section 3. AS 15.40.200 is amended to read:
Sec. 15.40.200. Requirements of party petition. Petitions for the nomination of candidates of political parties shall state in substance that the party desires and intends to support the named candidate for the office of United States senator or United States representative, as appropriate, at the special election and requests that the name of the candidate nominated be placed on the ballot.
Section 4. AS 15.40.220 is amended to read:
Sec. 15.40.220. General provisions for conduct of special election. Unless specifically provided otherwise, all provisions regarding the conduct of the general election shall govern the conduct of the special election of the United States senator or United States representative, including provisions concerning voter qualifications, provisions regarding the duties, powers, rights, and obligations of the director, of other election officials, and municipalities, provision for notification of the election, provision for payment of election expenses, provisions regarding employees being allowed time from work to vote, provisions for the counting, reviewing, and certification of returns, provisions for the determination of the votes and of recounts, contests, and appeal, and provision for absentee voting.
Section 5. AS 15.40.310 is amended to read:
Sec. 15.40.310. General provisions for conduct of special election. Unless specifically provided otherwise, all provisions regarding the conduct of the general election shall govern the conduct of the special election of the governor and lieutenant governor, including provisions concerning voter qualifications, provisions regarding the duties, powers, rights, and obligations of the director, of other election officials, and of municipalities, provision for notification of the election, provision for payment of election expenses, provisions regarding employees being allowed time from work to vote; provisions for the counting, reviewing, and certification of returns, provisions for the determination of the votes and of recounts, contests, and appeal, and provision for absentee voting.
Section 6. AS 15.40.470 is amended to read:
Sec. 15.40.470. General provision for conduct of special election. Unless specifically provided otherwise, all provisions regarding the conduct of the general election shall govern the conduct of the special election of state senators, including the provisions concerning voter qualifications, provisions regarding the duties, powers, rights, and obligations of the director, of other election officials, and of municipalities, provision for notification of the election, provision for payment of election expenses, provisions regarding employees being

allowed time from work to vote; provisions for the counting, reviewing, and certification of returns; provisions for the determination of the votes and of recounts, contests, and appeal; and provision for absentee voting.

Section 7. AS 15.40.010, 15.40.050, 15.40.060, 15.40.070, 15.40.075, 15.40.130, and [ ] 15.40.135 are repealed.

Section 8. Effective Date. This Act takes effect January 1, 2005.

*617 After the initiative was submitted to Lieutenant Governor Loren Leman, it was referred to the Department of Law for pre-certification review. When a month passed and the initiative had not been certified, Trust the People filed a complaint against Lieutenant Governor Leman and Attorney General Gregg Renkes (*Trust the People I*). Trust the People alleged that Lieutenant Governor Leman and Attorney General Renkes were unlawfully delaying certification in violation of Alaska statutory and constitutional law. Trust the People sought a declaratory judgment that the lieutenant governor was required to immediately certify the initiative and prepare petitions and booklets for circulation. A hearing concerning the delay was held on October 10, 2003 before Superior Court Judge Mark Rindner. At the hearing the parties agreed that by October 27, 2003 the lieutenant governor would either certify the initiative and provide Trust the People with petition booklets as required by law or provide Trust the People with a written denial of certification. A written order concerning the parties' agreement was entered on October 13, 2003.

On October 20, 2003 the Department of Law issued an opinion stating that the initiative "is not a proper exercise of the law making power reserved to the people under Article XII, Section 11 of the Alaska Constitution." [FN7] The Department of Law determined that, under the Seventeenth Amendment to the United States Constitution, the people do not have the power to determine by initiative the method by which vacancies in the office of U.S. senator will be filled. The Seventeenth Amendment states in full:

> The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.
>
> When vacancies happen in the representation of any state in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.
>
> This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Concluding that the plain language of the Seventeenth Amendment vests the power to determine how to fill U.S. Senate vacancies exclusively in each state's formal representative body, the department recommended that the lieutenant governor not certify the initiative because it proposed a law that may not be enacted via the initiative process. Lieutenant Governor Leman denied certification of the initiative on October 21, 2003.

On October 30, 2003 Judge Rindner conducted a hearing regarding the denial of certification. Trust the People argued that the lieutenant governor's power to deny certification of initiatives was limited to "precise state constitutional guidelines" (presumably those set out in article XI, section 7 of the Alaska Constitution) and had therefore been improperly exercised in this case. Trust the People also argued that any question regarding the constitutionality of the initiative could be addressed through review by the courts only if and when the voters of Alaska passed the initiative. The state argued that Lieutenant Governor Leman had the power to deny certification if the initiative concerned a subject that was outside the people's initiative power, and that denial was proper in this case because under federal constitutional law, the method of filling U.S. Senate vacancies cannot be determined by initiative.

*618 Relying on our decision in *Kodiak Island Borough v. Mahoney*, [FN8] Judge Rindner ruled that the constitutionality of the proposed initiative should not be considered unless and until the Alaska voters enact the

initiative into law. Accordingly, Judge Rindner held that Lieutenant Governor Leman erred by denying certification and ordered him to certify the initiative and provide petition books to Trust the People.[FN9] Judge Rindner emphasized that he was not reaching the merits of the state's Seventeenth Amendment argument. The state appealed but did not seek a stay of the superior court's order. Trust the People circulated the petition and obtained almost 50,000 signatures. On October 30, 2003 Lieutenant Governor Leman certified the petition for inclusion on the ballot for the November 2004 statewide general election.

FN8. 71 P.3d 896 (Alaska 2003). In *Mahoney* we held that a municipal clerk, in determining whether an initiative "would be enforceable as a matter of law," should only reject a petition that violates any of the liberally construed statutory or constitutional restrictions on initiatives or that proposes a substantive ordinance where controlling authority establishes unconstitutionality. *Id.* at 900. *See infra* discussion at Part IV.B.

FN9. *Trust the People v. State of Alaska*, No. 3AN-03-12217 Ci. (Alaska Super., November 3, 2003).

Briefing for the appeal of the superior court's decision was completed by early May. On June 5, 2004 House Bill (H.B.) 414, "An Act relating to filling a vacancy in the office of United States senator, and to the definition of "political party"; and providing for an effective date" [FN10] was enacted into law without Governor Murkowski's signature.[FN11] House Bill 414 provides in pertinent part:

FN10. H.B. 414, 23rd Legis., 2d Sess. (2004).

FN11. *See* bill history for H.B. 414, available at http://www.legis.state.ak.us/basis (last visited July 27, 2004). Under the Alaska Constitution, when the legislature is not in session, the governor has twenty days to sign or veto a bill, or it will become law without his signature. ALASKA CONST. art. II, § 17. Because the governor neither signed nor vetoed H.B. 414, it became law without his signature.

Section 1. The uncodified law of the State of Alaska is amended by adding a new section to read:
LEGISLATIVE INTENT. It is the desire of this legislature that the provisions of secs. 2-8 and 10 of this Act, which are substantially similar to those proposed in an initiative petition, not be repealed for at least two years after the Act's effective date.
Section 2. AS 15.40.140 is amended to read:
Sec. 15.40.140 **Condition and time of calling of special election.** When a vacancy occurs in the office of *United States senator* or United States representative, the governor shall, by proclamation, call a special election to be held on a date not less than 60, nor more than 90, days after the date the vacancy occurs. However, if the vacancy occurs on a date that is less than 60 days before or is on or after the date of the primary election in *the* general election year *during which a candidate to fill the office is regularly elected*, the governor may not call a special election.
Section 3. AS 15.40 is amended by adding a new section to read:
Sec. 15.40.145. Temporary Appointment of United States Senator. When a vacancy occurs in the office of United States senator, the governor may, at least five days after the date of the vacancy but within 30 days after the date of the vacancy, appoint a qualified individual to fill the vacancy temporarily until the results of the special election called to fill the vacancy are certified. If a special election is not called for the reasons set out in AS 15.40.140, the individual shall fill the vacancy temporarily until the results of the next general election are certified.

Following passage of H.B. 414, this court on June 9 asked the parties to address whether the case was moot, or to file a motion to dismiss. On June 16 Lieutenant Governor Leman removed the initiative from the ballot. The lieutenant governor, concurring with an opinion from Attorney General Renkes, determined that the proposed initiative was void because it was "substantially similar" to H.B. 414. The state then sought to dismiss its appeal to this court, arguing that passage of H.B. 414 had rendered the appeal moot.

*619 Trust the People opposed dismissal, claiming that the proposed initiative and H.B. 414 were not substantially the same. Trust the People filed a new action in the superior court, seeking a declaratory judgment that the proposed initiative must be placed on the ballot for the statewide general election in November 2004 and requesting injunctive relief to prohibit the state from interfering with a popular vote on the initiative ("*Trust the People II*").[FN12] Trust the People argued that Lieutenant Governor Leman's removal of the initiative from the ballot violated state statutory

and constitutional law. The state sought to stay the proceedings in *Trust the People II* pending our resolution of its appeal in *Trust the People I*. Superior Court Judge Morgan Christen denied the state's motion and ordered expedited consideration of the case. The state then filed a petition for review, seeking to reverse the superior court's denial of a stay.

FN12. *Trust the People v. Leman*, No. 3AN-04-08185 Ci.

On July 8 we issued an order granting the state's petition for a stay in *Trust the People II*. We informed both parties that we would consider the issue of mootness on an expedited basis when we considered the merits of *Trust the People I*. Oral argument was held July 21, 2004. On August 20, 2004 we issued the order set out in footnote 1.

In addition to the briefs filed by the parties to this case, the Alaska Public Interest Research Group (AKPIRG) has filed a brief as *amicus curiae*.

III. STANDARD OF REVIEW

[1][2] This appeal raises questions of both state and federal constitutional law, which we review using our independent judgment.[FN13] We liberally construe state constitutional provisions that apply to the initiative process, particularly provisions concerning subject matter limitations.[FN14] Liberal construction of federal constitutional provisions, however, is not appropriate.[FN15]

FN13. *See State, Dep't of Revenue v. Andrade*, 23 P.3d 58, 65 (Alaska 2001) (questions of law reviewed *de novo*).

FN14. *Brooks v. Wright*, 971 P.2d 1025, 1027 (Alaska 1999).

FN15. *See Bailey v. Alabama*, 219 U.S. 219, 239, 31 S.Ct. 145, 55 L.Ed. 191 (1911) (�[A state's] power to create presumptions is not a means of escape from [federal] constitutional restrictions.�).

IV. DISCUSSION

Resolution of this case requires consideration of two issues: (1) Is the initiative void under article XI, section 4 of the Alaska Constitution, which states that an initiative is void if the legislature passes "substantially the same" measure? (2) Should the state's Seventeenth Amendment challenge to the proposed initiative be resolved before the initiative is put on the ballot?

A. Is the Proposed Initiative Void Under Article XI, Section 4 of the Alaska Constitution Because It Is "Substantially the Same" as H.B. 414?

[3] Article XI, section 4 of the Alaska Constitution provides:

> An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. *If, before the election, substantially the same measure has been enacted, the petition is void.*[FN16]

FN16. The procedure for finding an initiative void on grounds of substantial sameness is codified in AS 15.45.210:

> If the lieutenant governor, with the formal concurrence of the attorney general, determines that an act of the legislature that is substantially the same as the proposed law was enacted after the petition had been filed, and before the date of the election, the petition is void and the lieutenant governor shall so notify the committee. The lieutenant governor's decision to remove an initiative from the ballot on this ground is subject to judicial review. AS 15.45.240.

(Emphasis added.)

The proposed initiative states in relevant part that:
*620 When a vacancy occurs in the office of United States senator or United States representative, the governor shall, by proclamation, call a special election to be held on a date not less than 60, nor more than 90, days after the date the vacancy occurs. However, if the vacancy occurs on a date that is less than 60 days before or is on or after the date of the primary election in the general election year during which a candidate to fill the office is regularly elected, the governor may not call a special election.

The proposed initiative would repeal the statutory provisions in AS 15.40.010 empowering the governor to make a temporary appointment to fill a senate vacancy. According to the impartial summary of the initiative prepared for the petition booklets by the lieutenant governor, the initiative "would repeal state laws by which the governor makes a temporary appointment of a Senator who serves until an election can be held."

Following the submission of the initiative to the lieutenant governor for placement on the ballot, the Alaska legislature passed H.B. 414. In contrast to the proposed initiative, H.B. 414 retains the governor's temporary appointment power in every case in which a senate vacancy might arise. House Bill 414 states in relevant part:
When a vacancy occurs in the office of United States senator, the governor may, at least five days after the date of the vacancy but within 30 days after the date of the vacancy, appoint a qualified individual to fill the vacancy temporarily until the results of the special election called to fill the vacancy are certified. If a special election is not called for the reasons set out in AS 15.40.140, the individual shall fill the vacancy temporarily until the results of the next general election are certified.

Notwithstanding this difference, the lieutenant governor determined that the initiative and H.B. 414 are substantially the same. Accordingly, he deemed the initiative void and removed it from the ballot. The parties sharply dispute whether the initiative and the bill are in fact "substantially the same."

The definition of "substantially the same" is not apparent from the text of the Alaska Constitution. And in *Warren v. Boucher*,[FN17] we noted that there is "nothing in the legislative history of the article, or in the vigorous floor debates thereon, which points to an agreed upon meaning or a consciously adopted definition of what this critical language should mean" or that offers any "helpful discussion of what was the intended scope of the words".[FN18] We also noted that "the words 'substantial' or 'substantially' are relative, inexact terms," whose meaning is "quite elusive".[FN19] We therefore examined the question "against the total structure" of Alaska's constitutional system of direct legislation.[FN20]

FN17. 543 P.2d 731 (Alaska 1975).

FN18. *Id.* at 735.

FN19. *Id.* at 736.

FN20. *Id.*

[4] We noted that the original proposal of the Constitutional Convention Committee called for "[l]aws proposed by initiative [to] be submitted to the voters ... unless the legislature enacts *the measure* initiated ...."[FN21] The insertion of "substantially the same measure" in place of "the measure" demonstrated that the framers wished to allow some flexibility to the legislature.[FN22] At the same time, we noted the framers' conviction that popular enactment of legislation should not be frustrated by legislative veto.[FN23] We ultimately decided that a legislative act is "substantially the same" as the initiative it seeks to supersede if "in the main the legislative act achieves the same general purpose as the initiative [and] accomplishes that purpose by means or systems which are fairly comparable."[FN24] We also noted that "[t]he broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative."*621[FN25] Thus, *Warren* developed a three-part test to determine whether a proposed initiative and legislation are substantially the same. A court must first determine the

scope of the subject matter, and afford the legislature greater or lesser latitude depending on whether the subject matter is broad or narrow; next, it must consider whether the general purpose of the legislation is the same as the general purpose of the initiative, and finally it must consider whether the means by which that purpose is effectuated are the same in both the legislation and the initiative.

FN21. *Id.* at 735 (quoting Constitution Convention Committee's Proposal No. 3) (emphasis added).

FN22. *Id.* at 736.

FN23. *Id.* at 737.

FN24. *Id.* at 736.

FN25. *Id.*

Turning to the first part of the test, we note that the subject matter of the legislation and the initiative before us-filling senate vacancies-is narrow. It is far narrower than the subject matter of campaign finance reform that we considered in *Warren*. The legislation in *Warren* was broad and complicated, touching upon a great range of topics, including campaign spending limits, reporting of contributions and expenses, restrictions on anonymous contributions, penalties for non-compliance, the creation of an elections oversight committee to monitor elections, and several other topics.[FN26] In the present case, the legislation is simple and straightforward, essentially dealing with only one substantive topic: filling of a U.S. Senate vacancy. We agree with Trust the People's assessment that "[t]he simpler and more focused a law is, the fewer details that can be adjusted without effecting a fundamental change in the measure's purpose and effect." As such, we begin our analysis with the view that the legislature should be accorded less latitude in its attempts to "vary from the particular features of the initiative."[FN27]

FN26. *Id.* at 737-38.

FN27. *Id.* at 736.

Turning to the next part of the test, we consider the general purpose of both the initiative and H.B. 414. The controversy before us differs fundamentally from the issue we addressed in *Warren*. In that case, both the initiative and the proposed legislation imposed greater controls over election contributions and expenditures, and despite some differences, it was clear that they both addressed the subject matter in similar ways.[FN28] (Indeed, the dispute in *Warren* turned almost exclusively on the third part of the test, the means by which the competing versions of the law sought to vindicate their clearly common purpose of campaign finance reform.) We stated that the legislature's changes to the initiative did not "vitiate[ ] the aims of the initiative, but ma[de] those aims more feasible of achievement."[FN29] The legislature had made numerous changes to the initiative that implicated the scope of the law, its enforcement mechanisms, and other structural issues concerning the regulation of campaign finance reform. But because these changes were seen as promoting the shared goals of both the bill and the initiative, we were willing to accept the legislature's bill as "substantially the same" as its initiative counterpart, even though there were in fact differences in the texts.[FN30] But we cannot find that the competing versions of the legislation before us in this case share a common purpose. Indeed, as we explain more fully below, we believe the initiative and H.B. 414 have opposite objectives.

FN28. *Id.* at 737-39.

FN29. *Id.* at 739.

FN30. *Id.* at 739-40. As the dissent in *Warren* pointed out, "of the 19 separate sections of the initiative, only six are the same as the statute," and "[s]even sections have been eliminated entirely by the statute." *Id.* at 741 (Erwin, J., dissenting).

In order to determine the respective purposes of H.B. 414 and the initiative, we look to their texts to determine

intent.[FN31] This, in turn, requires us to review the circumstances surrounding the origins of the initiative.

FN31. *See Falcon v. Alaska Pub. Offices Comm'n*, 570 P.2d 469, 472 (Alaska 1977).

As amended in 1998, AS 15.40.010 provided in relevant part:
When a vacancy occurs in the office of United States senator, the governor, within 30 days after the date of the vacancy, shall (1) appoint a qualified person ... to fill the vacancy temporarily until the vacancy*622 is filled permanently by election; and (2) ... call a special primary election and a special election to fill the vacancy for the remainder of the term of the predecessor in office if the predecessor's term would expire more than 30 calendar months after the date of the vacancy.[FN32]

FN32. Ch. 30, § 1, SLA 1998.

In 2002 the legislature amended the statute to restrict the governor from filling a vacancy until at least five days had passed from the date of the vacancy.[FN33] It was against this background that Trust the People formed for the purpose of changing the law by initiative. What was the intent of that initiative?

FN33. Trust the People argues that the proposed initiative arose out of voter frustration with this change in the law. According to Trust the People, the essential aims of the initiative are "to remove the appointment power from the Governor, in direct response to Governor Murkowski's appointment of his daughter to fill his own Senate seat," and to "eliminate totally the incumbency advantage for appointed Senators never elected by the voters." The state "does not agree with all aspects" of Trust the People's factual claims, which it argues are based on unsubstantiated opinions. Our resolution of this case does not require us to determine whether there is merit to the assertions of Trust the People.

We have previously held that in determining the meaning that voters might attach to a ballot initiative, we will look to published arguments made in connection with the initiative.[FN34] At the time of our August 20, 2004 order,[FN35] there was very little published material available because the voters' handbook has not yet been published. However, the lieutenant governor's neutral statement of the initiative's purpose, prepared pursuant to state law[FN36] for the petition booklets, was available for our review. The lieutenant governor, in his neutral statement of the purpose of the proposed initiative, wrote that the initiative "would repeal state laws by which the governor makes a temporary appointment of a Senator who serves until an election can be held." Trust the People insists that H.B. 414 does not accomplish this purpose, but instead achieves precisely the opposite result.

FN34. *Falcon*, 570 P.2d at 472 n. 6.

FN35. *See supra* note 1.

FN36. *See* AS 15.45.180(a).

The critical difference between the proposed initiative and the bill is that while the proposed initiative precludes gubernatorial appointment of a United States senator in *each and every case of vacancy*, H.B. 414 permits the governor to make a temporary appointment pending an election to fill the vacancy in each and every case. This means that, while the proposed initiative provides that in every instance Alaska's United States Senate seats will be filled only by Alaskan voters, H.B. 414 would allow an unelected executive appointee to fill the seat for an interim period that could last as long as five months.[FN37]

FN37. House Bill 414 provides that the governor need not call a special election for U.S. senator where a vacancy occurs less than sixty days prior to the primary election in a general election year. Primary elections are generally held in the last week of August, and general elections in early November, with the results certified in late November or early December, at which point the winning candidate is sworn in as senator. Therefore, were a senatorial vacancy to occur in late June of a general election year, the governor's appointee

would serve for roughly five months, or until the end of November. *See* the State of Alaska Division of Elections website, at http://www.gov.state.ak.us/ltgov/elections/homepage.html# results.

The state argues that the initiative and the bill are "substantially the same" because they "accomplish the same general goal." That is, "under both the act and the initiative, a special election largely replaces the appointment process, unless the relevant general election will occur soon after the vacancy." But the state's argument does not take into consideration the two critical differences noted above between the texts of H.B. 414 and the proposed initiative: (1) H.B. 414 retains the executive appointment power in every case while the proposed initiative repeals that power entirely, which means that (2) H.B. 414 allows appointees to fill U.S. Senate seats while the initiative seeks to ensure that an unelected appointee will never represent Alaska in the U.S. Senate. We conclude that these differences are so important that it cannot be said that the proposed initiative and H.B. 414 are "substantially the same."

*623 The state advances another argument to support its conclusion that H.B. 414 is substantially the same as the initiative. It notes that, pursuant to article XI, section 6 of the Alaska Constitution, the legislature may amend an initiative's terms at any time.[FN38] The state asserts that had the legislature not passed H.B. 414 to replace the initiative, it could just as easily have made the same changes to the law by amending the initiative once it was enacted. In *Warren*, we noted that the legislature's amendatory power is broad and, in *dicta*, we suggested that the legislature's power to supplant an initiative by enacting new legislation might be identical to its power to amend.[FN39] But the power to avoid an initiative by enacting legislation should not be equated with the power to amend an initiative enacted by the voters. While the *dicta* in *Warren v. Boucher* might be read to equate the two powers, they are not equal. This is because the Alaska Constitution contains no explicit limitation on the legislature's power to amend an initiative enacted by the voters,[FN40] but it does contain such a limitation on the legislature's power to avoid a proposed initiative. Legislation designed to avoid a vote on a proposed initiative must be "substantially the same" as the initiative.[FN41] Finally, debate surrounding the adoption of article XI, section 4 reflects the framers' concern that the legislature be given only "the power to amend and not the power to destroy."[FN42] Thus, even amendments to popularly-initiated legislation must still "effectuate [ ] the intent of the electorate,"[FN43] and an amendment that "so vitiates an act passed by initiative as to constitute its repeal" is not acceptable.[FN44]

FN38. The Constitutional Convention Committee's original proposal also stated that "[n]o law passed by initiative may be ... amended or repealed by the legislature for a period of three years," but this too was changed to the present constitutional language that an initiated law "may not be repealed by the legislature within two years of its effective date [but] may be amended at any time ...." Constitutional Convention Committee Proposal No. 3, Section 4 (Dec. 9, 1955).

FN39. *Warren v. Boucher*, 543 P.2d 731, 737 (Alaska 1975).

FN40. *See* ALASKA CONST. art. XI, § 6.

FN41. ALASKA CONST. art. XI, § 4.

FN42. *Warren*, 543 P.2d at 740 (Erwin, J., dissenting).

FN43. *Warren v. Thomas*, 568 P.2d 400, 403 (Alaska 1977) ("considerable language changes" in legislature's amendments of popularly-initiated law only served to "clarify and render the law more precise," and thus did not repeal it).

FN44. *Warren v. Boucher*, 543 P.2d at 737.

The essential inquiry, then, is whether any difference between H.B. 414 and the initiative "so vitiates" the initiative's uncontradicted general purpose as to render H.B. 414 not "substantially the same." Trust the People asserts that, by "continu[ing] the governor's appointment power and merely expand[ing] the period during which a special election is required," H.B. 414 "preserves" and "codifies" both the governor's appointment power and the incumbency

advantage given to his appointees when they later stand for election. According to Trust the People, the initiative and the bill thus "materially differ." The state does not deny that this difference exists, but seeks to downplay or justify its effects, insisting that "[t]he act and the initiative do accomplish the same general goal," and that the short-term nature of the governor's appointment power under H.B. 414 "is not significant in light of the more general goals of the initiative and the act."

The state also argues that the legislature's modifications to the proposed initiative were necessary, because the initiative, as drafted, is ill-conceived legislation that could seriously cripple or frustrate the sound workings of government. According to the state, even a temporary vacancy in one of Alaska's United States Senate seats (which, under the initiative's framework could last as long as five months) could damage Alaska's "interests in the national government" and "make a difference in the passage of legislation important to Alaska." The state further argues that "[f]illing senate vacancies quickly also could be a matter of national importance," because "a terrorist attack on the Capitol could wipe out the United States Senate," and "[t]he ability of one branch of the federal government*624 to function might depend on the states' ability to fill vacant seats quickly." While the state raises serious policy arguments in favor of H.B. 414, they relate to the wisdom of the legislation-and thus are more properly directed to the voters considering the proposed initiative-and not to the question whether the proposed initiative and H.B. 414 are substantially the same. As has been noted, the relevant judicial inquiry "is not whether the provisions are wise, but whether the legislative act is substantially the same as the initiative." [FN45]

FN45. *Id.* at 743 (Erwin, J., dissenting).

The state also contends that an appointee running for a vacant seat in a general or special election may not necessarily derive any benefits from his or her status as an incumbent, thereby minimizing the differences between H.B. 414 and the proposed initiative. The state asserts that "[a] temporary appointee who is thousands of miles from Alaska and is trying to learn how to be a senator right before the election might be at a disadvantage as against a candidate present in Alaska, garnering support and raising money." "Indeed," the state says, "someone wishing to permanently fill the seat might well decline to take a temporary appointment." But had the legislature truly sought to assure that Alaska maintained competent representation in Washington while eliminating any incumbency advantage for a temporary appointee, it could have tailored H.B. 414 to forbid a governor's appointee from running for election after appointment. In fact, the legislative history indicates that such a provision was proposed and rejected.[FN46] This casts considerable doubt on the state's claim that H.B. 414 is substantially the same as the proposed initiative.

FN46. The minutes of the Senate State Affairs Committee's March 18, 2004 discussion of H.B. 414 indicate that Senator Gretchen Guess proposed an amendment that would have prevented a governor's temporary senate appointment from standing for reelection in a subsequent special election. Senator Guess explained that she was "worried that the temporary appointee has an incumbency advantage," and that this would be "at odds with the intent" of the initiative, "which is to make a clean process that is separate from an appointment." The amendment failed.

We conclude that the intent of the proposed initiative is to strip the governor of appointment power, to ensure that occupants of Alaska's seats in the United States Senate are chosen by the voters, and to eliminate all of the perceived advantages that an incumbent appointee might receive in a special or general election to fill the vacancy. House Bill 414 preserves the power of gubernatorial appointment in every case of a vacancy, it allows vacancies in the United States Senate to be filled first by executive appointment rather than only by the voters, and it preserves potential incumbency advantages that might be conferred on the executive's appointee. Because the initiative and H.B. 414 seek to accomplish different objectives, they do not share a common purpose and they are not "substantially the same." Accordingly, we hold that the initiative has not been voided by enactment of H.B. 414.

B. Should the Constitutionality of the Proposed Initiative Be Reviewed Before the November 2004 Election?

[5] The state argues that, even if the petition were not voided on grounds of "substantial sameness," we should hold that it cannot be placed on the November ballot because the Seventeenth Amendment to the U.S. Constitution does not allow the proposed change to be made by initiative. Trust the People and the *amicus* respond that pre-election review of the initiative is premature and that we should only determine its constitutionality if the proposal is adopted at the

election. The state rejects this contention, arguing that pre-election judicial review is appropriate because, it claims, the initiative violates the Seventeenth Amendment. Because we conclude that pre-election judicial review may extend only to subject matter restrictions that arise from a provision of Alaska law that expressly addresses and restricts Alaska's constitutionally-established initiative process or to proposals that are clearly unlawful under controlling authority, we agree with Trust the People and the *amicus* that pre-election review is not appropriate in this case. Accordingly, we affirm *625 the decision of the superior court holding that the lieutenant governor could not engage in pre-election review of the Seventeenth Amendment issue.

As we have recognized on other occasions, "articles XI and XII are the only provisions of the Alaska Constitution that explicitly mention the initiative process." [FN47] Specifically, article XI, sec. 7, describes certain express subject-matter restrictions:

> FN47. *Brooks v. Wright*, 971 P.2d 1025, 1027 (Alaska 1999).

> The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation.[FN48]

> FN48. Alaska Const., art. XI, § 7. These restrictions are mirrored in AS 15.45.010.

Article XII, section 11, in turn, specifies that the electorate's power to legislate by initiative is always "subject to" these express restrictions; section 11 also more generally recognizes that the initiative process may be implicitly restricted by other provisions, but only if such provisions make the process "clearly inapplicable."

> *Unless clearly inapplicable,* the law-making powers assigned to the legislature may be exercised by the people through the initiative, subject to the limitations of Article XI.[FN49]

> FN49. Alaska Const., art. XII, § 11 (emphasis added). *See also Brooks*, 971 P.2d at 1028-29 (describing constitutional history of section 11 as indicating that its "clearly inapplicable" language meant that initiative process was inapplicable only when "55 idiots would agree that it was inapplicable").

These provisions largely define the permissible scope of pre-election subject-matter review in Alaska.[FN50] Early on, in *Boucher v. Engstrom*,[FN51] we approvingly noted "the general rule that courts will refrain from giving advisory opinions on the constitutionality of statutes," but recognized that an exception to this principle would apply "in regard to review of initiatives prior to submission to the electorate for approval."[FN52] As we expressly described it in *Boucher*, this exception applied to a limited set of challenges:

> FN50. There is an additional basis for pre-election review in Alaska, not argued in the case before us. "[G]eneral contentions that the provisions of an initiative are unconstitutional" may be considered pre-election "only ... if "controlling authority" leaves no room for argument about its unconstitutionality." *Alaska Action Ctr., Inc. v. Municipality of Anchorage*, 84 P.3d 989, 992 (Alaska 2004) (quoting *Kodiak Island Borough v. Mahoney*, 71 P.3d 896, 900 (Alaska 2003)) and *Brooks*, 971 P.2d at 1027. We provided an example of the type of clearly controlling authority that might allow a proposed initiative to be removed from the ballot: "The initiative's substance must be on the order of a proposal that would 'mandat[e] local school segregation based on race' in violation of *Brown v. Bd. of Educ.* before the clerk may reject it on constitutional grounds." *Alaska Action Ctr.*, 84 P.3d at 992 (citations omitted). In this case, the state concedes that the provisions of the proposed initiative would be "perfectly constitutional and above reproach" if enacted by the legislature.

> FN51. 528 P.2d 456 (Alaska 1974) *overruled on other grounds by McAlpine v. Univ. of Alaska*, 762 P.2d 81 (Alaska 1988).

> FN52. *Boucher*, 528 P.2d at 460.

This court, ... although recognizing the general limitation that only enacted legislation is subject to judicial review, [has] held that our courts are empowered to review an initiative to ascertain whether it complies with *the particular constitutional and statutory provisions regulating initiatives* [FN53]

FN53. *Id.* (citing *Walters v. Cease*, 394 P.2d 670 (Alaska 1964); *Starr v. Hagglund*, 374 P.2d 316 (Alaska 1962)) (emphasis added).

We stressed that it was necessary to apply the exception to this set of challenges in order to enforce the meaning of the initiative process as set out in Alaska's constitution. We said:
The people for their own protection have provided that the initiative shall not be employed with respect to certain matters. Unless the courts had power to enforce those exclusions, they would be futile. [FN54]

FN54. *Id.* (quoting *Bowe v. Sec'y of the Commonwealth*, 320 Mass. 230, 69 N.E.2d 115, 128 (1946))

In initiative cases decided since *Boucher*, we have consistently restated the language of *Boucher* that limits pre-election review to *626 cases involving compliance with "the particular constitutional and statutory provisions regulating initiatives." [FN55] Most recently, in *Alaska Action Center, Inc. v. Municipality of Anchorage*,[FN56] referring to this type of challenge, we stressed that "[s]eparation of powers principles are not offended by this procedure, as these restrictions were devised to prevent certain questions from going before the electorate at all." [FN57]

FN55. *See, e.g., Brooks*, 971 P.2d at 1027 (quoting *Boucher*), *Alaska Action Ctr.*, 84 P.3d at 992 (quoting *Brooks*'s quotation from *Boucher*), *Whitson v. Anchorage*, 608 P.2d 759, 761-62 (Alaska 1980).

FN56. 84 P.3d 989.

FN57. *Id.* at 992.

Alaska Action Center involved a challenge to a municipal clerk's decision rejecting a proposed initiative on the ground that it provided for an appropriation, in violation of article XI, section 7, and AS 29.26.100. In deciding the claim, we expressly followed the conventional rule that an initiative may be reviewed before going to the voters to ensure compliance with "the particular constitutional and statutory provisions regulating initiatives." [FN58] Finding that "[t]he proscriptions of AS 29.26.100 and article XI, section 7 of the Alaska Constitution are such limitations," we concluded that pre-election review was proper.[FN59] Thus, *Alaska Action Center* simply applied the test articulated in *Boucher*. To be sure, *Alaska Action Center* distinguished this kind of reviewable "subject matter" challenge from "[o]ther challenges ... grounded in 'general contentions that the provisions of an initiative are unconstitutional' " [FN60] But this distinction simply describes a baseline for pre-election review, although it usefully points out that pre-election review of an initiative proposal usually involves a subject-matter challenge as opposed to a general claim of substantive illegality-it does not say that all subject-matter challenges must automatically qualify for full pre-election review.

FN58. *Id.*

FN59. *Id.* at 993.

FN60. *Id.* at 992 (quoting *Brooks*, 971 P.2d at 1027).

By consistently pointing out that pre-election review is needed to ensure compliance with "the particular constitutional and statutory provisions regulating initiatives"-that is, with those restrictions specifically "devised to prevent certain questions from going before the electorate"-our cases establish that pre-election review does not encompass all potential subject-matter restrictions, but extends only to the restrictions imposed by Alaska

constitutional and statutory provisions regulating the initiative process. So interpreted, our cases make pre-election review appropriate to ensure compliance with the express initiative restrictions set out in article XI, section 7. Our cases similarly allow pre-election review, under article XII, section 11, to ensure compliance with subject-matter restrictions set out in other legal provisions; but under the express terms of article XII, section 11, the scope of review would be limited to cases of obvious non-compliance-cases where the initiative process would be "clearly inapplicable." [FN61]

> FN61. *See, e.g., Kodiak Island Borough v. Mahoney*, 71 P.3d 896, 900 (Alaska 2003) (comparing section 11's "clearly inapplicable" requirement to stringent test applicable when executive order declares statute unconstitutional), *Brooks*, 971 P.2d at 1029 (describing section 11's "clear idiot" test).

By contrast, the state argues that our cases stand for the proposition that whenever the issue is whether voters can enact the law by initiative, it is appropriate for pre-election review. The state thus argues for a broad rule that would allow a full range of pre-election review of all subject-matter challenges, "regardless of the source of the restriction." In arguing that full pre-election review is appropriate for even those subject-matter challenges "not enumerated in Alaska law," the state overlooks the limiting language noted above that we have employed in several cases.

The state argues that we reviewed the constitutionality of an initiative prior to its placement on the ballot in *Yute Air Alaska, Inc. v. McAlpine*. [FN62] Challengers to the initiative in *Yute Air* argued that the initiative "627 was unconstitutional because it concerned two subjects, which violated article II, section 13 of the Alaska Constitution which requires that every bill be confined to one subject; [FN63] they also argued that the initiative directed the executive to seek repeal of the Jones Act, and was thus unconstitutional because it was not a proper subject for an initiative under article XI, section 1 of the Alaska Constitution, which limits the use of the initiative to the enactment of laws. [FN64] We resolved these questions on the merits before the initiative was placed on the ballot. [FN65] The state argues that because we reviewed an initiative to determine if it violated a subject matter limitation not enumerated in article XI, section 7 of the Alaska Constitution in *Yute Air*, we should now likewise determine whether the people are restricted from enacting by initiative legislation on the subject of filling of senate vacancies before the election. But unlike the challenge raised here, which alleges that the Federal Constitution prohibits enactment by initiative, the challenge to the initiative in *Yute Air* concerned two limitations placed on the initiative process by the Alaska Constitution. Thus, pre-election review in *Yute Air* did not violate our holding in *Boucher v. Engstrom* that such review should be limited to ascertaining whether an initiative is in compliance with constitutional provisions that regulate legislative enactment via initiative. [FN66]

> FN62. 698 P.2d 1173 (Alaska 1985).
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> FN63. *Id.* at 1175.
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> FN64. *Id.*
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> FN65. *Id.* at 1177.
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> FN66. 528 P.2d 456, 460 (Alaska 1974).

The state also relies on *Alaskans for Legislative Reform v. State*, [FN67] in which an initiative that would have imposed term limits on legislators was denied a place on the ballot. We note at the outset that no party in that case opposed pre-election review. As Judge Shortell noted in his opinion (adopted by this court), the issue was not raised at the trial level because "both parties [had] the intention of obtaining pre-election dispositive review." [FN68] It appears that there was no consideration by any court at any level of the question whether pre-election review was proper. Second, to the extent that *Alaskans for Legislative Reform* supports pre-election review of claims that a term limits initiative is unconstitutional, it appears to have been overruled by *Kodiak Island Borough v. Mahoney*, [FN69] where we declined to allow pre-election review of a term-limits proposal. [FN70] Finally, since Judge Shortell ordered the initiative removed from the ballot, the case was clearly ripe for immediate review, [FN71] indeed, the only way for this court to avoid pre-election review would have been to declare *sua sponte* that Judge Shortell erred in addressing the constitutional

issue.

FN67. 887 P.2d 960 (Alaska 1994).

FN68. *Id.* at 962 n. 6.

FN69. 71 P.3d 896 (Alaska 2003).

FN70. *Id.* at 897.

FN71. *Alaskans for Legislative Reform*, 887 P.2d at 966.

The state also relies on *Brooks v. Wright*,[FN72] arguing that it raised a subject-matter claim that was subject to pre-election review. But for present purposes, it is crucial to take account of the exact nature of the claim raised in *Brooks*. The case involved an initiative proposing to ban all use of wolf snares. The challengers alleged that article VIII of the Alaska Constitution did not allow the initiative process to be used for game management purposes because the language of that constitutional provision and the provision's grant of trustee-like powers to the state implicitly gave the legislature exclusive authority to manage Alaska's natural resources.[FN73] But while basing their pre-election challenge on this constitutional theory, the initiative's opponents did not actually seek review of their article VIII claim, as such. Instead, they argued more narrowly that the implied subject-matter restriction imposed by article VIII violated the "clearly inapplicable" test of article XII, section 11. "under Article XII, the initiative process is "clearly inapplicable" to resource management *628 decisions[.]"[FN74] So asserted, the challenge in *Brooks* did more than claim a "subject-matter" restriction embedded in article VIII; it further asserted that this restriction implicated one of the Alaska Constitution's "particular" provisions governing the proper scope of initiatives: article XII.

FN72. 971 P.2d 1025 (Alaska 1999).

FN73. *Id.* at 1027-29.

FN74. *Id.*

Our opinion in *Brooks* resolved the constitutional claim by applying article XII, section 11's "clearly inapplicable" test. Our opinion acknowledged that "[p]re-election review of challenges to ballot initiatives is limited to ascertaining "whether [the initiative] complies with the particular constitutional and statutory provisions regulating initiatives'"[FN75] and that "[a]rticles XI and XII are the only provisions of the Alaska Constitution that explicitly mention the initiative process."[FN76] After noting that the challengers did not claim a violation of "one of the enumerated Article XI limitations," we took pains to point out that they argued, instead, that the initiative process was "clearly inapplicable" to resource management decisions" under article XII.[FN77] We then applied the article XII standard and concluded that neither prong of the challengers' claim that article VIII impliedly restricted using the initiative process to ban wolf snares was sufficiently persuasive to establish that the proposed wolf-snare ban was "clearly inapplicable" to the initiative process under Article XII."[FN78]

FN75. *Id.* at 1027 (citing *Boucher*, 528 P.2d at 460).

FN76. *Id.*

FN77. *Id.*

FN78. *Id.* at 1030, 1033.

Brooks thus based its ruling on the article VIII issue by using article XII's "clearly inapplicable" standard. By so

doing, it treated the claim as a permissible pre-election challenge under the narrow rule enunciated in *Boucher*, which, as already mentioned, expressly limits the scope of pre-election review to "particular constitutional [or] statutory provisions regulating initiatives." Thus, *Brooks* strongly supports the rule that when an alleged subject-matter violation hinges on an implied constitutional restriction outside the specific restrictions enumerated in article XI, section 7 -as the challenge did in *Brooks*-it is eligible for pre-election review only if it meets article XII, section 11's "clearly inapplicable" test.

The state also relies on *Whitson v. Anchorage*.[FN79] But that case supports the conclusion that pre-election review is not appropriate here. In *Whitson*, the Municipality of Anchorage challenged an initiative in court before submitting it to the voters. The municipality contended that, if enacted, the proposed initiative would violate provisions of state law implicitly limiting the electorate's right to enact an ordinance on the topic covered by the proposed initiative.[FN80] In opposing this challenge, the initiative's proponents argued that the challenge was premature and could not be decided before the election. But we disagreed, specifically concluding that the provision qualified for pre-election review because it "plainly ... would conflict" with state law and was "in clear conflict with a state statute."[FN81] *Whitson* thus illustrates an application of the clear "controlling authority" exception to the general rule against pre-enactment review that we referred to in *Alaska Action Center*.[FN82]

FN79. 608 P.2d 759 (Alaska 1980).

FN80. *Id.* at 761.

FN81. *Id.* at 761-62.

FN82. 84 P.3d 989, 992 (Alaska 2004). *See* discussion *supra* note 50.

In sum, a narrow interpretation of the permissible scope of pre-election review is faithful to our case law,[FN83] is supported by the strong policies that generally disfavor advisory opinions, and is justified by the limited purpose of pre-election review-to protect the Alaska Constitution's express provisions defining the initiative process.[FN84] Because the *629 subject matter at issue here-filling senate vacancies is not specifically barred from the initiative process under article XI, section 7, nor "clearly inapplicable" under article XII, section 11, nor is its resolution clear under controlling authority, we conclude that the proposed initiative meets the test for submission to the voters. Its ultimate compliance with the Seventeenth Amendment falls outside the proper scope of the lieutenant governor's pre-election review.

FN83. *See, e.g., Brooks*, 971 P.2d at 1027 (quoting *Boucher*, 528 P.2d at 460 *overruled on other grounds by McAlpine v. Univ. of Alaska*, 762 P.2d 81 (Alaska 1988)); *Alaska Action Ctr.*, 84 P.3d at 992 (quoting *Brooks*'s quotation from *Boucher*).

FN84. *Boucher*, 528 P.2d at 460. *See also Citizens for Tort Reform v. McAlpine*, 810 P.2d 162, 168-70 (Alaska 1991).

V. CONCLUSION

Because H.B. 414 is not "substantially the same" as 03SENV, the initiative is not void under the Alaska Constitution. Because the state's Seventeenth Amendment argument does not involve a subject matter restriction arising from a provision of Alaska law that expressly addresses and restricts Alaska's constitutionally-established initiative process or a proposal that is clearly unlawful under controlling authority, we AFFIRMED the superior court's decision to deny pre-election review of the Seventeenth Amendment issue.

For these reasons, we directed the lieutenant governor to place Trust the People's initiative, 03SENV, on the general election ballot.

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- 2004 WL 4908352 (Appellate Brief) State's Reply Brief (May 3, 2004)
- 2004 WL 4908350 (Appellate Brief) Brief of Appellees (Apr. 19, 2004)
- 2004 WL 4908351 (Appellate Brief) Brief of Amicus Curiae Alaska Public Interest Research Group (Apr 1, 2004)
- 2004 WL 4908349 (Appellate Brief) State's Appellant Brief (Feb 2, 2004)

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