HB

36

26-LS0197\T
Bullard
4/14/10

SENATE CS FOR CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 36(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES JOHANSEN, MILLETT, AND PEGGY WILSON, Johnson, Kelly, Neuman, Keller, Muñoz

A BILL

FOR AN ACT ENTITLED

"An Act relating to ballot initiative proposal applications, to ballot initiatives and to those who file or organize for the purpose of filing a ballot initiative proposal, and to election pamphlet information relating to certain propositions."

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

*** Section 1.** AS 15.13.040(k) is amended to read:

(k) Every individual, person, nongroup entity, or group contributing a total of $500 or more to a group organized for the principal purpose of influencing the outcome of a proposition**, and every individual, person, nongroup entity, or group contributing a total of $500 or more to a group organized for the principal purpose of filing an initiative proposal application under AS 15.45.020 or that has filed an initiative proposal application under AS 15.45.020,** shall report the contribution or contributions on a form prescribed by the commission not later than 30 days after the contribution that requires the contributor to report under this subsection is made. The report must include the name, address, principal occupation, and

employer of the individual filing the report and the amount of the contribution, as well as the total amount of contributions made to that group by that individual, person, nongroup entity, or group during the calendar year.

*** Sec. 2.** AS 15.13.050(a) is amended to read:

(a) Before making an expenditure in support of or in opposition to a candidate or before making an expenditure in support of or in opposition to a ballot proposition or question **or to an initiative proposal application filed with the lieutenant governor under AS 15.45.020**, each person other than an individual shall register, on forms provided by the commission, with the commission.

*** Sec. 3.** AS 15.13.050 is amended by adding a new subsection to read:

(c) If a group intends to make more than 50 percent of its contributions or expenditures in support of or opposition to a single initiative on the ballot, the title or common name of the initiative must be a part of the name of the group. If the group intends to make more than 50 percent of its contributions or expenditures in opposition to a single initiative on the ballot, the group's name must clearly state that the group opposes that initiative by using a word such as "opposes," "opposing," "in opposition to," or "against" in the group's name.

*** Sec. 4.** AS 15.13.065(c) is amended to read:

(c) Except for reports required by AS 15.13.040 and 15.13.110 and except for the requirements of AS 15.13.050, 15.13.060, and 15.13.112 - 15.13.114, the provisions of AS 15.13.010 - 15.13.116 do not apply to limit the authority of a person to make contributions to influence the outcome of a ballot proposition. In this subsection, in addition to its meaning in AS 15.60.010, "proposition" includes

(1) an issue placed on a ballot to determine whether

(A) [(1)] a constitutional convention shall be called;

(B) [(2)] a debt shall be contracted;

(C) [(3)] an advisory question shall be approved or rejected; or

(D) [(4)] a municipality shall be incorporated;

(2) an initiative proposal application filed with the lieutenant governor under AS 15.45.020.

*** Sec. 5.** AS 15.13.110(e) is amended to read:

(e) A group formed to sponsor [AN INITIATIVE,] a referendum or a recall shall report 30 days after its first filing with the lieutenant governor. Thereafter, each group shall report within 10 days after the end of each calendar quarter on the contributions received and expenditures made during the preceding calendar quarter until reports are due under (a) of this section.

*** Sec. 6.** AS 15.13.110 is amended by adding a new subsection to read:

(g) An initiative committee, person, group, or nongroup entity receiving contributions exceeding $500 or making expenditures exceeding $500 in a calendar year in support of or in opposition to an initiative on the ballot in a statewide election or an initiative proposal application filed with the lieutenant governor under AS 15.45.020 shall file a report within 10 days after the end of each calendar quarter on the contributions received and expenditures made during the preceding calendar quarter until reports are due under (a) and (b) of this section. If the report is a first report, it must cover the period beginning on the day an initiative proposal application is filed under AS 15.45.020 and ending three days before the due date of the report.

*** Sec. 7.** AS 15.13.400(4) is amended to read:

(4) "contribution"

(A) means a purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods, or services for which charge is ordinarily made**, and includes the payment by a person other than a candidate or political party, or compensation for the personal services of another person, that is rendered to the candidate or political party,** and that is made for the purpose of

(i) influencing the nomination or election of a candidate**;**

(ii) [, AND IN AS 15.13.010(b) FOR THE PURPOSE OF] influencing a ballot proposition or question**; or**

(iii) supporting or opposing an initiative proposal application filed with the lieutenant governor under AS 15.45.020 [, INCLUDING THE PAYMENT BY A PERSON OTHER THAN A CANDIDATE OR POLITICAL PARTY, OR COMPENSATION FOR

THE PERSONAL SERVICES OF ANOTHER PERSON, THAT ARE RENDERED TO THE CANDIDATE OR POLITICAL PARTY];

(B) does not include

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a political party, candidate, or ballot proposition or question;

(ii) ordinary hospitality in a home;

(iii) two or fewer mass mailings before each election by each political party describing the party's slate of candidates for election, which may include photographs, biographies, and information about the party's candidates;

(iv) the results of a poll limited to issues and not mentioning any candidate, unless the poll was requested by or designed primarily to benefit the candidate;

(v) any communication in the form of a newsletter from a legislator to the legislator's constituents, except a communication expressly advocating the election or defeat of a candidate or a newsletter or material in a newsletter that is clearly only for the private benefit of a legislator or a legislative employee; or

(vi) a fundraising list provided without compensation by one candidate or political party to a candidate or political party;

*** Sec. 8.** AS 15.13.400(6) is amended to read:

(6) "expenditure"

(A) means a purchase or a transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, incurred or made for the purpose of

(i) influencing the nomination or election of a candidate or of any individual who files for nomination at a later date and becomes a candidate;

(ii) use by a political party;

(iii) the payment by a person other than a candidate or

political party of compensation for the personal services of another person that are rendered to a candidate or political party; [OR]

(iv) influencing the outcome of a ballot proposition or question; **or**

(v) supporting or opposing an initiative proposal application filed with the lieutenant governor under AS 15.45.020;

(B) does not include a candidate's filing fee or the cost of preparing reports and statements required by this chapter;

(C) includes an express communication and an electioneering communication, but does not include an issues communication;

*** Sec. 9.** AS 15.13.400(8) is amended to read:

(8) "group" means

(A) every state and regional executive committee of a political party; [AND]

(B) any combination of two or more individuals acting jointly who organize for the principal purpose of influencing the outcome of one or more elections and who take action the major purpose of which is to influence the outcome of an election; a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of a candidate shall be considered to be controlled by that candidate; a group whose major purpose is to further the nomination, election, or candidacy of only one individual, or intends to expend more than 50 percent of its money on a single candidate, shall be considered to be controlled by that candidate and its actions done with the candidate's knowledge and consent unless, within 10 days from the date the candidate learns of the existence of the group the candidate files with the commission, on a form provided by the commission, an affidavit that the group is operating without the candidate's control; a group organized for more than one year preceding an election and endorsing candidates for more than one office or more than one political party is presumed not to be controlled by a candidate; however, a group that contributes more than 50 percent of its money to or on

behalf of one candidate shall be considered to support only one candidate for purposes of AS 15.13.070, whether or not control of the group has been disclaimed by the candidate; **and**

(C) any combination of two or more individuals acting jointly who organize for the principal purpose of filing an initiative proposal application under AS 15.45.020 or who file an initiative proposal application under AS 15.45.020;

*** Sec. 10.** AS 15.45.080 is amended to read:

Sec. 15.45.080. Bases of denial of certification. The lieutenant governor shall deny certification upon determining in writing that

(1) the proposed bill to be initiated is **not confined to one subject or is otherwise** not in the required form;

(2) the application is not substantially in the required form; or

(3) there is an insufficient number of qualified sponsors.

*** Sec. 11.** AS 15.45.090(a) is amended to read:

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

(1) a copy of the proposed bill [IF THE NUMBER OF WORDS INCLUDED IN BOTH THE FORMAL AND SUBSTANTIVE PROVISIONS OF THE BILL IS 500 OR LESS];

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

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

(4) an estimate of the cost to the state of implementing the proposed law;

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

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

and

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

*** Sec. 12.** AS 15.45 is amended by adding a new section to read:

Sec. 15.45.195. Public hearings. (a) At least 30 days before the election at which an initiative is to appear on the ballot, the lieutenant governor or a designee of the lieutenant governor shall hold two or more public hearings concerning the initiative in each judicial district of the state. Each public hearing under this section shall include the written or oral testimony of one supporter and one opponent of the initiative.

(b) The lieutenant governor shall provide reasonable notice of each public hearing required under this section. The notice must include the date, time, and place of the hearing. The notice may be given using print or broadcast media. The lieutenant governor shall provide notice in a consistent fashion for all hearings required under this section.

(c) Penalties for a violation of this section may not include removal of an initiative from the ballot.

(d) If the lieutenant governor determines that it is technologically and economically feasible, the division shall provide a live audio and video broadcast of each hearing held under (a) of this section on the division's Internet website.

*** Sec. 13.** AS 15.58.010 is amended to read:

Sec. 15.58.010. Election pamphlet. Before each state general election, and before each state primary **or special** election at which a ballot proposition is scheduled to appear on the ballot, the lieutenant governor shall prepare, publish, and mail at least one election pamphlet to each household identified from the official registration list. The pamphlet shall be prepared on a regional basis as determined by the lieutenant governor.

*** Sec. 14.** AS 15.58.020(b) is amended to read:

(b) Each primary **or special** election pamphlet shall contain only the information specified in (a)(6) and (a)(9) of this section for each ballot measure scheduled to appear on the primary **or special** election ballot.

* **Sec. 15.** AS 24.05 is amended by adding a new section to article 4 to read:

Sec. 24.05.186. Legislative hearings on initiatives certified by the lieutenant governor. (a) A standing committee of the legislature, selected jointly by the presiding officers of the house and senate, shall hold at least one hearing on an initiative that the lieutenant governor has determined was properly filed under AS 15.45.160.

(b) The standing committee selected jointly by the presiding officers of the house and senate under (a) of this section shall hold at least one hearing under this section within 30 days after the convening of the legislative session preceding the statewide election at which the initiative proposition must appear on the election ballot under AS 15.45.190.

* **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies only to an initiative, the application for which is filed with the lieutenant governor under AS 15.45.020 on or after the effective date of this Act.

Senator Hollis French

Capitol Room 417
465-3892
465-6595 fax

Pages (including cover sheet): 1

Date: April 2, 2010

To: Alpheus Bullard
From: Cindy Smith

RE: Draft CS for HB36

Please draft a CS with the following amendments to HB36:

1. **Language from CA.2 was adopted with a conceptual amendment to the amendment at page 8, line 3 adding the words "as determined by the presiding officers of the House and Senate".**

2. **Amend language at page 8 line 1 by deleting the word "consider" and replacing with "hold a hearing on"**

3. **Add language in CA.5**

Need this for tomorrow a.m.'s meeting!

C.

26-LS0197\CA.2
Bullard
4/13/10

AMENDMENT

OFFERED IN THE SENATE

TO: CSSSHB 36(FIN) am

Page 7, lines 30 - 31:

Delete **"Review of initiatives certified by the lieutenant governor by standing committees of the legislature"**

Insert **"Legislative hearings on initiatives certified by the lieutenant governor"**

Page 8, line 3:

Delete "conduct reviews"

Insert "hold at least one hearing"

2673

26-LS0197\CA.5
Finley/Bullard
4/14/10

AMENDMENT #4

OFFERED IN THE SENATE

TO: CSSSHB 36(FIN) am

Page 7, following line 17:

Insert a new subsection to read:

"(d) If the lieutenant governor determines that it is technologically and economically feasible, the division shall provide a live audio and video broadcast of each hearing held under (a) of this section on the division's Internet website."

26-LS0197\CA.2
Bullard
4/13/10

AMENDMENT #1

OFFERED IN THE SENATE

TO: CSSSHB 36(FIN) am

Page 7, lines 30 - 31:

Delete "**Review of initiatives certified by the lieutenant governor by standing committees of the legislature**"

Insert "**Legislative hearings on initiatives certified by the lieutenant governor**"

Page 8, line 3:

Delete "conduct reviews"

Insert "hold at least one hearing"

→ + "as determined by presiding officers of the house and senate —"

page 8, line 3

#2 page 8, line 1

"~~shall~~ hold a hearing"

"~~shall~~ consider"

delete

McGuire approved.

LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY
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MEMORANDUM April 14, 2010

SUBJECT: Membership of the State Personnel Board
CSHB 348(JUD) (Work Order No. 26-LS1360\S)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM: Alpheus Bullard RAB
Legislative Counsel

You asked that I address separation of powers concerns raised by the committee substitute described above.

CSHB36(JUD) provides that the governor would be required to appoint nominees from a list of at least three qualified persons submitted by the chief justice of the Alaska Supreme Court. This requirement, that the governor appoint board members from a list of persons selected by the chief justice, subject to the right of the governor to request additional nominations, raises a constitutional question as to whether the legislature may so constrain the governor's ability to choose whom to appoint to an executive board.

The power to appoint members of state boards, commissions, and councils is an executive function to be exercised by the governor. In Bradner v. Hammond, 553 P.2d 1, 5 - 6 (Alaska 1976), the Alaska Supreme Court recognized that the Alaska constitution envisioned a strong executive and "that the appointment of executive officers is an executive function. . . ." The legislature may prescribe qualifications for the members of boards and commissions that are reasonably related to either the position or to the aim of the legislation and do not interfere with the governor's appointment power or with qualifications set out in the constitution. Various state courts have reached this same conclusion and have upheld legislative designations of qualifications for public offices, such as memberships on a board or commission. See, e.g., State v. Matassarin, 217 P. 930 (Kansas 1923); State v. Eischen, 76 N.W.2d 385 (Minn. 1956); Humane Society of the United States v. New Jersey Fish and Game Council, 362 A.2d 20 (1976); Hurd v. Freeland, 442 P.2d 344 (Okla. 1966); State v. Wells, 112 N.W.2d 601 (S.D. 1961); State v. Millsap, 605 S.W.2d 366 (Tex. App. 1980).

However, the Department of Law, which has generally taken a position very protective of the governor's prerogatives, has asserted that the legislature may not restrict the governor's appointment powers, such as by requiring the governor to select from a list of

names provided by particular groups.[1] The Department of Law has repeatedly argued that such limitations on the governor's appointment power are unconstitutional infringements upon the governor's authority. Letter to Walter J. Hickel, Governor, from Charles E. Cole, Attorney General, June 11, 1991 (file no. 883-91-0071); 1981 Inf. Alaska Atty. Gen. Op. (file no. J-66-698-81), April 23; 1980 Inf. Alaska Atty. Gen. Op. (file no. J-66-164-80), September 17. However, courts in other states have held that statutes requiring a governor to make appointments to a state board from a list of nominees submitted by other parties are constitutional. Kentucky Association of Realtors v. Musselman, 817 S.W.2d 213 (Ky. 1991); Opinion of the Justices, 316 A.2d 174 (N.H. 1974); Seidenberg v. New Mexico Board of Medical Examiners, 452 P.2d 469 (N.M. 1969); Hurd v. Freeland, 442 P.2d 344 (Okla. 1966); Marks v. Frantz, 298 P.2d 316 (Kan. 1956); Ingard v. Barker, 147 P. 293 (Id. 1915).

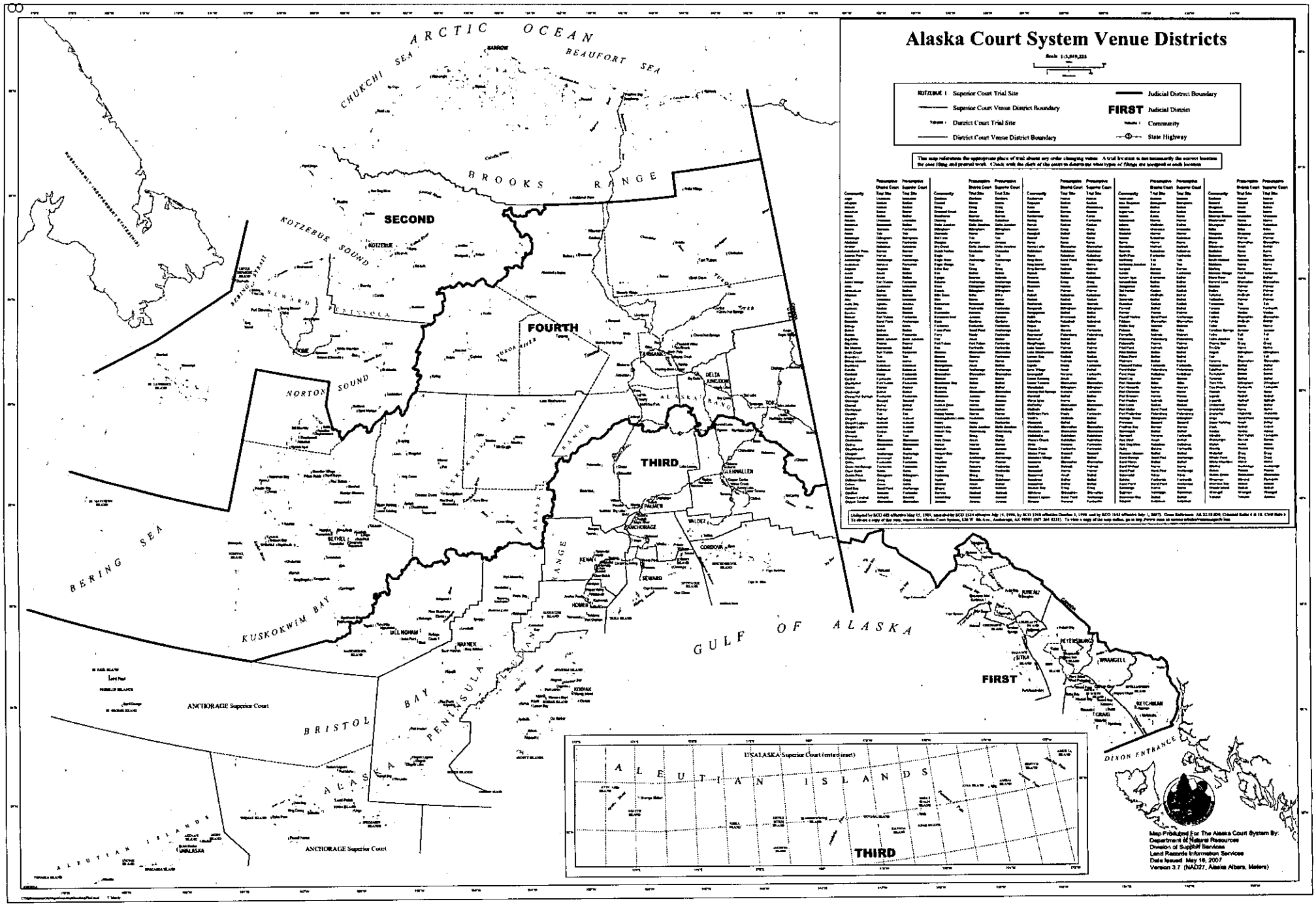
Nonetheless, at least three Alaska attorney general opinions or letters of advice have accepted that the legislature may prescribe reasonable qualifications for gubernatorial appointments to boards or commissions. 1981 Inf. Alaska Atty. Gen. Op. (file no. J-66-698-81), April 23; Memorandum to Governor Hammond from R. Pegues, August 13, 1979; 1988 Inf. Alaska Atty. Gen. Op. (file no. 883-88-0079), May 24.

In this instance, I cannot say how a court would interpret the reasonableness of a statutory requirement that the governor appoint members of the board from lists of nominees chosen by the chief justice of the Alaska Supreme Court.

If you have questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:plm
10-238.plm

[1] Note however that certain members of several state boards and commissions are currently chosen by the governor from lists submitted by other persons. These boards and commissions include the Professional Teaching Practices Commission (AS 14.20.410), the Alaska Public Offices Commission (AS 15.13.020), the Alaska Historical Commission (AS 41.35.310), the State Officers Compensation Commission (AS 39.23.500), the Workforce Investment Board (AS 123.15.550), and the Alaska Retirement Management Board (AS 37.10.210).


Alaska Court System Venue Districts
Scale 1:5,849,225
KOTZEBUE 1 Superior Court Trial Site
Superior Court Venue District Boundary
Yakutat 1 District Court Trial Site
District Court Venue District Boundary
Judicial District Boundary
FIRST Judicial District
Yakutat 1 Community
State Highway
This map substitutes the appropriate place of trial absent any order changing venue. A trial location is not necessarily the correct location for case filing and pretrial work. Check with the clerk of the court to determine when types of filings are assigned to each location
Community
Presumptive Superior Court Trial Site
Presumptive District Court Trial Site
Adopted by SCO 483 effective May 15, 1985, amended by SCO 1324 effective July 15, 1996, by SCO 1340 effective October 1, 1996 and by SCO 1641 effective July 1, 2007). Cross Reference: AS 22.10.020, Criminal Rules 4 & 18, Civil Rule 3
To obtain a copy of this map, contact the Alaska Court System, 820 W. 4th Ave., Anchorage, AK 99501 (907 264 0233). To view a copy of the map online, go to http://www.state.ak.us/courts/publicmaps.htm
ARCTIC OCEAN
CHUKCHI SEA
BEAUFORT SEA
BARROW
BROOKS RANGE
KOTZEBUE SOUND
KOTZEBUE
SECOND
SEWARD PENINSULA
NOME
FOURTH
NORTON SOUND
BERING SEA
KUSKOKWIM BAY
BETHEL
DILLINGHAM
MAKNEK
ANCHORAGE Superior Court
BRISTOL BAY
ALASKA PENINSULA
ALEUTIAN ISLANDS
UNALASKA
ANCHORAGE Superior Court
THIRD
DELTA JUNCTION
FAIRBANKS
GLENNALLEN
PALMER
ANCHORAGE
WALDEZ
CORDOVA
KENAI
SEWARD
HOMER
KODIAK
GULF OF ALASKA
FIRST
JUNEAU
KETCHIKAN
WRANGELL
PETERSBURG
CRAIG
KLAWOCK
DIXON ENTRANCE
UNALASKA Superior Court (enlarged inset)
ALEUTIAN ISLANDS
THIRD
Map Produced For The Alaska Court System By:
Department of Natural Resources
Division of Support Services
Land Records Information Services
Date Issued May 16, 2007
Version 3.7 (NAD27, Alaska Albers, Meters)

Our view: Campaign disclosure

Lawmakers should make sure two good bills don't languish

Published: April 12th, 2010 07:14 PM
Last Modified: April 12th, 2010 07:15 PM

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Our view: Campaign disclosure
Our view: LNG export
Our view: School aid
Who's up / Who's down
Our view: That's a lot of bacon

The House has passed one bill. The Senate has passed the other. Each chamber should finish the work to guarantee an open elections process, one with all the money players identified and the issues laid out before everyone. The House approved House Bill 36, which covers initiatives. This bill:

- Requires reporting of contributions and expenditures by groups and individuals backing or opposing a ballot initiative.

- Requires signature gatherers for an initiative to carry a copy of the initiative so that prospective signers could read just what it is the sponsors are trying to get on the ballot.

- Requires the lieutenant governor to hold at least eight public hearings, two in each of the state's four judicial districts, to include pro and con testimony on the initiative and public questions and comments.

- Requires review by an appropriate legislative committee of any initiative approved for the ballot. Lawmakers would have no authority to change or reject an initiative, but would hold hearings for testimony about the effects and costs of any initiative.

This is all to the good. Disclosure requirements will force all the moneyed friends and foes of an initiative to stand up and be counted. No anonymous donors. No front groups.

Formal hearings should provide a further vetting of initiatives and their consequences, with plenty of opportunity for open debate across the state.

Whenever lawmakers amend the initiative process, there's a natural wariness that they may be limiting the access of Alaskans to their constitutional right to the initiative process. That's not the case here. The more disclosure, the better. And the more public vetting of an initiative, the better.

The Senate has approved Senate Bill 284, which covers campaign disclosures by corporations, unions and any other group that got a green light for campaign spending in the Supreme Court's January decision affirming corporate personhood. This bill:

- Requires corporations and other groups -- as "persons" -- to report what they're giving and what candidate or cause they support or oppose, and the names or principal officers of the groups or any donors to the group.

- Requires names and addresses of corporations and other groups behind a campaign ad.

- Requires full disclosure on any ads about who the top five contributors to that ad or group sponsoring it are -- in print that's readable or audio that's easily understood.

- Prohibits foreign nationals from contributing to Alaska campaigns.

In light of the Supreme Court decision, this is necessary legislation to keep Alaska elections open. The court amplified corporate power. The least Alaska can do in response is to make sure we can identify the sources of that power and their interests as we decide how to vote.

Both bills have strong support. The House initiative bill passed 35-5; the Senate disclosure bill passed 19-1. But Alaskans shouldn't take final passage and the governor's signature for granted. Good legislation has gotten lost before in the last days of deal-making before adjournment.

Lawmakers should make sure these bills become law.

BOTTOM LINE: Campaign disclosure laws should be on the books this spring.

Comments

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April 12, 2010

Honorable Hollis French
Chairman
Senate Resources Committee
Capitol Building
Juneau, AK 99801

Re: HB-36, Ballot Initiative Process

Dear Senator French,

I am writing to urge passage of House Bill 36 dealing with the ballot initiative process. The use of the ballot initiative process during the past several years has shown that changes to this important law are needed.

As currently written, the law contains loopholes that do not provide effective disclosure to Alaskans of exactly who or what groups are seeking to change Alaska statues. In contrast to the lax rules of disclosure for ballot initiatives, the disclosure requirements for political campaigns and for lobbying are extensive. As currently written, State Statures can be proposed, funded and passed to become State Law without input or debate by the Legislature or the Administration, and without the public even being aware of who is behind the initiative.

We urge that HB-36 be passed at the earliest possible time.

Sincerely,

Steven C. Borell, P.E.
Executive Director

Cc: Finance Committee Members

LEGAL SERVICES

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MEMORANDUM February 25, 2010

SUBJECT: Questions relating to CSSSHB 36(JUD)
(Work Order 26-LS0197\S)

TO: Representative Bill Stoltze
Co-Chair of the House Finance Committee
Attn: Ben Mulligan

FROM: Alpheus Bullard
Legislative Counsel

You have asked three questions relating to the above-described bill.

1. Would a ban on paying ballot initiative circulators per signature be upheld by an Alaska Court?

The pay-per-signature prohibition contained in CSSSHB 36(JUD)[1] would, as drafted, likely be upheld by a state court against a challenge under the First Amendment.

---

[1] Section 10 of CSSSHB 36(JUD) amends AS 15.45.110(c) to read:

> (c) A circulator may not receive payment or agree to receive payment [THAT IS GREATER THAN $1 A SIGNATURE], and a person or an organization may not pay or agree to pay an amount, **based on the number of registered voters who sign a petition. This subsection does not prohibit a person or an organization from employing a circulator and**
>
> **(1) paying an hourly wage or salary;**
>
> **(2) establishing express or implied minimum signature requirements for the circulator;**
>
> **(3) terminating the petition circulator's employment if the circulator fails to meet certain productivity requirements; or**
>
> **(4) paying discretionary bonuses based on the circulator's reliability, longevity, and productivity** [THAT IS GREATER THAN $1 A SIGNATURE, FOR THE COLLECTION OF SIGNATURES ON A PETITION].

The circulation of initiative petitions involves core political speech, and is, therefore, protected by the First Amendment. The United States Supreme Court held in Meyer v. Grant, 486 U.S. 414 (1988), that a complete prohibition against paying petition circulators limited core political speech and severely burdened sponsors' First Amendment rights by (1) limiting the number of voices who could convey the petition sponsors' message, (limiting the size of the audience the sponsors would reach), and (2) making it less likely that the initiative petition's sponsors would garner the number of signatures necessary to place the matter on the ballot (limiting the sponsors' ability to make the matter the focus of statewide discussion). Id. at 423 - 424. Similarly, a prohibition against paying election-related petition circulators on any other basis than time worked was also found to create a severe burden on political speech in Citizens for Tax Reform v. Deters, 518 F.3d 378 (U. S. App. 6th Cir. 2008).

If the pay-per-signature prohibition in this bill is challenged, an Alaska court will review the evidence presented to determine the weight of the burden placed on initiative sponsors by the prohibition, and whether the state's interests justify the prohibition.[2] The bill's proposed prohibition prohibits only the "per-signature" method of paying petition circulators. It does not prevent initiative sponsors from establishing express or implied minimum signature requirements for the circulator, terminating the petition circulator's employment if the circulator fails to meet certain productivity requirements, or paying discretionary bonuses based on the circulator's reliability, longevity, and productivity. Because the prohibition is narrowly drafted to prohibit only a specific form of payment, it is likely to be interpreted by a court as imposing a lesser burden on the political speech of petition sponsors than the prohibitions at issue in Meyer or Citizens for Tax Reform. Like an Oregon prohibition against paying initiative circulators by the signature upheld in

---

[2] In Timmons v. Twin Cities Area New Party, 520 U.S. 351 (1997), the Supreme Court established the relevant framework for a court to employ in resolving these competing interests:

> When deciding whether a state election law violates First and Fourteenth Amendment associational rights, we weigh the character and magnitude of the burden the State's rule imposes on those rights against the interests the State contends justify that burden, and consider the extent to which the State's concerns make the burden necessary. Regulations imposing severe burdens on plaintiffs' rights must be narrowly tailored and advance a compelling state interest. Lesser burdens, however, trigger less exacting review, and a State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions. No bright line separates permissible election-related regulation from unconstitutional infringements on First Amendment freedoms.

Id. at 358 - 359 (internal quotation marks and citations omitted).

Prete v. Bradbury, 438 F.3d 949 (9th Cir. 2006),[3] it simply "prohibits one method of payment." Id. at 962.

2. Can the legislature limit out-of-state contributions and expenditures for initiatives in the same manner as for candidates?

No. Imposing contribution limits for ballot initiatives, or prohibiting or limiting out-of-state contributions or expenditures made in support of or in opposition to ballot initiatives, would likely be interpreted by a court as an unconstitutional burden on the freedom of speech under the First Amendment to the Constitution of the United States, and article I, section 5 of the Constitution of the State of Alaska.

Campaign finance laws have been found permissible under the First Amendment because they address the problems of political corruption, and the United States Supreme Court has deemed this a sufficient reason to restrict speech. See Buckley v. Valeo, 424 U.S. 1 (1976) (upholding, in large part, the constitutionality of the Federal Election Campaign Act of 1971). However, campaign finance statutes that apply to initiatives and referenda in the same manner as candidate campaigns have been overturned, since an expenditure or a contribution made on behalf of an initiative campaign is not believed to pose the same potential for corruption as does a contribution to a candidate. "Speech relating to ballot initiatives (where quid pro quo corruption is not a significant danger) is entirely protected." State v. Alaska Civil Liberties Union, 478 P.2d 597, 606 - 607 (Alaska 1999). "[B]allot initiatives do not involve the risk of '*quid pro quo*' corruption present when money is paid to, or for, candidates." Buckley v. American Constitutional Law Foundation, 525 U.S. 182 (1999), citing Meyer v. Grant, 486 U.S. 414 (1988), citing First National Bank of Boston v. Bellotti, 435 U.S. 765, 786 (1978). Absent the threat of quid pro quo corruption, a court is unlikely to support any limitation on contributions and expenditures relating to an initiative no matter which state the contribution or expenditure is made from.[4]

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[3] In this case, an Oregon court upheld an initiative pay-per-signature prohibition using the Timmons framework. The court examined the effect of the prohibition on (1) the pool of petition circulators, (2) the cost of gathering signatures, and (3) the invalidity rate of the signatures gathered. The court found that the prohibition did not severely burden initiative sponsors' speech because it (1) did not limit the pool of circulators, (2) restrict the size of the sponsors' potential audience, or (3) make it any less likely that the sponsors would be able to gather the necessary number of signatures to place their initiative on the ballot, and that this lesser burden was justified by the state's important regulatory interest in preventing fraud and its appearances in its electoral processes.

[4] A federal law, 2 U.S.C. 441(e), already prohibits a foreign national, directly or indirectly, from making a contribution or donation of money or other thing of value in connection with a federal, state, or local election.

3. Does CSSSHB 36(JUD)'s public hearing requirement create a constitutional issue?

The bill's public hearings requirement would present a constitutional problem if it burdened the First Amendment rights of an initiative proponent or an initiative opponent. However, nothing in the provision appears to either burden the speech of an initiative supporter or opponent.

The bill requires the lieutenant governor, or a designee of the lieutenant governor, to hold two or more public hearings concerning the initiative in each judicial district of the state.[5] Each hearing must include the written or oral testimony of one supporter of the initiative and one opponent of the initiative. No initiative proponent or opponent is required to appear. The hearings provide an opportunity for the public to hear testimony from a person supporting the initiative and a person opposing the initiative. Neither an initiative proponent nor opponent is required to participate. If an initiative proponent or opponent does desire to participate in a hearing held under the provision, the individual need not bear the costs and difficulties of attending the hearings, because the provision allows for testimony to be presented telephonically or in writing. No person's First Amendment right to speak on an initiative is burdened by the provision's hearing requirement.

If you have further questions, please do not hesitate to contact me.

TLAB:plm:ljw
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[5] There are four judicial districts in the state.

ALASKA STATE LEGISLATURE

REPRESENTATIVE KYLE JOHANSEN
MAJORITY LEADER

SPONSOR STATEMENT – HOUSE BILL 36
Version C.A

Alaska's lawmaking process is highly public and strives to be transparent. Shown by the passage of an omnibus ethics bill in 2006, Alaskan voters want to know who is contributing to candidate campaigns. Initiative-created law has the same authority and effect as law created by elected officials; therefore voters should be allowed to know who is making law through the initiative process. House Bill 36, also known as the Open and Transparent Initiative Act (OTIA), seeks to identify people and/or groups who financially contribute to initiative campaigns by requiring disclosure earlier in the process than is currently required. These guidelines are similar to those imposed upon elected officials. In addition, OTIA mandates that the Lieutenant Governor hold at least 2 public hearings in each judicial district (8 hearings total) and requires signature-gatherers to carry a full copy of the proposed initiative so potential signers have the opportunity to read all of the language rather than a short summary.

Initiative committees in Alaska are not held to high enough disclosure standards. There are loopholes in the current disclosure process that allow groups to hide contributors. There is a lack of public hearings and input. These shortcomings are not acceptable, and the Open and Transparent Initiative Act seeks to close these loopholes, repair the initiative process, and restore the faith of Alaskans in our election process.

Session: State Capitol, Juneau, AK 99801-1182 • (907) 465-3424 • Fax (907) 465-3793
Interim: 50 Front Street, Suite 203, Ketchikan, AK 99901 • (907) 247-4672 • Fax (907) 225-8546

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ALASKA STATE LEGISLATURE

REPRESENTATIVE KYLE JOHANSEN
MAJORITY LEADER

SECTIONAL ANALYSIS – HOUSE BILL 36
Version C.A

Section 1. Requires an individual, person, non-group entity, or group that contributes a total of $500 or more to a group organized for the principal purpose of influencing a bill proposed for inclusion on the ballot as an initiative under AS.15.45.020, to report the individual's, person's, non-group entity's, or group's contribution or contributions on a for prescribed by the Alaska Public Offices Commission (APOC) not later than 30 days after the contribution is made.

Section 2. Provides that each person other than an individual shall register with APOC before making an expenditure in support or opposition to a proposed initiatives bill filed with the lieutenant governor under AS 15.45.020.

Section 3. Requires a group to include the name of an initiative in the name of their group if they intend to spend more than 50 percent of their funds towards a single initiative on the ballot.

Section 4. Expands the meaning of "proposition" under AS 15.13.065(c) to include an initiative proposal application filed with the lieutenant governor under AS 15.45.020.

Section 5. Conforms subsection AS 15.13.110 (e) to the enhanced initiative reporting requirements found in the bill's section 6.

Section 6. Establishes new reporting requirements for initiative committees, persons, groups, or non-group entities making certain contributions or expenditures in support or opposition to an initiative proposal application filed with the lieutenant governor under AS 15.45.020 or an initiative that has been approved for placement on the ballot.

Section 7. Expands the definition of "contribution" applicable to state election campaigns to include certain purchases, payments, promises, or obligations to pay, loans or loan guarantees, deposits or gifts of money, goods, or services for which a charge is ordinarily made that is made for the purpose of supporting or opposing an initiatives proposal application filed with the lieutenant governor under AS 15.45.020.

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Section 8. Expands the definition of "expenditure" applicable to state election campaigns to include certain purchases or transfers of money or anything of value, or promises or agreements to purchase or transfer money or anything of value, incurred or made for the purpose of supporting or opposing an initiative proposal application filed with the lieutenant governor under AS 15.45.020.

Section 9. Changes the definition of group to include those organized to file an initiative proposal application under AS 15.45.020.

Section 10. Echoes 15.45.040 in saying that if an initiative is not confined to a single subject, it will not be certified for the ballot.

Section 11. Requires that each initiative petition contains a copy of the proposed initiative bill.

Section 12. Requires that the Lieutenant Governor (1) hold hearings in each judicial district of the State and (2) provide reasonable notice of each public hearing. Provides a time frame for the Lieutenant Governor to hold public hearings, which is after the measure is to appear on the ballot and at least 30 days prior to the election.

Section 13. Requires an election pamphlet to be prepared and mailed to each household for any special election at which a ballot proposition is scheduled to appear on the ballot.

Section 14. Provides that an election pamphlet for a special election at which a ballot measure is scheduled to appear on the ballot shall contain (1) the full text of the measure, (2) the ballot title and summary of the proposition, (3) a statement of the costs to the state of implementing the law proposed in the initiative, (4) a neutral summary of the proposition, (5) statements submitted that advocate voter approval or rejections of the proposition not to exceed 500 words, and (6) any additional information on voting procedures that the lieutenant governor considers necessary.

Section 15. Requires a standing committee of the legislature review initiatives that the lieutenant governor has approved for placement on the ballot.

Section 16. Provides that the provisions of the Act apply to an initiative proposed by filing an application with the lieutenant governor under AS 15.45.020 on or after the effective date of the Act.

From Ketchikan Daily News; Sat/Sun March 14-15 2009.

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Initiatives deserve same vetting as bills

By KYLE JOHANSEN

POINT OF VIEW

House Bill 36, also known as the Open and Transparent Initiative Act, is an attempt to tackle an enormous problem we have here in Alaska: Our initiative process is used as a way for special interests to maneuver around the lawmaking body to enact laws without regard for the public as a whole. The right to petition government belongs to the citizens of Alaska. It is imperative that the process be protected from abuse. HB36 offers those safeguards. I am taking this opportunity to review the changes I believe need to happen to protect our initiative process.

Currently, initiative sponsors are not required to hold public hearings. However, the Legislature is required to hold public hearings on all bills that are voted on as a body. Most bills receive multiple committee referrals and spend hours being publically vetted. Though bills passed by the Legislature and initiatives passed by the people have the same effect, they are not held to the same public-hearing requirements. Mandating a proposed initiative go through a public hearing process is an essential element for developing sound public policy. HB36 requires that a standing committee review the proposed initiative. This allows the affected state agencies to come forward and express how the initiative will affect their operations. When a bill is in front of the Legislature, the affected state agencies come before the appropriate committee and explain the implementation of the policy. Initiatives that are passed by the people are law, and the agencies that have to administer those laws should be afforded the same ability.

Prohibiting initiatives that are substantially similar to a failed initiative says that the people have spoken. We have seen the same initiatives proposed year after year, with a lack of regard for the public's will. If an initiative fails, the public has spoken. However, people's attitudes, beliefs, and perceptions can change. That is why I think it is appropriate that failed initiatives be restricted from the ballot for one election cycle to save the state money, time, and resources.

Signature-gatherers are commonly paid on a per-signature basis. In Alaska, they are not supposed to receive more than $1 per signature. Twenty-four states have an initiative process, and many have banned the practice of paying per signature because of fraud. Petition circulators in other states have been caught using disingenuous practices to gather more signatures to receive a bigger paycheck. If petition circulators did not collect payment based on the number of signatures, they would be less inclined to commit fraud.

Petition circulators are allowed to solicit signatures for more than one initiative at a time. This means that someone can have multiple clipboards outside the grocery store, shuffling them around while trying to convince you to sign their petitions. It is easy to confuse which petition was explained to you and which petition you have agreed to sign. Petition circulators should be allowed to collect signatures for only one initiative at a time to reduce confusion, deceptive practices, and misleading information.

Unlike the current initiative process, HB36 will go through many public committee hearings where it will be vetted, debated and amended. This is a chance for the public to weigh in on the bill, for lawmakers to ask questions and clarify issues of concern, for changes to be proposed, and many other aspects to be publicly debated so the best public policy is put forward. As a reminder, this is not required of initiative legislation. What you see is what you get, and unfortunately, what you don't see is what you get as well.

I encourage you to read the legislation yourself. Please form your own opinion based on the facts of the bill itself, rather than regurgitate information given to you by parties with their own agenda. HB36 can be found at www.legis.state.ak.us/basis.

[Republican Kyle Johansen represents Ketchikan in the Alaska House.]

Fighting for Second Amendment rights

Initiative and Referendum in the 21st Century

Final Report and Recommendations of the NCSL I&R Task Force

NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

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July 2002

EXECUTIVE SUMMARY

On December 7, 2001, the National Conference of State Legislatures assembled a task force to review the growing use of initiatives and referendums around the country and to examine their effect on representative democracy at the state level.

The Initiative and Referendum Task Force found that opportunities for abuse of the process outweigh its advantages and does not recommend that states adopt the initiative process if they currently do not have one.

The task force also developed recommendations that would enable initiative states to make their processes more representative. For states that are intent upon adopting an initiative process, the task force offers a set of guidelines to enhance the process and to avoid many of the pitfalls currently experienced by the initiative states. The task force urges such states to consider giving preference to a process that encourages citizen participation without enacting specific constitutional or statutory language—specifically, the advisory initiative or the general policy initiative.

The 34 recommendations contained in this report acknowledge that the initiative process has outgrown the existing laws that govern it. After listening to expert testimony from a wide variety of witnesses and compiling data from all 50 states, the task force concluded that the initiative has evolved from its early days as a grassroots tool to enhance representative democracy into a tool that too often is exploited by special interests. The initiative lacks critical elements of the legislative process and can have both intended and unintended effects on the ability of the representative democratic process to comprehensively develop policies and priorities.

As a result, the task force suggests that initiative states reform drafting, certification, signature-gathering and financial disclosure statutes; adhere to single subject rules; and improve practices regarding voter education. It also recommends that initiatives be allowed only on general election ballots.

It is the task force's intent that the discussion and adoption of the reforms in this report lead to a more thoughtful lawmaking process, improve interaction between initiative proponents and legislatures, and ultimately produce better public policy and reinforce representative democracy.

Task Force Recommendations

The following 34 recommendations were adopted unanimously at the final meeting of the NCSL Initiative and Referendum Task Force in Denver, Colorado, on April 26-27, 2002.

The task force does not recommend that states that currently do not have an initiative process adopt one. The task force believes that representative democracy is more desirable than the initiative. The disadvantages of the initiative as a tool for policymaking are many, and the opportunities for abuse of the process outweigh its advantages. However, if a state is intent upon adopting an initiative process, the first four recommendations lay out the task force's view of an effectively structured process.

The remaining recommendations deal with specific elements of the initiative process and are intended as guidelines to improve existing procedures. The task force believes that the adoption of these recommendations will improve the initiative process to the benefit of both state government and voters and will result in improved public policy making via the initiative.

General Recommendations Regarding the Initiative Process

Recommendation 1.1: States that are considering adopting an initiative process should give preference to one that encourages citizen participation without enacting specific constitutional or statutory language. Specifically, states should consider:

A. First, adopting the advisory initiative; or
B. In the alternative, adopting the general policy initiative.

Recommendation 1.2: If states wish to adopt an initiative process and neither the advisory initiative nor the general policy initiative are adopted, they should adopt an indirect initiative process.

Recommendation 1.3: If states adopt a direct initiative process, they should adopt only a statutory initiative process, not a constitutional amendment initiative process.

Recommendation 1.4: If states adopt a constitutional amendment initiative process, they also should adopt a statutory initiative process.

Involving the Legislature in the Initiative Process

Recommendation 2.1: States that currently have a direct initiative process should consider adopting an indirect process as well, and provide incentives to encourage its use.

Recommendation 2.2: After a specified percentage of signatures has been gathered for an initiative petition, the legislature should provide for public hearings on the initiative proposal.

Recommendation 2.3: When appropriate, the legislature should place an alternative legislative referral on the ballot with an initiative that appears on the ballot.

The Subject Matter of Initiatives

Recommendation 3.1: States should encourage the sponsors of initiatives to propose them as statutory initiatives when possible, rather than as constitutional amendments.

Recommendation 3.2: States should adopt the single subject rule to enhance clarity and transparency in the initiative process.

Recommendation 3.3: If an initiative measure is rejected by voters, states should prohibit an identical or substantially similar initiative measure from appearing on the ballot for a specified period of time.

The Drafting and Certification Phase

Recommendation 4.1: States should require a review of proposed initiative language by either the legislature or a state agency. The review should include non-binding suggestions for improving the initiative's technical format and content, and should be considered public information.

Recommendation 4.2: States should require the drafting and certification of a ballot title and summary for each initiative proposal. Ballot titles must identify the principal effect of the proposed initiative and must be unbiased, clear, accurate, and written so that a "yes" vote changes current law.

Recommendation 4.3: States should require the drafting of a fiscal impact statement for each initiative proposal. The statement should appear on the petition, in the voter information pamphlet, and on the ballot.

Recommendation 4.4: States should establish a review process and an opportunity for public challenge of technical matters, including adherence to single subject rules, and ballot title, summary and fiscal note sufficiency, to be made prior to the signature-gathering phase.

The Signature Gathering Phase

Recommendation 5.1: States should require that initiative proponents file a statement of organization as a ballot measure committee prior to collecting signatures. States should void any signature that is gathered before a statement of organization is filed.

Recommendation 5.2: States should provide for safeguards against fraud during the signature gathering process. Safeguards should include:

A. Prohibiting the giving or accepting of money or anything else of value to sign or not sign a petition.
B. Requiring a signed oath by circulators, stating that the circulator witnessed each signature on the petition and that to the best of the circulator's knowledge, the signatures are valid.
C. Requiring circulators to disclose whether they are paid or volunteer.

Recommendation 5.3: States should provide for an adequate but limited time period for gathering signatures. The deadline for submission should allow a reasonable time for verification of signatures before the ballot must be certified.

Recommendation 5.4: States should establish a limit on the length of time that verified signatures are valid.

Recommendation 5.5: States should require a higher number of signatures for constitutional amendments than is required for statutory initiatives.

Recommendation 5.6: To achieve geographical representation, states should require that signatures be gathered from more than one area of the state.

Recommendation 5.7: Each state should establish a uniform process for verifying that the required number of valid signatures has been gathered.

Voter Education

Recommendation 6.1: States should provide to the public a manual describing the initiative and referendum process.

Recommendation 6.2: States should encourage public education and discussion about measures on the ballot.

Recommendation 6.3: States should produce and distribute a voter information pamphlet containing information about each measure certified for the ballot.

Recommendation 6.4: In addition to a printed voter information pamphlet, states should consider alternative methods of providing information on ballot measures, such as the Internet, video and audio tapes, toll-free phone numbers, and publication in newspapers.

Financial Disclosure

Recommendation 7.1: States should require financial disclosure by any individual or organization that spends or collects money over a threshold amount for or against a ballot measure.

Recommendation 7.2: After a title has been certified for an initiative measure, states should require that proponents and opponents of the initiative measure file a statement of organization as a ballot measure committee prior to accepting contributions or making expenditures.

Recommendation 7.3: States should make the disclosure requirements for initiative campaigns consistent with the disclosure requirements for candidate campaigns.

Recommendation 7.4: States should prohibit the use of public funds or resources to support or oppose an initiative measure. This should not preclude elected public officials from making statements advocating their position on an initiative measure.

Voting on Initiatives

Recommendation 8.1: States should allow initiatives only on general election ballots.

Recommendation 8.2: States should adopt a requirement that creates a higher vote threshold for passage of a constitutional amendment initiative than for passage of a statutory initiative.

Recommendation 8.3: States should require that any initiative measure that imposes a special vote requirement for the passage of future measures must itself be adopted by the same special vote requirement.

Recommendation 8.4: States should ensure that statutory initiative measures require the same vote threshold for passage that is required of the legislature to enact the same type of statute.

Recommendation 8.5: States should adopt a procedure for determining which initiative measure prevails when two or more initiative measures approved by voters are in conflict.

INTRODUCTION

Initiative and referendum operated quietly in the background of state politics for much of the 20th century, but during the last decade, it has come back into vogue. More initiatives are circulated, more make it to the ballot, and more money is spent in the process than ever before. Consider the numbers: 183 statewide votes on initiatives in the 1970s, 253 in the 1980s, and 383 in the 1990s, more than double the total from the 1970s. California alone accounts for 130 of the total 819 measures during that 30-year period; Oregon can claim 107. Between them, these two states account for nearly 30 percent of all initiatives from 1970 to 1999. It is no wonder that people in California and Oregon are beginning to voice concerns about the initiative process.

Initiative advocates say the resurgence of the initiative is good for states—it means citizens are using it as a tool to implement new laws and reforms that the legislature is unable or unwilling to enact. Besides accomplishing policy change, supporters also say that initiatives increase citizen involvement with government—people are not only more aware of state policy issues, but they are also more likely to vote. For these reasons, movements have begun to establish an initiative process in some of the states that currently do not have such a process.

However, in some states where the initiative is heavily used, there is growing public frustration with initiatives, and some people are beginning to speak out against the process. Legislatures are struggling to find ways to prevent fraud in the signature-gathering process; disclose information about who pays for initiative campaigns; and add flexibility to the process to accommodate more debate, deliberation and compromise than presently exists. Equally concerning to many is the disadvantage that, unlike our legislatures' process of representative government, decisions made through the initiative process do not provide an opportunity to accommodate minority interests. Most importantly, initiatives ask voters to make simple yes-no decisions about complex issues without subjecting the issue to detailed expert analysis and without asking voters to balance competing needs with limited resources. In short, the initiative affects the ability of representative democracy to develop policies and priorities in a comprehensive and balanced manner.

The problems with the initiative process are not easy to solve for a number of reasons. The courts have made it difficult to regulate both petition circulators and initiative campaign finance, and almost any reform can be a difficult political issue because proponents of the initiative generally are hostile to legislative attempts to change the process.

The initiative is a vital and popular part of democracy in half the states (refer to appendix A for a list of initiative states), but it is clear that the initiative has outgrown the existing state laws governing it. NCSL's Initiative and Referendum Task Force set out to first gather the facts and data necessary to paint an accurate picture of how the initiative process works in each state. It identified and focused on problems in the process, then considered ways that the process might be made more open and flexible. The task force feels strongly that the changes it recommends in the initiative process would equally benefit both voters and the legislative process, and that, in the end, a reformed initiative process might produce better public policy.

The task force met three times during a five-month period. Meetings were held on:

- December 7-8, 2001, in Washington, D.C.;
- February 8-9, 2002, in Washington, D.C.; and
- April 26-27, 2002, in Denver, Colorado.

The task force took great care to ensure that it heard testimony from experts and activists on a wide array of issues and from as many points of view as possible. Presenters included both supporters and critics of the initiative process, citizens who use the initiative process, and election administrators. The experts who testified before the task force were:

David Broder, *Washington Post*, Washington, D.C.;
Lois Court, Save our Constitution, Colorado;
Neal Erickson, Office of the Secretary of State, Nebraska;
Wayne Pacelle, Humane Society of the United States, Washington, D.C.;
John Perez, Speaker's Commission on the California Initiative Process, California;
Honorable Joe Pickens, State Representative, Florida;
Larry Sokol, Speaker's Commission on the California Initiative Process, California;
M. Dane Waters, Initiative and Referendum Institute, Washington, D.C.; and
Joseph F. Zimmerman, State University of New York-Albany, New York.

In addition to the experts who testified before the task force, the task force members themselves are experts on the initiative process. The perspectives and suggestions that each member brought to the table contributed to the extensive body of knowledge the task force developed about how the initiative works around the country. Finally, the task force also relied on a wide array of written materials on the initiative process. These include reports from earlier initiative reform commissions and task forces, and the many books and academic papers that are listed in appendix B and in the reference section of this report.

The task force adopted 30 recommendations for legislatures in the initiative states that are seeking guidance on how their initiative process might be improved. Four additional recommendations are meant for states that may be thinking about adopting an initiative process. Although the task force does not recommend that non-initiative states adopt such a procedure, these four recommendations are offered for those states that have, nonetheless, made the decision to go forward.

All the recommendations were based on a set of observations and conclusions about representative and direct democracy that were adopted by the task force at its first meeting. These principles reflect the task force members' belief that it is important to carefully balance the pure democratic impulse of the initiative with the deliberative, consensus-

building practices of representative democracy. It also is the belief of task force members that the adoption of this set of recommended reforms by initiative states will lead to a more thoughtful lawmaking process, improved interaction between initiative proponents and legislatures, and ultimately, better public policy.

Observations and Conclusions About Representative and Direct Democracy

Adopted by the NCSL I&R Task Force on April 27, 2002

We offer in the following observations regarding representative and direct democracy.

1. Representative democracy is the foundation of America's system of government.

2. Representative democracy has provided a stable and flexible system of government that has served America well for more than 200 years.

3. Direct democracy, as envisioned in the initiative and referendum system, was first instituted as a check on representative democracy. It was meant to enhance representative government, not to supercede or abolish it.

4. As intended by its founders, the initiative and referendum process was meant to give citizens a tool to break what they perceived as the hold of special interests over some state legislatures.

5. In most of the 24 states where it exists, the initiative is a popular part of the lawmaking process.

6. The initiative brings to the fore issues that may not receive legislative attention or final action and engages citizens in a debate of important public policy issues.

Based on these observations, we draw the following conclusions about direct democracy.

1. The initiative has evolved from its early days as a grassroots tool to enhance representative government. Today, it is often a tool of special interests.

2. The initiative process, as it exists today, lacks some of the critical elements of the representative system of government, including debate, deliberation, flexibility, compromise and transparency.

3. The initiative process does not involve all the checks and balances that representative government does.

4. The initiative can affect the ability of representative democracy to develop policies and priorities in a comprehensive and balanced manner.

5. As the initiative process and the way it is used have evolved over time, a review of the laws governing it is merited.

NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

Banning Payment-per-Signature for Initiative Petition Circulators

Updated May 28, 2008

It is common for initiative sponsors to pay circulators on a per-signature basis to gather petition signatures. Payments typically range from $1 to $3 per signature, and occasionally are as high as $10 per signature. Critics argue that this encourages fraud—since a circulator who collects more signatures will earn more money, circulators who are paid per signature are more likely to commit acts of fraud such as forging signatures or misrepresenting the content of the petition in order to encourage people to sign.

Presently, six states (Montana, Nebraska, North Dakota, Oregon, South Dakota and Wyoming), have laws which ban initiative sponsors from paying petition circulators per signature. Instead, they may pay a flat fee or an hourly salary. These laws have been challenged in the courts with mixed results. North Dakota and Oregon's provisions have been upheld by the U.S. 9th and 8th Circuit Courts, respectively. However, similar provisions in Idaho, Maine, Mississippi, Ohio and Washington were held unconstitutional by federal district courts. The Ohio case was upheld by the U.S. 6th Circuit Court of Appeals in March 2008.

Montana (MCA §13-27-102(2)(b))
"A person gathering signatures for the initiative, the referendum, or to call a constitutional convention...may not be paid anything of value based upon the number of signatures gathered" (2007 Mont. Laws, Chap. 481)

Nebraska (NRS §32-630(3)(g))
No person shall pay a circulator based on the number of signatures collected.
(2008 Neb. Laws, L.B. 39)

North Dakota (N.D. Cent. Code §16.1-01-12(11))
"It is unlawful for a person to...[p]ay or offer to pay any person, or receive payment or agree to receive payment, on a basis related to the number of signatures obtained for circulating an initiative, referendum, or recall petition. This subsection does not prohibit the payment of salary and expenses for circulation of the petition on a basis not related to the number of signatures obtained, as long as the circulators file their intent to remunerate prior to submitting the petitions..."
Upheld in 2001 by the U.S. 8th Circuit Court of Appeals, Initiative & Referendum Institute v. Jaeger.

Oregon (Or. Const. Art. IV §1b)
"It shall be unlawful to pay or receive money or other thing of value based on the number of signatures obtained on an initiative or referendum petition. Nothing herein prohibits payment for signature gathering which is not based, either directly or indirectly, on the number of signatures

obtained. [Created through initiative petition filed Nov. 7, 2001, and adopted by the people Nov. 5, 2002]"
Upheld in February 2006 by the U.S. 9th Circuit Court of Appeaks, Prete v. Bradbury.

South Dakota (new section added to §12-13 during the 2007 legislative session, HB 1156)
No person may employ, reward, or compensate any person to circulate a petition for an initiated measure, referred law, or proposed amendment to the South Dakota Constitution based on the number of registered voters who signed the petition. Nothing in this section prohibits any person from employing a petition circulator based on one of the following practices:
(1) Paying an hourly wage or salary;
(2) Establishing either express or implied minimum signature requirements for the petition circulator;
(3) Terminating the petition circulator's employment, if the petition circulator fails to meet certain productivity requirements; and
(4) Paying discretionary bonuses based on reliability, longevity, and productivity.
Any violation of this section is a Class 2 misdemeanor.

Wyoming (Wyo. Stat. §22-24-125)
"A circulator of an initiative or a referendum petition or a person who causes the circulation of an initiative or a referendum petition may not receive payment for the collection of signatures if that payment is based upon the number of signatures collected. Nothing in this section prohibits a circulator of an initiative or a referendum petition or a person who causes the circulation of an initiative or a referendum petition from being paid a salary that is not based upon the number of signatures collected."

Dollar-Amount Limitations on Payment per Signature

In Alaska, circulators may not be paid more than $1 per signature (AS §15.45.110(c)).

Source: National Conference of State Legislatures
May 2008
For more information, contact Jennie Drage Bowser at 303-856-1356.

Held Unconstitutional:

Idaho
Held unconstitutional in 2001 by a U.S. District Court. Idaho Coalition United for Bears v. Cenarrusa.

Maine (Me. Rev. Stat. tit. 21-A §904-A (REPEALED))
Held unconstitutional in 1999 by the U.S. District Court of Maine. On Our Terms '97 PAC v. Secretary of State of State of Maine.

Mississippi (Miss. Code Ann. §23-17-57(3))
Held unconstitutional in 1997. Term Limits Leadership Council v. Clark, 984 F.Supp. 470 (S.D. Miss. 1997)

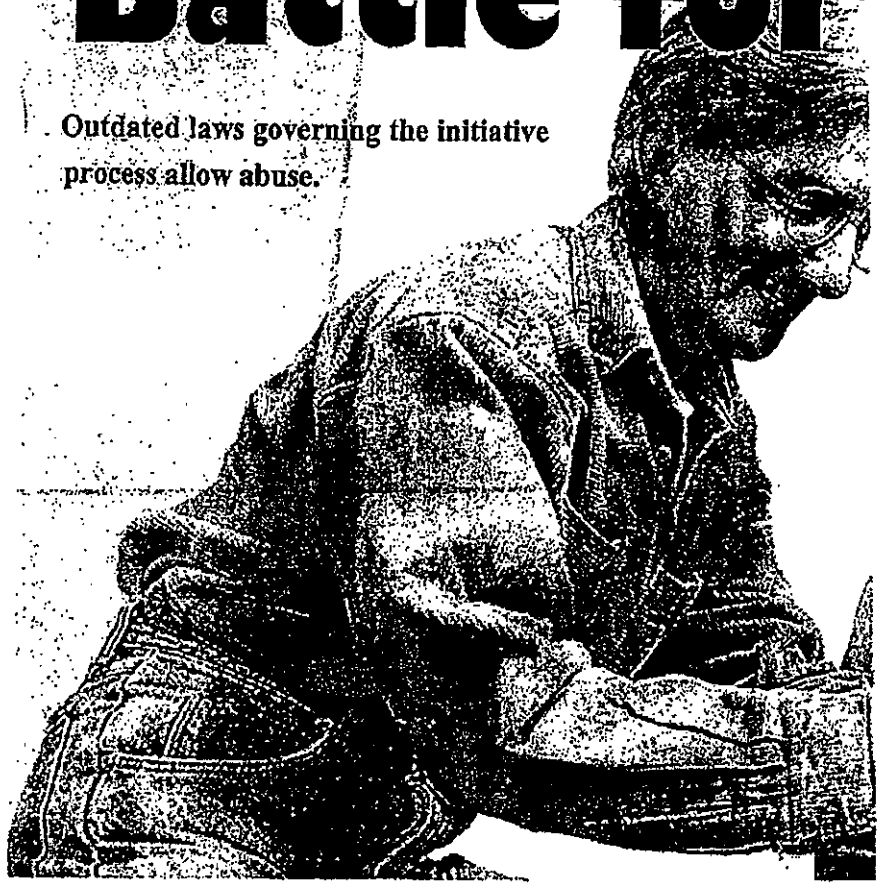
Ohio (Ohio Code §3599.111)
Made it a felony to pay petitioners in any manner except upon their time worked.
Declared unconstitutional on December 1, 2006 by a U.S. District Court Judge. Citizens for Tax Reform v. Deters, 1:05-cv-212 (Cincinnati). Upheld by the 6th Circuit Court of Appeals in March 2008.

Washington (REPEALED)
Held unconstitutional in 1994 by a federal district court, LIMIT v. Maleng.

Source: National Conference of State Legislatures
May 2008
For more information, contact Jennie Drage Bowser at 303-856-1356.

Battle for

Outdated laws governing the initiative process allow abuse.



BY JENNIE DRAGE BOWSER

One of the little-noticed stories of the 2008 election was the escalating tug-of-war between legislatures and activists over the rules governing the citizen initiative process.

The struggle has ramped up dramatically since the 2006 election. Legislatures in the 24 states that allow initiatives have shown a keen interest in improving the process ever since the use of the citizen petition to place issues on the ballot skyrocketed in the 1990s. And recent legislative activity has been higher than ever before.

States have passed about double the number of bills addressing the initiative process in the 2007-2008 biennium (a total of 47 so far, with legislatures still in session in a handful of states) compared to the previous two biennia (22 in 2005-2006 and 32 in 2003-2004).

Why the heightened interest?

The process has changed tremendously in the past two decades. The initiative "industry"—individuals and firms that make a living from the initiative process by researching and drafting proposals, gathering signatures or campaigning for or against initiatives—has exploded. The average number of initiatives on ballots nationwide has doubled from 31 a year in the 1970s to 62 a year in the 2000s. And laws governing the process haven't kept pace.

Some state laws, for example, do not specify which official has the authority to investigate and prosecute abuses, while others lack the capacity to verify that circulators meet the legal qualifications.

Colorado Representative Andy Kerr was one of the co-sponsors of an unsuccessful referendum on the 2008 ballot that would have made qualifying constitutional initiatives harder, but statutory initiatives easier.

REPRESENTATIVE ANDY KERR COLORADO

Jennie Drage Bowser is NCSL's expert on ballot measures.

He sees flaws in the initiative process, particularly in a state that had more measures on the ballot in 2008 than any other state.

"Citizens have a lot of power to change and propose laws and constitutional amendments," he says. "But the way the process is set up in Colorado, our constitution can be changed frequently without these amendments being fully vetted first."

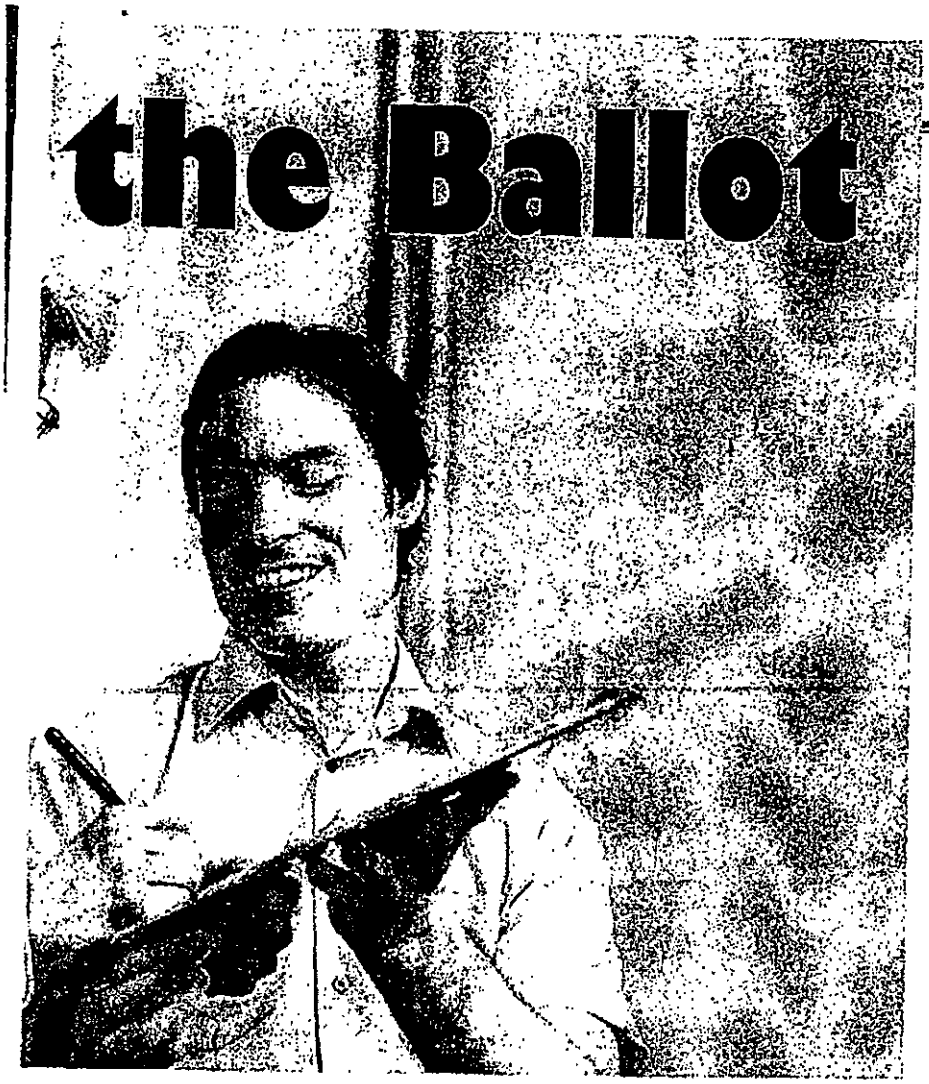
HARD SELL

It is difficult, however, for legislatures to limit the number of initiatives qualifying for ballots, and whether or not they should is a controversial question. Increasing the number of signatures required, tinkering with time limits and restricting the subject matter involves amending state constitutions. And that requires voter approval.

It isn't always easy to convince voters that changing the process is a good idea, as Kerr learned in November.

Making the process more difficult rarely slows down well-funded petition efforts that can afford to hire and pay an army of circulators. It's the grassroots efforts, which depend on volunteers, that suffer from higher signature thresholds and shorter petition timeframes.

Details of the process in state law are what legislatures can, and with increasing frequency do, change without voter approval. States have clarified rules for petition formats, restructured timelines to allow for the added administrative burdens of processing a high volume of petitions, and spelled out more clearly the procedures for evaluating and counting signatures. Voter education is an area ripe for reform, too, particularly as technological advances make it easier to use multimedia and multi-lingual approaches to explain measures on the ballot.



SIGNATURE-GATHERING FRAUD

Along with the explosion in the number of initiatives is the issue of fraud. The courts removed at least half a dozen measures from the ballot in 2006 for deceit in gathering signatures. In a Montana case, a court wrote that the "signature-gathering process was permeated ... by a pattern of deceit, fraud and procedural noncompliance."

Specific instances of fraud in Montana, Nevada and Oklahoma included circulators who opened the phone book and forged the signatures of listings onto their petitions. Others inserted carbon paper and a second petition beneath the one they asked voters to sign, thus obtaining a signature on another petition without the signer's knowledge. One circulator told voters they needed to sign in three different places if they supported the issue. In reality, they were unwittingly signing three separate petitions. And accusations of circulators who misrepresent or conceal the content of their petition are common.

Kristina Wilfore is executive director of the Ballot Initiative Strategy Center, which serves as a clearinghouse for progressive ballot measures. She says policing the process is tough.

"Part of the problem is that the state officials in charge of watching over the process aren't equipped, funded or modernized enough to catch the few bad apples that are responsible for the vast majority of what eventually gets on the ballot," she says.

Wilfore says that it was only a few years ago that she began to hear about extreme abuses in the process by a handful of signature-gathering companies.

Signature-gathering is now dominated by a few professional firms that hire people who make a living moving from state to state. In more than one initiative state, they are not required to register. That means they cannot be identified or prosecuted for fraud because signatures can't be traced to particular circulator. Wilfore calls the signature-gathering process "one of the most neglected areas" of the initiative process when it comes to state laws and regulations.

Efforts to curb abuse include new laws to ban paying signature gatherers on a per-signature basis, and instead require an hourly wage. Six states now prohibit payment-per-signature, with three of those laws adopted in the 2007-2008 legislative session. Other new laws require circulators to offer people a chance to read the proposal in full before signing, set age and residency requirements for circulators, and apply criminal penalties for forgeries and fraud in knowingly submitting a petition with invalid signatures.

ACTIVISTS STRIKE BACK

Initiative supporters are rarely happy when the legislature enacts changes that add to the cost or complexity of the initiative process. In some states, they have fought back by trying to get measures on the ballot that would make the initiative process easier.

But voters don't necessarily support them. In 2006, Colorado voters rejected Amendment 38, an initiative that would have significantly reduced regulation of the initiative process. And petitions easing regulation of the initiative process were circulated but failed to qualify this year in Arizona, Massachusetts, Oregon and Washington.

Legislatures started calling for reform of the initiative process in the early 2000s. It's not just state legislatures that are calling for reform these days, however. Cities and academic groups and even pro-initiative groups have joined the call for change.

Given the number of initiatives on statewide ballots over the past two decades, it's clear the initiative is not going away. It will continue to be a vibrant process in most of the states that allow it. But it's up to legislatures to ensure the process promotes ethical behavior among those involved, and that the rules surrounding it allow for as much transparency and deliberation as possible without restraining a process whose popularity is not likely to decline. It's not an easy task, and is certain to be one that legislatures grapple with well into the next decade.

Guest Opinion - Representative Kyle Johansen

Let's fix Alaska's ballot initiative process

A citizen's right to petition their government is a right reserved to the people of Alaska granted by Article 11 of the Alaska State Constitution. The concept of the initiative is based on the principle of direct democracy – the people's ability to change law and policy themselves rather than having to do so through their elected representative. This right is held so close to Alaskans, and it is important to guard this process from abuse.

In the past few election cycles, it has become wildly apparent to Alaskans that their initiative process does not serve the best interests of the people. Special interests have hijacked the citizen's initiative. Sources of funds are hidden. Contributor's identities are veiled. Alaskans deserve better. Alaskans deserve an open and transparent process.

I have introduced legislation that does just that. House Bill 36 will make the initiative process more open to the public, including public hearings and more financial disclosures. The current laws governing the initiative process are easy to skirt, and special interests have used the system to their advantage. The initiative process is a tool that belongs to the people of Alaska, and as such, it should be safeguarded from special interests with self-serving goals.

The financial disclosure process for initiatives is flawed. It is easy for groups to hide sources of money, and to the extent that the voters don't even know about the main funders behind an initiative until the election has come and gone.

This is completely unacceptable, and Alaskans should be outraged that this has been allowed to occur. Allowing financial disclosure loopholes of this magnitude undercut the integrity of our initiative process. House Bill 36 proposes changes to fix these flaws and repair the loopholes. House Bill 36 changes the date of when financial disclosures must begin. Rather than being able to collect money for months and months before having to disclose the source of funds, groups would have to begin financial disclosures as soon as they file their initial paperwork with the Lieutenant Governor's office. Although initiative groups have to collect a number of signatures in different regions before officially being declared a measure on the ballot, the groups are still influencing public policy. Initiative groups should be filing financial disclosures as soon as they receive their first red cent.

Signature gatherers are an instrumental part of the initiative process. They collect the constitutionally-required signatures necessary to qualify initiatives for the ballot. We often see them outside of the grocery store or any high-traffic zone. Their goal is to gather signatures. Period. They are often paid on a commission basis, so they are motivated to gather as many signatures as possible. They are not paid to answer questions or explain issues. If signature gatherers were paid on an hourly wage basis, they would be more open to take the time to explain the issue or answer questions posed by voters. House Bill 36 proposes that signature gatherers be paid on an hourly or salary basis so that they wouldn't be shuffling people as fast as they can to make their dollar. Restricting the use of per-signature commission is yet another attempt to promote the sharing of information so that voters can make the most informed decision at the ballot box.

Public hearings are a necessary and essential part of the political process. Public hearings are the venue where questions are posed, ideas are vetted, and information is freely shared. Public hearings are the foundation of the lawmaking process. All potential laws that govern our behavior, our property, and our interests are all vetted in a public forum, right? Wrong. There are no public hearing requirements for ballot measures. Laws created via the Legislature and laws created via initiative are equal – they are the laws we are required to live by. However, initiative-created law does not go through a public process that enables citizens to ask questions, criticize, give suggestions, or clarify issues.

Holding public hearings would greatly strengthen the initiative process because they would provide more information to the public. The public deserves to know the ins and outs of initiatives, just as the ins and outs of legislation are hashed out in committee meetings. House Bill 36 solves this problem by requiring public hearings throughout Alaska. Because of the geographical challenges and dispersed population of our state, a total of ten public hearings are required, two hearings per judicial district. These hearings provide a public forum so voters can ask questions, analyze the issues, and voice their support or opposition. These public hearings won't cost the initiative sponsors a dime; the venue can be provided by the state, and if initiative sponsors cannot afford to travel to the different districts to participate in the hearing personally, they can teleconference. House Bill 36 provides a win-win situation: more information provided to the public, while not costing the ballot measure groups anything but their time.

In addition to the public hearing requirement, House Bill 36 also requires a standing committee of the legislature to review ballot measures. This does not allow the legislature to change the ballot measure because that would be encroaching on a citizen's right to petition their government. Instead, the legislative review allows another public venue for questions to be asked and concepts to be discussed. Also, the legislative review provides a forum for the affected agencies to discuss how the proposed initiative would be administered.

The loopholes with the initiative process have become apparent all over the country, not just in Alaska. About half of the states in the Union have the initiative process, and many of those states are modifying their initiative process with tighter financial disclosures, public hearing requirements, and restructuring signature-gathering methods. These modifications are seen as ways to reinforce the citizen initiative process – to protect it – not to impose onerous and meaningless requirements.

Providing more information to the public is the purpose of House Bill 36. There is no fine print. There is no catch. House Bill 36 returns the power of the initiative back to the rightful owners: Alaskans.

ALASKA STATE LEGISLATURE

REPRESENTATIVE KYLE JOHANSEN
MAJORITY LEADER

12 April 2010

Senator Hollis French
State Capitol, Room 417
Juneau, Alaska 99801

Re: House Bill 36

Dear Senator French,

House Bill 36, which focuses on Ballot Initiative Reform, is currently in the Senate Judiciary Committee. We have sponsored this legislation to help bring more clarity to the initiative process, and to provide the public with more information about initiatives. We see HB 36 as an Alaska solution to a problem that has plagued the initiative states for year.

This letter serves a request to have HB 36 heard in your committee at your earliest convenience.

Regards,

Representative Kyle Johansen | Representative Charisse Millett | Representative Peggy Wilson

Session: State Capitol, Juneau, AK 99801-1182 • (907) 465-3424 • Fax (907) 465-3793
Interim: 50 Front Street, Suite 203, Ketchikan, AK 99901 • (907) 247-4672 • Fax (907) 225-8546

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