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: 907-321-0283

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

Ballot Measure 2

Cruise Ship Taxation, Regulation and Disclosure

BALLOT LANGUAGE

This initiative would impose a $46 per person per voyage tax on large cruise ships to pay for vessel services. It would provide for the proceeds from the tax to be deposited in the state general fund and, subject to appropriation by the legislature, distributed to municipalities. It would levy a tax on cruise ship gambling activities in state waters. It would change the way cruise ship corporate income tax is calculated. It would require cruise ship operators to gather and report more information, and get a new type of permit for sewage, graywater or other wastewater before discharging in state marine waters. It would assess a $4 per passenger berth fee and require large cruise ships to have state-employed marine engineers (Ocean Rangers) licensed by the Coast Guard to observe health, safety and wastewater treatment and discharge operations. It would authorize citizen lawsuits against an owner or operator of a large cruise ship, or against the Department of Environmental Conservation, for an alleged violation of any permit condition, provision of environmental statutes or performance of duties. It would also enable a person who provides information leading to enforcement of the law to receive 25 to 50 percent of fines imposed. It would impose additional requirements on disclosures about on-ship promotions of shoreside businesses.

SHOULD THIS INITIATIVE BECOME LAW?

⬭ Yes

⬭ No

LEGISLATIVE AFFAIRS AGENCY SUMMARY

Part of this bill is about cruise ship taxes. It imposes a $46 a person tax on cruise ship passengers. That money goes into a special account in the state's general fund. The legislature may appropriate part of that money to the vessel's ports of call. But, towns that receive that money cannot impose local cruise ship head taxes. The bill also taxes gambling on cruise ships. The tax is 33 percent of the cruise ship's adjusted gross income from the gambling. The bill changes the state's corporate income tax law so it could be applied to cruise ships.

The bill also changes environmental laws that apply to cruise ships. It requires wastewater discharge permits for cruise ships. It sets minimum standards and conditions for use of those permits. It prohibits wastewater discharges without a permit. It changes the monitoring and record keeping requirements for wastewater discharges. It establishes a new ocean ranger program. A ranger is a marine engineer. It requires each cruise ship to have a ranger on board. The ranger is an independent observer. The ranger monitors compliance with pollution laws. The bill imposes a four-dollar fee per berth for operating the ranger program. It gives private citizens the right to sue for discharge violations. It also establishes financial penalties for violations of environmental laws.

Finally, the bill regulates sales on cruise ships. Persons paid to mention or promote a business in a state port must say they are paid. Written materials must also say that the person is paid. Persons selling tours and other shore-side activities on board a cruise ship must disclose how much they are paid for each sale. A seller must give the address and phone number of the shore-side business if asked. It makes violation of these laws an unfair trade practice.

STATEMENT OF COSTS AND REVENUES FOR BALLOT MEASURE 2 - INITIATIVE 03CTAX - Prepared by the Alaska Department of Revenue

As required by AS 15.58.020(b), the Alaska Department of Revenue has prepared the following statement of costs to the Department of implementing the law proposed in Ballot Measure 2 - Initiative 03CTAX.

COSTS

In order to administer the tax collection process required by this initiative, the Department of Revenue would require six new positions, at an estimated cost of $626,000 per year for staff and associated costs.

Ballot Measure 2

Cruise Ship Taxation, Regulation and Disclosure

REVENUES

This initiative would impose an excise tax of $46 per passenger per voyage on travel on commercial passenger vessels with 250 or more berths, and a "Ranger fee" of $4 per passenger berth.

We assume that 2007 cruise ship activity will be similar to the scheduled 2006 cruise ship activity. We cannot predict whether the excise tax might impact the number of passengers.

Assuming the ships sail at 100 percent capacity, we estimate the $46 per passenger excise tax would be applied to approximately 900,000 passengers in the 2007 season, resulting in revenue of approximately $41 million. About $14 million of that revenue would be shared with municipalities at which the cruise ships stopped. Twenty-five percent of the total, or approximately $10 million, would be placed in a "Regional Cruise Ship Impact Fund," to be distributed to other affected municipalities. The $4 per berth Ranger fee would bring in approximately $5.6 million.

Net revenues to the state, after deducting costs for the Departments of Revenue and Environmental Conservation, and deducting the $24 million in shared revenues cited above, would be approximately $14.4 million.

This initiative would impose a tax of 33 percent of the adjusted gross income from operation of gaming or gambling activities on ships operating in Alaskan waters.

The Department has no data on the extent or profitability of cruise ship gaming in Alaskan waters, and therefore cannot calculate revenues from the proposed gaming tax.

This initiative would also change the way the corporate income tax is calculated for the cruise ship industry. The Department does not have adequate data to estimate the effects of this change on corporate income tax revenue.

STATEMENT OF COSTS FOR BALLOT MEASURE 2 - INITIATIVE 03CTAX- Prepared by the Alaska Department of Environmental Conservation

As required by AS 15.58.020(b), the Alaska Department of Environmental Conservation ("DEC") has prepared the following statement of costs to the Department of implementing the law proposed in Ballot Measure 2 Initiative - 03CTAX.

The initiative would require DEC to develop and maintain a new permit program for Large Commercial Passenger Vessels ("cruise ships") to replace the current program for regulating these vessels. It would also require DEC to place marine engineers ("Ocean Rangers") licensed by the Coast Guard on the cruise ships to monitor compliance with State and Federal environmental laws. Two marine engineers working alternating twelve-hour shifts would be placed on each cruise ship operating in Alaska waters.

The cost to the state during the first full year of the implementation of this initiative is estimated to be approximately $5.6 million.

FULL TEXT OF THE PROPOSED LAW

FOR AN ACT PROVIDING FOR TAXATION OF CERTAIN COMMERCIAL SHIP VESSELS, PERTAINING TO CERTAIN VESSEL ACTIVITIES and RELATED TO SHIP VESSEL OPERATIONS TAKING PLACE IN THE MARINE WATERS OF THE STATE OF ALASKA

Be it enacted by the People of the State of Alaska:

* Section 1. AS 43 is amended by adding a new chapter to read:

Chapter 52. Excise Tax on Travel Aboard Commercial Passenger Vessels.

Sec. 43.52.010. Levy of excise tax on overnight accommodations on commercial passenger vessels. There is imposed an excise tax on travel on commercial passenger vessels providing overnight

accommodations in the state's marine water.

Sec. 43.52.020. Rate of tax. The tax imposed by AS 43.52.010 - 43.52.095 is levied at a rate of $46 a passenger per voyage.

Sec. 43.52.030. Liability for payment of tax. A passenger traveling on a commercial passenger vessel providing overnight accommodations in state marine water is liable for the tax imposed by AS 43.52.010 -- 43.52.095. The tax shall be collected and is due and payable to the department

(1) by the person who provides travel aboard a commercial vessel for which the tax is payable; and

(2) in the manner and at the times required by the department by regulation.

Sec. 43.52.040. Disposition of receipts.
(a) The proceeds from the tax on travel on commercial passenger vessels providing overnight accommodations in the state's marine water shall be deposited in a special "Commercial Vessel Passenger Tax Account" in the general fund. The legislature may appropriate money from this account for the purposes described in (b) and (c) of this section, for state-owned port and harbor facilities, other services to properly provide for vessel or watercraft visits, to enhance the safety and efficiency of interstate and foreign commerce and such other lawful purposes as determined by the legislature.

(b) For each voyage of a commercial passenger vessel providing overnight accommodations, the commissioner shall identify the first five ports of call in the state and the number of passengers on board the vessel at each port of call. Subject to appropriation by the legislature, the commissioner shall distribute to each port of call $5 per passenger of the tax revenue collected from the tax levied under this chapter. If the port of call is a city located within a borough not otherwise unified with the borough, the commissioner shall, subject to appropriation by the legislature, distribute $2.50 per passenger to the city and $2.50 to the borough. Each port of call receiving funds under this section shall use the funds in a manner calculated to improve port and harbor facilities and other services to properly provide for vessel or water craft visits and to enhance the safety and efficiency of interstate and foreign commerce.

(c) A "Regional Cruise Ship Impact Fund" consisting of 25% of the proceeds from the tax on travel aboard commercial passenger vessels providing overnight accommodations in the state's marine water shall be established as sub-account of the funds established in (a), above, and deposited in the general fund. Subject to appropriation by the legislature and regulations adopted by the Department of Revenue, the commissioner shall distribute funds to municipalities or other governmental entities within the Prince William Sound Region, Southeast Alaska or any other distinctive region impacted by cruise ship related tourism activities but not entitled to receive funds based on port of call visitation as allowed by (b), above, provided that any funds used from this account shall be used to provide services and infrastructure directly related to passenger vessel or water craft visits or to enhance the safety and efficiency of interstate and foreign commerce related to vessel or water craft activities.

Sec. 43.52.050. Administration.
(a) The department shall

(1) administer this chapter; and

(2) collect, supervise, and enforce the collection of taxes due under this chapter and penalties as provided in AS 43.05.

(b) The department may adopt regulations necessary for the administration of this chapter.

Sec. 43.52.060. Local levies. Any municipality, whether home rule or general law, that receives passenger ship fee funds under this chapter may not impose an additional form of tax on travel on commercial passenger vessels engaged in activities involving overnight accommodations for passengers in state marine waters. Any form of tax on travel on commercial passenger vessels engaged in activities involving overnight accommodations for passengers in state marine waters enacted by a municipality, whether home rule or general law, prior to the effective date of this legislation shall expire one year after enactment of this law if that municipality elects to receive funds under this chapter.

The text of this bill is presented as submitted by petition sponsors.

Ballot Measure 2

Cruise Ship Taxation, Regulation and Disclosure

Sec. 43.52.095. Definitions. In this chapter, (1) "commercial passenger vessel" means a boat or vessel that is used in the common carriage of passengers in commerce; "commercial passenger vessel" does not include
(A) vessels with fewer than 250 berths or other overnight accommodations for passengers;

(B) noncommercial vessels, warships, and vessels operated by the state, the United States, or a foreign government;

(2) "marine water of the state" and "state marine water" have the meaning given to "waters" in AS 46.03.900, except that they include only marine waters.

(3) "passenger" means a person whom a common carrier has contracted to carry from one place to another.

(4) "voyage" means any trip or itinerary lasting more than 72 hours.

* **Sec. 2.** AS 05, is amended by adding a new chapter to read:

Chapter 16. Games of Chance and Contests of Skill on Ships Operating on Waters Within the Jurisdiction of Alaska.

Sec. AS 05.16.010. Gambling activities aboard commercial vessels purportedly authorized by federal law. This chapter applies to the use of playing cards, dice, roulette wheels, coin-operated instruments or machines, or other objects or instruments used, designed, or intended for gaming or gambling used in the waters under the jurisdiction of the State of Alaska on a voyage described in 15 U.S.C. Section 1175(c)(2), and to any other gambling activities taking place aboard large passenger vessels in the state.

Sec. AS 05.16.020. Tax on gambling activities authorized by AS 05.16.010. There is imposed on the operator of a gaming or gambling activities aboard large passenger vessels in the state a tax of 33% of the adjusted gross income from those activities. "Adjusted gross income" means gross income less prizes awarded and federal and municipal taxes paid or owed on the income. The tax shall be collected and is due and payable to the department of revenue in the manner and at the times required by the department of revenue.

Sec. 05.16.030. Disposition of receipts. (a) The proceeds from the tax on gambling operations aboard commercial passenger vessels in the state's marine water shall be deposited in a special "Commercial Vessel Passenger Tax Account" in the general fund.

* **Sec. 3.** AS 43.20.021 is repealed and reenacted as follows:

Sec. 43.20.021(a). Internal Revenue Code adopted by reference. (a) Sections 26 U.S.C. - 1399 and 6001 - 7872 (Internal Revenue Code), as amended, are adopted by reference as a part of this chapter. These portions of the Internal Revenue Code have full force and effect under this chapter unless excepted to or modified by other provisions of this chapter.

(b) Nothing in this chapter or in AS 43.19 (Multistate Tax Compact) may be construed as an exception to or modification of 26 U.S.C. 883.

(c) The provision in (b), above, does not apply to commercial passenger vessels as defined in AS 43.52.095.

* **Sec 4.** AS 46.03.462 is repealed and re-enacted as follows:

Sec. 46.03.462. Terms and conditions of discharge permits. (a) An owner or operator may not discharge any treated sewage, graywater, or other wastewater from a large commercial passenger vessel into the marine waters of the state unless the owner or operator obtains a permit under AS 46.03.100, which shall comply with the terms and conditions of vessel discharge requirements specified in (b) of this section.

(b) The minimum standard terms and conditions for all discharge permits authorized under this provision require that the owner or operator:

(1) may not discharge untreated sewage, treated sewage, graywater, or other waste-

waters in a manner that violates any applicable effluent limits or standards under state or federal law, including Alaska Water Quality Standards governing pollution at the point of discharge;

(2) shall maintain records and provide the reports required under AS 46.03.465(a);

(3) shall collect and test samples as required under AS 46.03.465(b) and (d) and provide the reports with respect those samples required by AS 46.03.475(c);

(4) shall report discharges in accordance with AS 46.03.475(a);

(5) shall allow the department access to the vessel at the time samples are taken under AS 46.03.465 for purposes of taking the samples or for purposes of verifying the integrity of the sampling process; and

(6) shall submit records, notices, and reports to the department in accordance with AS 46.03.475(b), (d), and (e).

* Sec. 5. AS 46.03.463 is amended to read as follows:

Sec. 46.03.463(d) is repealed.

Sec. 46.03.463(e) is repealed and reenacted to read: An owner or operator may not discharge any treated sewage, graywater, or other wastewater from a large commercial passenger vessel into the marine waters of the state unless the owner or operator obtains a permit under AS 46.03.100 and AS 46.03.462, and provided that the vessel is not in an area where the discharge of treated sewage, graywater or other wastewaters is otherwise prohibited.

Sec. 46.03.463(g) is repealed.

* Sec 6. AS 46.03.465 repealed and reenacted to read as follows:

Sec. 46.03.465. Information-gathering requirements. (a) The owner or operator of a commercial passenger vessel shall maintain daily records related to the period of operation while in the State, detailing the dates, times, and locations, and the volumes and flow rates of any discharges of sewage, graywater, or other waster into the marine waters of the State, provide electronic copies of such records on a monthly basis to the department no later than 5 days after each calendar month of operation in State waters.

(b) while a commercial passenger vessel is present in the marine waters of the State, the owner or operator of the vessel shall provide an hourly report of the vessel's location based on Global Positioning System technology and collect routine samples of the vessel's treated sewage, graywater, and other wastewaters being discharged into marine waters of the State with a sampling technique approved by the department.

(c) while a commercial passenger vessel is present in the marine waters of the State, the Department, or an independent contractor retained by the Department, may collect additional samples of the vessel's treated sewage, graywater, and other wastewaters being discharged into the marine waters of the State.

(d) the owner or operator of a vessel required to collect samples under (b) of this section shall ensure that all sampling techniques and frequency of sampling events are approved by the department in a manner sufficient to ensure demonstration of compliance with all discharge requirements under AS 46.03.462.

(e) the owner or operator of a commercial passenger vessel shall pay for all reporting, sampling and testing of samples under this section.

(f) if the owner or operator of a commercial passenger vessel has, when complying with another state of federal law that requires substantially equivalent information required under (a), (b), or (d) of this section, the owner or operator shall be considered to be in compliance with that subsection so long as the information is also provided to the department.

The text of this bill is presented as submitted by petition sponsors.

* Sec. 7. AS 46.03 is amended to include new provisions as follows:

Sec. 46.03.476. Ocean Rangers. (a) An owner or operator of a large commercial passenger vessel entering the marine waters of the state is required to have a marine engineer licensed by the United States Coast Guard hired or retained by the department on board the vessel to act as an independent observer for the purpose of monitoring state and federal requirements pertaining to marine discharge and pollution requirements and to insure that passengers, crew and residents at ports are protected from improper sanitation, health and safety practices.

(b) The licensed marine engineer shall monitor, observe and record data and information related to the engineering, sanitation and health related operations of the vessel, including but not limited to registration, reporting, record keeping and discharge functions required by state and federal law.

(c) Any information recorded or gathered by the licensed marine engineer shall be promptly conveyed to the Alaska Department of Environmental Conservation and the United State Coast Guard on a form or in a manner approved by the Commissioner of Environmental Conservation. The Commissioner may share information gathered with other state and federal agencies.

46.03.481. Citizens suits. (a) Any citizen of the State of Alaska may commence a civil action

(1) against an owner or operator of a large passenger vessel alleged to have violated any provision of this chapter, or

(2) against the department where there is an alleged failure to perform any act or duty under this chapter which is not discretionary. No civil action may be commenced under this section, however, prior to 45 days after the plaintiff has provided written notice of the intent to sue to the Attorney General of Alaska.

(b) Subject to appropriation, as necessary, up to 50% and not less than 25% of any fines, penalties or other funds recovered as a result of enforcement of this chapter shall be paid to the person or entity, other than the defendant, providing information sufficient to commence an investigation and enforcement of this chapter under this provision.

* Sec. 8. AS 46.03.480 is amended as follows:

Sec. 46.03.480 is amended by adding a new section to read:
(d) An additional fee in the amount of $4.00 per berth, is imposed on all large commercial passenger vessels, other than vessels operated by the state, for the purpose of operating the Ocean Ranger program established in AS 46.03.476; said program shall be subject to legislative appropriation.

Sec. 46.03.480(d) shall be repealed and reenacted as 46.03.480(e).

* Sec. 9. AS 46.03.760 is amended as follows:

Sec. AS 46.03.760 is amended by adding a new section to read:

(f) An owner, agent, employee or operator of a commercial passenger vessels as defined in AS 43.52.095 who falsifies a registration or report required by AS 46.03.460 or 46.03.475 or who violates or causes or permits to be violated a provision of AS 46.03.250 - 46.03.314, 46.03.460 - 46.03.490, AS 46.14, or a regulation, a lawful order of the department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under AS 46.03.250 - 46.03.314, 46.03.460 - 46.03.490, or AS 46.14 is liable, in a civil action, to the state for a sum to be assessed by the court of not less than $5000 nor more than $100,000 for the initial violation, nor more than $10,000 for each day after that on which the violation continues, and that shall reflect, when applicable,

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, that shall be determined by the court according to the toxicity, degradability and dispersal characteristics

of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality; for a violation relating to AS 46.14, the court, in making its determination under this paragraph, shall also consider the degree to which the discharge causes harm to persons or property; this paragraph may not be construed to limit the right of parties other than the state to recover for personal injuries or damage to their property;

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation;

(3) the economic savings realized by the person in not complying with the requirement for which a violation is charged; and

(4) the need for an enhanced civil penalty to deter future noncompliance.

Sec. 46.03.760(f) shall be repealed and reenacted as 46.03.760(g).

* Sec. 10. AS 45.50.474 is repealed and reenacted to read as follows:

Sec. 45.50.474. Required disclosures in promotions and shore side sales on board cruise ships. (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. All such written notice of disclosure shall be in a type not less than 14-point typeface and in a contrasting color calculat J to draw attention to the disclosure.

(b) A person or other entity aboard a cruise ship conducting or making a sale of tours, flightseeing operations or other shore-side activities to be delivered by a vendor or other entity at a future port of call shall disclose, both orally and in writing, the amount of commission or percentage of the total sale retained or returned to the person making the sale. The person or entity aboard a cruise ship making or attempting to make a sale of services or goods provided by a shore-side vendor shall disclose the address and telephone number of the shore side 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.

(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. In this section, "cruise ship" means a ship that operates at least 48 hours in length for ticketed passengers, provides overnight accommodations and meals for at least 250 passengers, is operated by an authorized cruise ship operator, and is certified under the International Convention for the Safety of Life at Sea or otherwise certified by the United States Coast Guard.

* **Sec. 11. Severability.** It is the intention of the people of Alaska that any portion of this legislation that is declared unlawful shall be stricken in a manner that preserves the remaining portion of the remaining legislation to the maximum extent possible.

* **Sec. 12. Effective Date.** This Act takes effect 90 days after enactment.

The text of this bill is presented as submitted by petition sponsors.

Ballot Measure 2

Cruise Ship Taxation, Regulation and Disclosure

STATEMENT IN SUPPORT

The cruise lines should follow Alaska's taxation and pollution rules like everyone else. This initiative protects our fisheries and helps pay for cruise ship impacts on Alaskan communities by establishing/requiring:

1. **$50 passenger tax** - Alaskans pay tourism taxes when traveling Outside and independent tourists pay taxes on rental cars and lodging in Alaska. Cruise passengers willingly pay similar fees throughout the world. A typical cruise, including tickets, airfare, shopping, tours, gambling, and alcohol, costs over $3000. A $50 fee won't make people choose a cruise to New Jersey - therefore there will be no negative impact on Alaska's tourism economy. Federal law requires the funds be spent "servicing the industry," for example, maintaining ports and harbor infrastructure. This tax will help SUPPORT the Alaska tourism economy. Communities preferring their own tax program can opt out of the statewide program.

2. **Meet Alaska Water Quality Standards** - Alaskans need clean water and healthy fish. Cruise ships are the only major polluters not required to have a discharge permit and meet ALL Alaska water quality standards. Everyone else has a permit; no new permitting program is necessary. Nearly every major cruise line has felony convictions for dumping, tampering with pollution control equipment, or falsifying documents to the Coast Guard. This initiative places an independent marine engineer observer on every ship (paid through the passenger tax) to monitor discharges, inspect equipment, and verify logbook entries. The cruise lines have proven they cannot be trusted to help keep Alaska's waters clean and productive.

3. **End tax evasion** - All legal gambling operations in Alaska, except those on cruise ships, pay 1/3 of their profits to charity or in tax. Lucrative cruise line casino operations in Alaska pay nothing. Alaska corporations pay Corporate Income Tax. The cruise industry lobbied for and was granted a specialized income tax exemption for revenue from foreign registered ships. Under the initiative, the cruise lines will pay the same taxes that local businesses and U.S. registered vessels pay on their income and gambling profits.

4. **Support local businesses** - Since 1994, Alaska law has required oral and written disclosure to passengers by cruise lines when they receive commissions for promoting shore-based tours/businesses. Cruise line promotions are presented as "advice" when they are really "advertisements." This is unfair to local businesses that can't afford the steep, advertising commission. This initiative will require cruise lines to disclose the size of their commissions which will help local businesses compete for tourism dollars. No local businesses will have to report anything.

The cruise lines are "selling" Alaska - while impacting our docks, roads, public facilities, wildlife, and the quality of our lives. This initiative will do nothing to turn visitors away; it will help keep our tourism industry sustainable while protecting the needs of all Alaskans. The Miami/Vancouver-based cruise lines make billions in profits by registering their ships in third world countries to avoid paying U.S. income taxes and wages. The cruise lines can easily afford to play by Alaska's rules like everyone else.

Please vote YES on Ballot Measure 2!

RESPONSIBLE CRUISING IN ALASKA

Gershon Cohen, Haines, Alaska
Joe Geldhof, Juneau, Alaska

The statement printed on this page is the opinion of the author(s) and is presented as submitted to the Division of Elections.

Ballot Measure 2

Cruise Ship Taxation, Regulation and Disclosure

STATEMENT IN OPPOSITION

Vote "No" on Ballot Measure 2
It just doesn't make sense!

Dear fellow Alaskans,

Ballot Measure 2 is a direct attack on Alaska's economy. It will hurt our tourism industry -- a growing industry and the 4th largest employer of Alaskans. Additional taxes, lost jobs and more lawsuits in Alaska are not the answer. **Ballot Measure 2 deserves a "No" vote on August 22nd.**

The Alaska State Chamber of Commerce, Anchorage Chamber of Commerce, City of Fairbanks, Associated General Contractors of Alaska, Southeast Conference, Alaska Travel Industry Association, Resource Development Council, Juneau Chamber of Commerce, City of Skagway and the Ketchikan Chamber of Commerce and several hundred others all **oppose Ballot Measure 2 because it's bad for Alaska.**

Measure 2 will:

Mandate four additional new taxes including a state wide head tax of $50 per person, $100 per couple, and $200 for an average family of four. Rising oil prices are driving up the cost of living, which has reduced all travelers' budgets. Imposing more taxes and fees on top of the other additional travel costs will keep tourists away and hurt our economy instead of helping it.

Force the disclosure of confidential business information about Alaska's local small businesses to competitors including those in the lower 48. No other business in Alaska is required to disclose this type of information. Forced disclosure would reduce the pre-purchase of tours and excursions, hurting Alaska businesses.

Raise costs and discourage tourism to Alaska. Tourists already pay millions of dollars in taxes and fees on their plane tickets, hotels, restaurants, tours and shopping. Additionally, there are more than 26,000 local jobs provided by the tourism industry contributing tens of millions of dollars to our strong economy. Measure 2 would increase costs, discourage tourism and reduce spending at our local businesses.

Open the door and create new motives for lawyers to file predatory lawsuits. Lawyers will be allowed to file suit and collect up to 50% of any fines collected. Out-of-state attorneys will line up and flood Alaska's court systems with frivolous lawsuits. The Measure would even allow individuals to sue the state of Alaska.

Increase the amount of bureaucratic red tape, bureaucracy and size of state government in Alaska. Measure 2 creates a new layer of state bureaucracy, red tape, paperwork and unnecessary government regulations that don't provide any additional benefits to Alaskans or the environment. Increasing the number of state bureaucrats, cost of state government and the amount of red tape doesn't solve anything.

Tourism is over a $2 billion dollar industry in Alaska. Attacking the tourism industry through Measure 2 and attempting to pass more taxes, unnecessary and redundant government regulations, and tourism disincentives is the wrong move.

Threatening Alaska's economy, over 26,000 local jobs and thousands of small businesses across the state isn't the answer.

Also endorsing this letter: Mayor Bob Weinstein, City of Ketchikan; Chris Anderson, ORSO and Glacier BrewHouse - Anchorage

Vote "No" on Ballot Measure 2.

Carol Fraser
Aspen Hotels of Alaska

Steve Frank
Rivers Edge Resort in Fairbanks

Marc Langland
President Fiscal Policy Council of Alaska

The statement printed on this page is the opinion of the author(s) and is presented as submitted to the Division of Elections.

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543 P.2d 731
543 P.2d 731
(Cite as: 543 P.2d 731)

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); Leininger 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); Leininger 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 accompained 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."

Supsequent 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 be 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 complx 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 open 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 compaign 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 condidate 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 accomplich 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 terms:
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 intiative 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 1930, p. 412-414 (3rd Ed.1943).

I agree with the implication of the majority opinion that the sections eliminated affect the workings of he commission and various other provisions throughout the statute. However, I an 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. 11, § 6.

*400 Clifford E. Warren, pro se.
Rodger W. Pegues, 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." *403Meyers v. Board of Sup'rs 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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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:

FN7. Article XII, section 11 of the Alaska Constitution provides:

As used in this constitution, the terms by law and by the legislature, or variations of these terms, are used interchangeably when related to the law-making powers. *Unless clearly inapplicable, the law-making powers assigned to the legislature may be exercised by the people though the initiative, subject to the limitations of Article XI.*

(Emphasis added.)

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, section 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).

FN63. *Id.* at 1175.

FN64. *Id.*

FN65. *Id.* at 1177.

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.

Alaska,2005.

State v. Trust the People
113 P.3d 613

Briefs and Other Related Documents (Back to top)

- 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)

END OF DOCUMENT

Letters of Support

1 Alaska Travel Industry Association
2 Anchorage Convention and Visitors Bureau
3 Southeast Exposure (Ketchikan kayak tours)
4 Allen Marine Tours (Ketchikan division)
5 Alaska Heritage Tours (owner of Prince William Sound Cruises and Tours, and Kenai Fjord Tours)
6 Chilkat Guides Ltd (Haines)
7 National Federation of Independent Business
8 Snorkel Alaska (Ketchikan)
9 Experience Alaska Tours (Ketchikan)
10 Great Alaskan Lumberjack Show (Ketchikan)
11 Alaska Rainforest Sanctuary
12 River Adventures (Haines)
13 Taquan Air (Ketchikan)
14 Alaska Canopy (Ketchikan)
15 Four Seasons Marine Services (Auke Bay)
16 Canal Marine and Oceanside RV (Haines)
17 Vyonne Zartman, citizen
18 Allen Marine Tours (Sitka division)
19 Allen Marine Tours (Juneau division)
20 Coastal Helicopters
21 Alaska Adventures Unlimited, Southeast Sportfishing (Sitka)
22 Pioneer Bar and Bamboo Restaurant (Haines)
23 Allen Marine Tours (Ketchikan)
24 Alaska Tour and Travel (Anchorage)
25 Glacier Brewhouse, Orso (Anchorage)
26 Four Seasons Marine Services (Auke Bay)
27 Bruce Bustamante, ACVB (Anchorage)
28 AJ Juneau Dock LLC (Juneau)
29 Cadigan Enterprises
30 Stan Stephen Cruises and Wildlife Trips
31 Alaska Travel Adventures (Juneau)
32 Chilkoot Lake Tours (Haines)
33 Anna Neidig, citizen
34 Copper Moose B&B (Copper Center)
35 Scott Laird, US Travel Leisure Agent
36 Alaska Travel Industry Association
37 Cape Fox Tours (Ketchikan)
38 Era Helicopters (Wasilla)
39 Steve Silverstein, citizen
40 Allen Marine Tours (Sitka)
41 Jim Shook, citizen (Haines)
42 Alyeska Resort (Girdwood)
43 Wings of Alaska/Wings Airways

44 Gray Line of Alaska (Ketchikan)
45 Mark Miller, state tourism planner
46 ATIA, Juneau Chapter
47 Sherry Aitken, citizen (Sitka)

Alaska State House of Representatives

Rep. Mark Neuman, Chair
Alaska State Capitol, Room 432
Juneau, Alaska 99801-1182
Phone: (907) 465-2679
Fax: (907) 465-4822
House District 15

Representative Vic Kohring
Representative Carl Gatto
Representative Bob Lynn
Representative Kyle Johansen
Representative Andrea Doll
Representative Mike Doogan

House Special Committee on Economic Development, Trade & Tourism

This is a supplemental package to HB 217:

Attached are copies of the emails sent to the Committee by way of the Chairman and Sponsor of this legislation.

NFIB
The Voice of Small Business®

Alaska

March 24, 2007

The Honorable Lindsey Holmes
Room 405
Alaska State Capitol Building
Juneau, Alaska 99801

RE: House Bill 217

Dear Representative Holmes,

On behalf of the Alaska Chapter of the National Federation of Independent Business, I wish to express our support for House Bill 217. The Alaska Chapter of the National Federation of Independent Business with over 2,500 members is the largest small-business advocacy group in the state.

HB 217 would protect proprietary information for shoreside vendors while providing cruise ship passengers with information that would allow them to shop for alternative providers of shoreside activities. This will allow passengers to be informed of options without forcing shoreside businesses into an uncompetitive position compared to those do not use cruise ships as booking agents.

Sincerely,

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

cc: Representative Mark Neuman, Chair, House Special Committee on Economic Development, Trade and Tourism
Representative Gatto
Representative Johansen
Representative Kohring
Representative Lynn
Representative Doll
Representative Doogan

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

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

><><><><><><><><><><><><><><><><><><><><><><><<
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) 792-3761 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

ALASKA
ANCHORAGE
CONVENTION & VISITORS BUREAU

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