ALASKA LEGISLATURE COMMITTEE FILES, 2005-2006 8672
11682 HOUSE STATE AFFAIRS

zenship night schools
established; however,
control of the federal
of Indian Affairs;
l service area in the
eservation, and that
ortion of those grade
of a single regional

school district or a
ch 98 SLA 1966; am
32 ch 124 SLA 1975)

Education and Early De-
for "state Board of Edu-
accordance with sec. 104,

For definition of "school

Title 15. Elections.

Chapter

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

In 1971 "secretary of state" was changed to "lieutenant governor" throughout the title in conformity with the 1970 Alaska constitutional amendment (SJR 2) changing the designation of that office.

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

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

Chapter 05. Qualification of Voters.

Section

Collateral references. — 25 Am. Jur. 2d, Elections, § 1 et seq.

29 C.J.S., Elections, §§ 14-35.

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

(1) is a citizen of the United States;

(2) is 18 years of age or older;

(3) has been a resident of the state and of the house district in which the person seeks to vote for at least 30 days just before the election; and

(4) has registered before the election as required under AS 15.07 and is not registered to vote in another jurisdiction. (§ 1.01 ch 83 SLA 1960; am § 1 ch 125 SLA 1962; am § 1 ch 80 SLA 1963; am § 1 ch 211 SLA 1968; am § 1 ch 88 SLA 1969; am § 1 ch 15 SLA 1970; am § 1 ch 75 SLA 1972; am §§ 1, 38 ch 116 SLA 1972; am §§ 2, 3 ch 197 SLA 1975; am § 1 ch 100 SLA 1980; am § 27 ch 21 SLA 2000)

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

(1) registration and absentee voting procedures, except as otherwise provided in this section, shall be identical to the procedures established in this title;

(2) registration of otherwise qualified persons shall be permitted without regard to a durational residency requirement;

(3) if any citizen who is otherwise qualified to vote in the state for president and vice-president has begun residence in another state after the 30th day preceding the election and, for that reason, does not satisfy the registration requirements of that state, that person shall be allowed to vote for president and vice-president either in person in the precinct in which the person resided immediately before removal, or by absentee ballot as provided in AS 15.20. (§ 1 ch 69 SLA 1967; am § 3 ch 116 SLA 1972)

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

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

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

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

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

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

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

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

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

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

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

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

Collateral references. - residents of military establis
Residence of students f
ALR3d 797.

Sec. 15.05.030. Los
crime that constitutes
not vote in a state, fed
the date of the uncondi
the person may registe
(b) The commission
unconditionally discha

Dee

#POC Not nominated until after on ballot

100 mile - how determined

Pg 3 line 17 + 18 class B (jail?)

Pg 6 line 11 - 13 perjury

P6 Corruption after 15.45.470 "that is either misuse of public office for private gain or abuse of public power for personal gain"

Mary Thompson
Sec 4
Dept of Law
we were

Opinion did not address because

LEGAL SERVICES

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

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

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

MEMORANDUM March 15, 2006

SUBJECT: Issues relating to HB 438
(CSHB 438( ), (Work Order No. 24-LS1344\X))

TO: Representative Jay Ramras
Attn: Jim Pound

FROM: Kathryn L. Kurtz KLK
Assistant Revisor

You have asked several questions about the above noted draft.

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

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

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

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

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

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

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

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

KLK:med
06-218.med

Louie Flora

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

Louie,

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

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

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

Sincerely,
Whitney Brewster, Director
Division of Elections

Louie Flora

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

Hi Louie,

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

Sincerely,
Whitney

Louie Flora wrote:

> Hi Whitney,
>
> Where in the Elections statute does it discuss whether or not a circulator may recieve a food per diem. Is it implicit in the 1$ per signature limit in AS 15.45.110 that a circulator may not recieve a food per diem?
>
> Louie Flora
> Staff, Rep. Seaton
> (907) 465-4963

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION

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

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

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

KLK:med
06-218.med

Barbara Borchmiers

① 107. OK

② Maximum Rate of Meals @ 15

③ organizing duties increase the process cost
Circ Training

P9 2 line 12
4 23
8 16

④ Fiscal note
how fines collection

Louie Flora

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

Louie,

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

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

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

Sincerely,
Whitney Brewster, Director
Division of Elections

Louie Flora

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

Hi Louie,

There is nothing in current statute that addresses food per diem. The only payment for petition circulators that is referenced in law is the $1 per signature in AS 15 45.110. This has been an issue that the Division has had questions about and has sought guidance from the Department of Law on. I have attached an opinion issued by the Department of Law in December 2005 regarding circulator payment for your review. Please let me know if you have any further questions.

Sincerely,
Whitney

Louie Flora wrote:

> Hi Whitney,
>
> Where in the Elections statute does it discuss whether or not a circulator may recieve a food per diem. Is it implicit in the 1$ per signature limit in AS 15.45.110 that a circulator may not reciev a food per diem?
>
> Louie Flora
> Staff, Rep. Seaton
> (907) 465-4963

SEE LAST TWO PARAGRAPHS

MEMORANDUM

State of Alaska

Department of Law

TO: Whitn[illegible] H. Brewster
Director, Division of Elections

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

TEL. NO.: (907) 465-3600

FAX: (907) 465-2520

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

SUBJECT: Reimbursement of Expenses for Initiative Signature Gatherers

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

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

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

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

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

---

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

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

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

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

---

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

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

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

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

STATE OF ALASKA

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

FRANK H. MURKOWSKI, GOVERNOR

P.O. BOX 110300
123 4TH STREET
DIMOND COURT HOUSE, 6TH FLOOR
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600

March 22, 2006

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

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

Dear Representative Seaton:

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

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

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

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

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

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

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

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

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

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

Sincerely,

DAVID W. MÁRQUEZ
ATTORNEY GENERAL

Sarah J. Felix

By: Sarah J. Felix
Assistant Attorney General

SJF/cjh

cc: Kevin Jardell, Legislative Liaison
Office of the Governor

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

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

STATE OF ALASKA

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

FRANK H. MURKOWSKI, GOVERNOR

P.O. BOX 110300
123 4TH STREET
DIMOND COURT HOUSE, 6TH FLOOR
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600

March 17, 2006

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

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

Dear Representative Seaton:

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

DAVID W. MÁRQUEZ
ATTORNEY GENERAL

Sarah J. Felix

By: Sarah J. Felix
Assistant Attorney General

SJF/cjh

cc: Kevin Jardell, Legislative Liaison
Office of the Governor

Annette Kreitzer, Chief of Staff
Office of the Lieutenant Governor

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

SEE LAST TWO PARAGRAPHS

MEMORANDUM

State of Alaska
Department of Law

TO: Whitney H. Brewster
Director, Division of Elections

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

TEL. NO.: (907) 465-3600

FAX: (907) 465-2520

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

SUBJECT: Reimbursement of Expenses for Initiative Signature Gatherers

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

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

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

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

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

---

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

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

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

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

---

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

Jane Pierson

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

Hi Jane,

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

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

Sincerely,
Whitney

Response To Comments By The Division Of Elections on HB438

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

See answer to comment number one.

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

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

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

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

Yes.

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

Understood.

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

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

This should be enforced by APOC.

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

(b) In this section,

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

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

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

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

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

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

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

Yes.

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

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

BANKSTON, GRONNING, O'HARA,
SEDOR, MILLS, GIVENS & HEAPHEY
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
601 W. 5TH AVENUE, SUITE 900
ANCHORAGE, ALASKA 99501
(907) 276-1711
FACSIMILE (907) 279-5358
WWW.BANKSTON.TO

WILLIAM M. BANKSTON
LEA E. FILIPPI
JON T. GIVENS
CHRIS D. GRONNING
CHRISTOPHER J. HEAPHEY
MICHAEL R. MILLS

BARBRA Z. NAULT
STEVEN T. O'HARA
JOHN M. SEDOR
BRIAN J. STIBITZ
THOMAS V. WANG, JR.

April 8, 2004

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

via electronic transmission
original (with exhibits) to follow

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

Dear Ms. Glaiser:

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

I. Introductory Remarks

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

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

[2] *Meiners*, 687 P.2d at 296.

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

II. **Background Facts**

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

> Senator Scott Ogan demonstrated corruption in office by actively promoting legislation, directly benefiting business interests of his employer Evergreen Resources, (Evergreen), instead of protecting the private property and due process rights of his constituents.
>
> Ogan's legislative activities enabled Evergreen to acquire coal bed methane (CBM) leases knowing it would deprive his Mat-Su Valley constituents of actual notice of leases and therefore their constitutional right to due process, demonstrating neglect of duty.
>
> Ogan neglected his duties to constituents by promoting Evergreen in legislative committee, misstated important facts (3-28-03), and was even listed as Evergreen's corporate contact in its legislative materials submitted to the House Oil and Gas Committee hearing on HB 69.
>
> Ogan did not abstain from voting for HB 69, which reduced local control over CBM development that directly benefited his employer, Evergreen.
>
> Ogan's persistent and irreconcilable conflict of interest between his duties to his constituents and his activities as an Evergreen and CBM industry promoter demonstrate his inability to recognize his obvious conflict, a failure in ethical judgment that shows lack of fitness to serve in public office, incompetence, and neglect of duty.

---

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

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

III. Statutory Framework

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

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

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

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

(3) a statement that the sponsors are qualified voters who signed the application with the statement of grounds for recall attached;

(4) the designation of a recall committee of three sponsors who shall represent all sponsors and subscribers in matters relating to the recall;

(5) the signatures of at least 100 qualified voters who subscribe to the application as sponsors for purposes of circulation; and

(6) the signatures and addresses of qualified voters equal in number to 10 percent of those who voted in the preceding general election in the state or in the senate or house district of the official sought to be recalled.[4]

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

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

---

[4] AS 15.45.500.
[5] AS 15.45.540.
[6] *Compare* AS 15.45.620, which provides 30 days for the Director to review a recall petition.

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

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

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

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

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

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

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

---

[7] **Exhibit 1.**
[8] **Exhibit 1.**

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

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

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

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

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

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

---

[9] 687 P.2d at 294.
[10] AS 29.26.240-.360.
[11] AS 15.45.500.
[12] AS 29.26.250.
[13] *Von Stauffenberg v. Committee for an Honest & Ethical Sch. Bd.*, 903 P.2d 1055 (Alaska 1995); *Meiners v. Bering Strait Sch. Dist.*, 687 P.2d 287 (Alaska 1984); *McCormick v. Smith*, 793 P.2d 1042 (Alaska 1990), vacated on unrelated grounds, 799 P.2d 287). McCormick addressed the ability of recall sponsors to intervene in an action between the target of the recall and the municipal clerk, whether the waiting period is mandatory when the application is rejected as insufficient, and the validity of certain signatures. None of these issues are relevant to our inquiry.

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

At one end of the spectrum is recall as a legal process. Under this view, recall is an extraordinary process producing the harsh result of removing elected officials before expiration of their terms of office.[16] Grounds for recall, therefore, are narrowly construed. Procedural requirements are strictly construed. All doubts are resolved against conduct of a recall election and there is no doctrine of substantial compliance.[17] For example, in Florida, recall is viewed as an extraordinary proceeding with a heavy burden on those seeking recall to conform to the statutes governing recall.[18] While Washington courts previously took a more political view of recall,[19] significant statutory changes now make recall available only for specific narrowly defined grounds that must be set out in a detailed charge including the date, location, and nature of each act upon which recall would be based.[20] Washington requires a recall petitioner to verify under oath that she or he has knowledge of the facts underlying the asserted grounds for recall[21] and the recall charges are submitted to the court for a sufficiency review.[22]

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

---

[14] 687 P.2d at 295.
[15] 687 P.2d at 294.
[16] 687 P.2d at 294 (describing the approach taken in states such as Montana as illustrated in *State ex rel. Palmer v. Hart*, 655 P.2d 965 (Mont. 1982)).
[17] 687 P.2d at 294.
[18] *Garvin v. Jerome*, 767 So.2d 1190, 1193 (Fla. 2000).
[19] *Chandler v. Otto*, 693 P.2d 71, 73 (Wash. 1984)(*en banc*).
[20] Wash. Rev. Code §29.82.010.
[21] Wash. Rev. Code §29.82.010; *Chandler*, 693 P.2d at 73.
[22] Wash. Rev. Code §29.82.021(2).
[23] 687 P.2d at 294.
[24] 687 P.2d at 294 & n.5 (citing cases from Colorado, Michigan, Nebraska and New Jersey); *see also Abbey v. Green*, 235 P.2d 150 (Ariz. 1925); *Bernzen v. City of Boulder*, 525 P.2d 416 (Colo. 1974) (*en banc*); *In re: Bower*, 242 N.E. 2d 252, 255 (Ill. 1968); *Batchelor v. Eighth Judicial Dist. Ct.*, 403 P.2d 239, 241 (Nev. 1965).

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

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

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

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

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

---

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

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

[27] Cal. Const. Art. II §14.

[28] 687 P.2d at 294.

[29] Alaska Const. Art. XI § 8.

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

[31] 687 P.2d at 294.

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

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

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

V. What Does the "Middle Ground" Mean?

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

A. Factual Allegations Are To Be Taken As True

In *Meiners*, the court addressed the statutory requirement that a petition for recall under Title 29 contain a "statement . . . of the grounds of the recall stated with particularity as to specific instances."[36] This requirement is similar to the particularity requirement in Title 15.[37] In *Meiners*, the court stated that "it is not the role of the municipal clerk or Director of Elections" to determine whether statements of fact are true or false.[38] Instead, the determination as to the truth or falsity of the stated grounds for recall is left to the voters.[39] Thus, the Director is to take the factual statements in the application as true and determine whether the application states grounds for recall.[40] This "means that, accepting the

---

[34] 687 P.2d at 294-96.

[35] *Compare* AS 15.45.470-.720 *with* AS 29.26.240-.360.

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

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

[38] 687 P.2d at 301.

[39] 687 P.2d at 300 n.18.

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

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

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

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

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

---

[41] *Matter of Recall of Wade*, 799 P.2d 1179, 1181 (Wash. 1990) (citations omitted).
[42] 687 P.2d at 302.
[43] In *Unger v. Horn*, the Supreme Court of Kansas concluded that a petition seeking recall of a school board member on grounds that he violated open meeting laws by participating in unannounced private meetings failed to satisfy Kansas' particularity requirement because the general allegation that he had violated open meetings laws without details provided the board members no opportunity to refute the charge. 732 P.2d 1275, 1277, 1280-81 (Kan. 1987). In *State ex. rel City Council of the City of Gladstone v. Yeaman*, the Missouri Court of Appeals ruled that a recall petition that merely repeated the three statutory grounds for recall, misconduct in office, failure to perform duties prescribed by law, or incompetence, in guiding city affairs was insufficient. 768 S.W.2d 103, 107 (Mo. App. 1988). Although Missouri has no statutory requirement for specificity, the court ruled that mere repetition of the statutory grounds for recall did not afford potential petition signers adequate reason to affix their signature or give the recall target a fair opportunity to respond. 768 S.W.2d at 107. Michigan requires the asserted basis for recall to be stated with "sufficient clarity to enable the officer whose recall is sought and the electors to identify the course of conduct that is the basis for the recall." *Dimas v. Macomb County Election Comm'n.*, 639 N.W.2d 850, 852 (Mich. App. 2002) *appeal denied by Dimas v. Macomb County Election Comm'n.*, 646 N.W. 2d 470 (Mich. 2002).
[44] *In re Recall of Kast*, 31 P.3d 677, 681 (Wash. 2001) (*en banc*).

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

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

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

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

The application of the doctrine of substantial compliance is consistent with *Meiners* and *von Stauffenberg*. In fact, it may be that substantial compliance is the mechanism by which the "middle ground" is achieved. One goal of the recall process is to not create "artificial technical hurdles" and provide access to the recall process to a broad spectrum of Alaskans.[50] At the same time, providing voters a fair summary of the recall allegations[51] and giving "the office holder the opportunity to defend his conduct in a rebuttal limited to 200 words" are equally important goals.[52] The focus of the Director's

---

[45] AS 15.45.500(2).
[46] AS 15.45.550(1) (emphasis added)
[47] *Nenana City Sch. Dist. v. Coghill*, 898 P.2d 929, 933 (Alaska 1995)(*quoting Jones v. Short*, 696 P.2d 665, 667 (Alaska 1985).
[48] *Copper River Sch. Dist. v. State*, 702 P.2d 625, 627 (Alaska 1985).
[49] 702 P.2d at 627.
[50] *Meiners*, 687 P.2d at 296 (*quoting Boucher v. Engstrom*, 528 P.2d 456, 462 (Alaska 1974)); *see also von Stauffenberg*, 903 P.2d at 1058.
[51] *See, e.g., Faipeas v. Municipality of Anchorage*, 860 P.2d 1214, 1219 n.8 (Alaska 1993) (Notwithstanding liberal construction of initiative laws, the people have a constitutional right to "a fair and accurate summary of issues on which they are being asked to express their will" and that this right extends to "petitions and elections").
[52] 687 P.2d at 302.

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

D. Allegations of Violation of Nonexistent Laws are Insufficient

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

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

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

---

[53] 903 P.2d 1055 (Alaska 1995).
[54] 903 P.2d at 1057.
[55] 903 P.2d at 1057.
[56] 903 P.2d at 1060 n.13 *citing Meiners*, 687 P.2d at 301.
[57] 903 P.2d at 1060 n.14 *citing Chandler v. Otto*, 693 P.2d 71, 74 (Wash. 1984) (*en banc*)..
[58] 903 P.2d at 1059-60 n.13. "Given the relevant exception to the Open Meetings Act, the grounds for recall allege a violation of totally nonexistent law. That is, there is no law which precludes public officials from discussing sensitive personnel matters in closed door executive sessions."
[59] *Meiners*, 687 P.2d at 301.
[60] *Meiners*, 687 P.2d at 302; *see also Faipeas v. Municipality of Anchorage*, 860 P.2d 1214, 1221 (Alaska 1993) (stating that "all matters . . . should be presented *clearly* and *honestly* to the people of Alaska . . . 'to guard against inadvertence by petition-signers and voters and to discourage stealth by initiative drafters and promoters . . .'") (citations omitted)(emphasis added).

allegations in a recall petition in different language."[61] *Meiners* also rejected the proposition that if any allegation supporting recall is sufficient the entire petition must go forward as a whole.[62] These conclusions protect a recall target from having to use the limited rebuttal opportunity to respond to legally insufficient charges that may attract voters' attention.[63]

Meiners also declined to adopt the position that an entire recall petition be rejected if any of the stated grounds are insufficient.[64] *Meiners* recognized that such a construction would frustrate the purposes of recall because recall proponents may be forced to bear the significant burden of gathering signatures a second time if any aspect of the grounds was found deficient.[65] Having identified those outcomes to be avoided, *Meiners* ruled that a certifying officer may "delete severable individual charges that do not come within the grounds specified by statute."[66] *Meiners* ruled, however, that "those charges which are sufficient to meet the statute must be set forth on the ballot in full, as contained in the petition, without revision."[67] *Meiners* observed that that approach would avoid the hazards of other approaches and would be fair to proponents of recall, the targeted officials, and voters.[68]

The Alaska Supreme Court has employed similar reasoning to address presentation to the voters of a ballot initiative, portions of which were unconstitutional. In *McAlpine v. University of Alaska*, the Alaska Supreme Court discussed whether Alaska courts have the power to sever from an initiative not yet put to popular vote a "discrete constitutionally-impermissible

---

[61] 687 P.2d at 302.
[62] 687 P.2d at 302.
[63] 687 P.2d at 302.
[64] 687 P.2d at 302.
[65] 687 P.2d at 302-303.
[66] 687 P.2d at 303. Other states take a similar approach. *See, e.g., Hamlett v. Hubbard*, 416 S.E.2d 732, 733-34 (Ga. 1992) (directing that insufficient allegations in a recall petition be expunged or obliterated from the petition before it is submitted to the people); *Reynolds v. Figge*, 19 P.3d 193, 202 (Kan. App. 2001) (indicating that "it would serve little purpose for an official subject to recall to obtain a determination that one or more of the grounds for recall is sufficient, but yet allow those legally insufficient grounds to be posted at the polling places" and ruling "that the statement for recall posted at the polling places must contain only the legally sufficient grounds for recall"). *But see Garvin v. Jerome*, 757 So.2d 1190, 1192-94 (Fla. 2000) (describing recall as an "extraordinary proceeding with the burden on those seeking to overturn the regular elective process to base the petition on lawful grounds or face the invalidation of the proceedings" and holding that a recall petition in which four of the five included grounds "were legally insufficient could not properly form the basis for a recall election").
[67] 687 P.2d at 303.
[68] 687 P.2d at 303.

portion of a proposed bill and order the remainder to appear on the next ballot without the sponsors reinstituting the certification and signature-gathering processes."[69] *McAlpine* observed that courts with "power to alter initiatives may frustrate the constitutionally-guaranteed right of the people to sponsor, subscribe to, vote on, and enact laws by initiative."[70] But *McAlpine* concluded that "circumspect judicial exercise of the power to sever impermissible portions of initiatives will promote, rather than frustrate, the important right of the people to enact laws by initiative."[71] The court noted that invalidating an entire initiative "on grounds that one sentence of secondary importance is constitutionally invalid would be strong medicine" as it would force those supporting the initiative "to choose between abandoning their efforts altogether and submitting a new application and expending, for the second time, the significant time and effort required to generate public enthusiasm and gather the requisite number of signatures."[72]

McAlpine discussed *Meiners* and emphasized *Meiners'* conclusion that "striking the entire petition rather than excising the invalid portion would place an unwarranted constriction on the rights of the people to express their will."[73] *McAlpine* concluded that a court's duty when conducting pre-election review of an initiative was similar to its duty when reviewing an already enacted law, such that a reviewing court should sever an impermissible portion of the proposed bill when:

> (1) standing alone, the remainder of the proposed bill can be given legal effect; (2) deleting the impermissible portion would not substantially change the spirit of the measure; and (3) it is evident from the content of the measure and the circumstances surrounding its proposal that the sponsors and subscribers would prefer the measure to stand as altered, rather than to be invalidated in its entirety.[74]

The protective considerations identified in *McAlpine* apply with equal measure to the certification of a recall application under Title 15. In fact, the third factor noted above becomes self effectuating in the context of a recall application. Recall sponsors can determine for themselves whether to

---

[69] 762 P.2d 81, 92 (Alaska 1988).
[70] 762 P.2d at 92.
[71] 762 P.2d at 93.
[72] 762 P.2d at 93.
[73] 762 P.2d at 94.
[74] 762 P.2d at 94-95 (footnotes omitted).

undertake the effort of circulating recall petitions if allegations in the application have been severed as insufficient.

That severable individual charges may be deleted from a recall petition does not mean that each element of a recall petition must be evaluated in isolation. Requiring that each factual allegation or paragraph of an application be evaluated in isolation would run counter to the principle that recall statutes are to be reviewed liberally to enable a broad spectrum of Alaskans to use the recall process without being tripped up by unnecessary legal technicalities or artificial hurdles.[75] It would be inappropriate to evaluate a recall application in such a manner that the certification of the application depended upon fortuities of phrasing, paragraph and structure of the statement of the grounds. In that regard, it is important to remember that the Title 15 recall statutes are skeletal and do not provide clear guidance regarding the methods by which sufficiency of the asserted grounds will be judged.

VI. How Should the Grounds for Recall Under Title 15 be Interpreted?

A. Lack of Definition and General Guidelines

The four statutory grounds for recall of state office holders are "lack of fitness," "incompetence," "neglect of duties," and "corruption."[76] The legislature, which is charged by the constitution to establish the grounds for recall, has not defined these four terms. Thus, Title 15 has the same "ambiguities" that exist in Title 29.[77]

The paucity of information in the statutes establishing the grounds for recall leaves recall applicants and targeted officials guessing as to what interpretive mechanisms might be employed to define the grounds after the application has been filed. Others have used a variety of interpretive methods to grapple with the problem of fairly interpreting undefined terms in the context of the "middle ground" where recall is both for cause as well as a political tool[78]

---

[75] 687 P.2d at 296.
[76] AS 15.45.510.
[77] *Cf. Meiners*, 687 P.2d at 296.
[78] *See* Letter from attorney Harold Brown to Charlotte Thickstun, Director, Division of Elections (August 24, 1992) (hereinafter "Brown letter") attached as **Exhibit 3**; *Coghill v Rollins, et al.*, No. 4FA-92-178 CI (Alaska Super., Sept. 14. 1993) (Memorandum decision) (hereinafter "Savell decision"), attached as **Exhibit 4**.

We interpret the grounds of recall in light of the following guidelines:

1. The grounds for recall should not be defined too restrictively. While grounds for recall must be specified, the *Meiners* court, in discussing the Title 29 grounds, contrasted Delegate White's comments at the Alaska Constitutional convention (urging that the people retain the right to determine the reasons for recall) with Delegate Hurley's comments (urging that the Legislature prescribe the grounds to avoid recalls for "petty grounds") and noted that the original statutory listing of grounds by the Legislature was quite broad – effectively tracking Delegate White's philosophy.[79] The court went on to note with approval that subsequent amendment of the statute, while appearing to be a limitation of grounds for recall, may have, instead, been a summary of existing grounds.[80] The court counseled that "it would be a mistake to read too much into the statute's history."[81]

2. The Alaska Supreme Court has said that "[i]n interpreting a statute or an ordinance, [the court's] goal is to give effect to the intent of the law making body 'with due regard for the meaning that the language in the provision conveys to others.'"[82] A related principle is that "[i]n assessing statutory language, 'unless words have acquired a peculiar meaning, by virtue of statutory definition or judicial construction, they are to be construed in accordance with their common usage.'"[83]

3. One could try to define the four statutory grounds for recall through reference to unrelated statutes. While this might be helpful, it is a problematic interpretive method because it involves relatively elaborate legal research.[84] Interpretation of the grounds

---

[79] *Meiners*, 687 P.2d at 295.
[80] 687 P.2d at 295.
[81] 687 P.2d at 295.
[82] *Marlow v. Municipality of Anchorage*, 889 P.2d 599, 602 (Alaska 1995) *quoting Foreman v. Anchorage Equal Rights Comm'n.*, 779 P.2d 1199, 1201 (Alaska 1989)(citing *State v. Alex*, 646 P.2d 203, 208-09 n.4 (Alaska 1982)).
[83] *Muller v. BP Exploration (Alaska), Inc.*, 923 P.2d 783, 787 (Alaska 1996) *quoting Tesoro Alaska Petroleum Co. v. State*, 746 P.2d 896, 905 (Alaska 1987).
[84] Dozens of Alaska statutes use the terms "fitness" and "incompetence." Six Alaska statutes, other than AS 15.45.510, use "corruption": AS 09.43.120(a)(2) ("corruption in any of the arbitrators" is grounds for vacating an arbitration award); AS 15.20.540 ("corruption on the part of an election official sufficient to change the result of the election" is grounds for contesting an election result); AS 5.30.160 (listing findings supporting the Congressional Ballot

for recall based on such research might require detailed legal advice and thereby render recall inaccessible to a broad spectrum of Alaskans, a result to be avoided.[85] Interpretation through comparison to other statutes is also impossible for some of the listed grounds for recall. Each Alaska statute using the word "corruption," for instance, involves concerns about corruption or the appearance of corruption among public office holders, including legislators, but none defines corruption.

4. *Meiners* defined "failure to perform prescribed duties" by reference to the office holder's statutory duties broadly interpreted to include implicit related obligations.[86] In *Meiners*, the recall proponents alleged that the school board members had failed to adequately supervise and control the conduct of the superintendent.[87] *Meiners* analyzed the sufficiency of the allegations by referring to the statute establishing the duties of a regional school board, which included the obligation to "employ a chief school administrator,"[88] and the statute establishing the powers of a regional school board, which included the power to "appoint, compensate and otherwise control all school employees."[89] *Meiners* rejected the argument that "controlling" school employees, including the superintendent, was merely a discretionary function that the board may choose not to perform.[90] Thus, at least when statutory duties are involved, implicit related obligations must also be considered.

Access Limitation Act, including that close alignment of federal office holders with special interest groups providing campaign contributions creates corruption or the appearance of corruption, which reduces voter participation); AS 15.30.170(1) (listing purposes of the Congressional Ballot Access Limitation Act including to "promote, protect, and defend the compelling interest of the citizens of this state in preventing corruption and the appearance of corruption among the federal legislative representatives of this state by limiting the number of terms in which any Senator or Representative may hold office[.]"); AS 24.50.010(6) (legislative findings for legislative ethics statutes include that "No code of conduct, however comprehensive, can anticipate all situations in which violations may occur nor can it prescribe behaviors that are appropriate to every situation; in addition, laws and regulations regarding ethical responsibilities cannot legislate morality, eradicate *corruption*, or eliminate bad judgment[.]")(emphasis added); AS 39.52.010(6) (recognizing the same in legislative findings regarding the executive branch ethics act).

[85] *Meiners*, 687 P.2d at 295-96.

[86] 687 P.2d at 299.

[87] 687 P.2d at 291-92.

[88] 687 P.2d at 299 & n.15 (quoting AS 14.08.111).

[89] 687 P.2d at 299 & n.16 (quoting AS 14.08.101).

[90] 687 P.2d at 300.

B. Interpreting the Statutory Grounds for Recall in Title 15

1. Corruption

No Alaska Statute defines corruption. No Alaska Supreme Court case defines "corruption." In a 1992 legal opinion, Harold Brown concluded that "corruption implies an intentional evil or wrongful act."[91] Brown's definition is broader than the definitions of corruption in legal and nonlegal dictionaries. Black's Law Dictionary defines corruption as follow:

> An act done with intent to give some advantage inconsistent with official duty and the rights of others. The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.[92]

The definition of corruption in Black's Law Dictionary includes a cross-reference to the term "bribe," which it defines as,

> Any money, goods, a right in action, property, thing of value, or any preferment, advantage, privilege, or emolument, or any promise or undertaking to give any, asked, given, or accepted, with the corrupt intent to induce or influence action, vote, or opinion of a person in any public or official capacity.[93]

Nonlegal dictionaries have similar definitions. For example, The New Oxford American Dictionary defines corruption as "dishonest or fraudulent conduct by those in power, typically involving bribery."[94] The definitions of corruption in Merriam-Webster's Collegiate Dictionary include "impairment of integrity, virtue, or moral principle," or an "inducement to wrong by improper or unlawful means (as bribery)."[95]

The problem of elected officials being perceived as being influenced in the execution of their duties by conflicts of interest has been recognized by the

---

[91] *See* Brown Letter, **Exhibit 3** at 9-10.
[92] Black's Law Dictionary 345 (6th ed. 1990).
[93] Black's Law Dictionary 191 (6th ed. 1990).
[94] The New Oxford American Dictionary 386 (2001).
[95] Merriam-Webster's Collegiate Dictionary 408 (Deluxe ed. 1998).

Alaska legislature and is addressed in the Legislative Ethics Act ("LEA"),[96] which establishes standards of conduct for legislators. As an introduction to those standards, the legislature found that "A fair and open government requires of legislators . . . conduct the public's business in a manner that preserves the integrity of a legislative process and avoids conflicts of interest or even the appearance of conflicts of interest" and that "A part time citizen legislature implies that legislators are expected and permitted to earn outside income, and that the rules governing legislators' conduct during and after leaving public service, must be clear, fair, and as complete as possible."[97]

The statutory standards of conduct for legislators "specifically supersede the provisions of the common law relating to legislative conflict of interest that may apply to a member of the legislature."[98] These provisions, however, do "not exempt a person from applicable provisions of another law unless the law is expressly superceded or incompatibly inconsistent with the specific provisions of the LEA."[99] Because the statutory term "corruption," at its very essence, reflects a particular type of conflict of interest, "corruption" in Title 15 should not be interpreted in a way that is inconsistent with the LEA.

Based on the above, we interpret "corruption" in the context of recall of a legislator as (1) intentional conduct, (2) motivated by private self-interest, (3) in the performance of work as a legislator, (4) that violates one or more provisions of the LEA or other statutes intended to guard against corruption.[100]

2. Neglect of Duties

Neglect of duties as a statutory ground for recall of a state public official has not been expressly construed in any Alaska case with precedential value in Alaska.[101] Harold Brown interpreted "neglect of duties" as meaning refusal or unwillingness without sufficient excuse to perform one's duties.[102] Brown did not discuss how an office holder's duties should be defined.

---

[96] Alaska Statutes Title 24, Chapter 60.
[97] AS 24.60.010(2) and (4).
[98] AS 24.60.020(b).
[99] AS 24.60.020(b).
[100] *See, e.g.*, AS 11.41.520 (establishing the crime of extortion); AS 11.41.530 (establishing the crime of coercion).
[101] Judge Savell limited his analysis to allegations of incompetence and unfitness and did not define neglect of duties. *See* Savell decision, **Exhibit 4**.
[102] *See* Brown letter, **Exhibit 3** at 9.

Meiners addressed the sufficiency of allegations of "failure to perform prescribed duties,"[103] which is a statutory ground for recall under Title 29 that may be similar to "neglect of duties." The difference in wording of the two recall statutes may suggest that those terms should be interpreted as having distinct meanings. We believe the terms in the two recall statutes are sufficiently similar that it is appropriate to follow the *Meiners* approach in evaluating the sufficiency of allegations of neglect of duty. As demonstrated by the discussion of the alleged failure to adequately supervise a school administrator, *Meiners* defines duties for the purposes of recall as encompassing the express statutory obligations associated with the office and related obligations implicitly included as corollaries to the office holder's express duties.[104]

We, therefore, interpret "neglect of duties" under Title 15 as the nonperformance of a duty of office established by applicable law. An "applicable law" includes implicit related obligations. While "neglect of duties" may overlap with "corruption" to the extent that an allegation describes conduct violative of the LEA, neglect of duties also encompasses duties outside of and in addition to the LEA.

3. Incompetence

In 1992, Harold Brown concluded that "incompetence" means a lack of physical or mental capacity to perform the duties of the office.[105] In 1993, when ruling on the sufficiency of an application for a petition to recall Lieutenant Governor Coghill, Superior Court Judge Richard Savell ruled that "incompetence for the purposes of recall must relate to a lack of ability to perform the official's required duties" without including any requirement that the lack of ability stem from mental or physical disability.[106] The definitions of incompetence in nonlegal dictionaries vary in their levels of generality and detail, but do not include the limitation that the inability of an incompetent person to perform stems from a physical or mental disability.[107]

---

[103] *Cf. Meiners*, 687 P.2d at 299 n.14 (discussing failure to perform prescribed duties).
[104] 687 P.2d at 300.
[105] Brown letter, **Exhibit** 3 at 9 *citing Cole v. Webster*, 692 P.2d 799, 804 (Wash. 1984) *and* 1981 Op. Kansas Atty. Gen. (Jan. 20, No. 1 82-11).
[106] Savell decision, **Exhibit 4** at 21.
[107] The New Oxford American Dictionary defines "incompetent" as "not having or showing the necessary skills to do something successfully," and notes that in the field of law "incompetent" means "not qualified to act in a particular capacity." The New Oxford American Dictionary 860 (2001). Merriam-Webster's Collegiate Dictionary defines "incompetent" as "not legally qualified[;] inadequate or unsuitable for a particular purpose[; and] lacking the qualities need for effective action [,] unable to function properly." Merriam-Webster's Collegiate Dictionary 928 (Deluxe ed. 1998).

We find Judge Savell's less restrictive definition to be closer to a common understanding of incompetence. We interpret "incompetence" for the purposes of recall under Title 15 as the inability to perform the duties of office regardless of the cause.

In keeping with the principle that an office holder cannot be recalled for discretionary decisions, we bound our definition of "incompetence" to exclude claims that a lawmaker is incompetent by reason of being insufficiently informed about the subjects and policies before the legislature. We would not find sufficient allegations that a policy maker was incompetent because he or she declined to read briefing or a position paper on a given subject. We also would not require lawmakers or executive officials with broad responsibilities, such as the Governor, to have personally read each title and chapter of the Alaska Statutes.[108]

4. Lack of Fitness

The statutes governing recall under Title 15 do not define "lack of fitness." Brown concluded that a "lack of fitness" implied conduct that was unsuitable, inappropriate or improper.[109] Brown deemed insufficient the allegation that Governor Hickel's "unfitness was demonstrated by lapses of memory and publicly admitted mistakes which far exceed the normal bounds of sound judgment" because the allegation did not describe improper conduct and lacked necessary detail.[110] We find Brown's working definition of fitness to be consistent with the common understanding of lack of fitness as unsuitability.[111] Standing alone, the common understanding of lack of fitness as unsuitability might bring Alaska too close to a political model of recall. That result can be avoided, however, by the requirement of particularity and the limitation that the asserted grounds for recall must relate to the recall target's conduct in office.[112] Those limiting considerations prevent lack of fitness from being used as a catch-all allowing a minority of the electorate to produce political instability by attempting recall without identifiable cause.

---

[108] *Cf.* Savell decision, **Exhibit 4**.

[109] Brown letter, **Exhibit** 3 at 9 *citing CAPS v. Alvarado*, 832 P.2d 790 (N.M. 1992).

[110] **Exhibit 3** at 10-11.

[111] *Cf.* The New Oxford American Dictionary 640 (2001) (defining "fitness" as "the quality of being suitable to fill a particular role or task").

[112] Even states taking a more political view of recall require that the asserted cause for recall be connected with the recall target's conduct in office. *See, e.g., Westpy v. Burnette*, 197 A.2d 400, 403-04 (N.J. Super. App. Div. 1964) *judgment aff'd by Westpy v. Burnette*, 197 A.2d 857 (N.J. 1964).

In our view, allegations need not demonstrate a violation of the LEA to sufficiently state "lack of fitness" as a ground for recall under Title 15. Among the findings in the introduction to the LEA are:

> (1) high moral and ethical standards among public servants in the legislative branch of government are essential to assure the trust, respect, and confidence of the people of this state;
> (2) a fair and open government requires that legislators and legislative employees conduct the public's business in a manner that preserves the integrity of the legislative process and avoids conflicts of interest or even appearances of conflicts of interest;
> . . . .
> (6) no code of conduct, however comprehensive, can anticipate all situations in which violations may occur nor can it prescribe behaviors that are appropriate to every situation; in addition, laws and regulations regarding ethical responsibilities cannot legislate morality, eradicate corruption, or eliminate bad judgment[.][113]

As noted above, the provisions of the LEA supersede provisions of the common law related to conflict of interest, but do not exempt legislators from applicable provisions of another law unless that law is expressly superseded or incompatibly inconsistent with the LEA.[114] An interpretation of "lack of fitness" that treats the standards of conduct of the LEA as behavioral floors, is not "incompatibly inconsistent" with the LEA and is, in fact, wholly consistent with the legislative findings that the LEA does not anticipate all possible violations and cannot draw statutory lines prohibiting all conduct which is not acceptable.

We interpret "lack of fitness" under Title 15 as referring to conduct in office showing the office holder to be unsuitable through factual detail sufficient to enable the public to understand the charge and the recall target to respond meaningfully.

---

[113] AS 24.60.010.
[114] AS 24.60.020(b).

VII. **Analysis of the Ogan Recall Application**

A. Factual Particularity

With regard to the application for a petition to recall Senator Ogan, we find that the alleged grounds for recall relate to one alleged event: Senator Ogan's alleged promotion of Evergreen Resources' interests through HB 69. We conclude that individual factual allegations that are related to a single claim should be read together.[115] In other words, the application to recall Senator Ogan should be read as a whole.

An argument could be made that to evaluate a recall application, the stated grounds should be parsed so each factual assertion is compared in isolation to the statutory grounds for recall under Title 15. We advise against taking that approach for somewhat interrelated reasons. First, in discussing Title 29 recalls, the Alaska Supreme Court has indicated that the recall processes and statutes are to be reviewed liberally so individual Alaskans can use the recall process without being tripped up by unnecessary legal technicalities or artificial hurdles.[116] In general, considering each allegation or paragraph of an application in isolation would be counter to that principal because certification of an application would depend upon fortuities of phrasing, paragraphing and structure of the statement of the grounds.

In addition, given the lack of statutory guidance in Title 15, recall sponsors ought not be penalized for either mischaracterizing one paragraph as one ground of recall or alleging that a particular fact alleged constitutes all or more than one ground for recall. To conclude otherwise would, through the ambiguities of the statutes, put the recall process into a legalistic straight jacket. Finally, the allegations in the specific application for recall of Senator Ogan all relate to Senator Ogan's alleged promotion of Evergreen Resources and HB 69. Because the application states facts related to a single event, separating those facts for consideration in isolation would be inappropriate.

We find, reading the application as a whole, that the application for a petition to recall Senator Ogan is sufficiently particular to enable those who may sign a recall petition to understand the nature of the alleged wrongdoing and to permit Senator Ogan to meaningfully respond in a rebuttal limited to

---

[115] *Cf.* Savell decision, **Exhibit 4** at 22-23 (concluding that the allegation that Coghill had made contradictory public statements regarding his involvement and knowledge of the recall process should be read together with the claim that Coghill was incompetent because he did not know the State's election laws).

[116] *Meiners*, 687 P.2d at 296.

200 words. The application, therefore, meets the goals of the statute as discussed *supra* in Section IV above. Stripped of argument, nonparticularized facts, and legal conclusions, the application for the recall of Senator Scott Ogan contains the following factual allegations:

1. Ogan was employed by Evergreen Resources.[117]

2. Ogan was active as an Evergreen and coal bed methane industry promoter.[118]

3. Ogan actively promoted legislation directly benefiting business interests of Evergreen Resources.[119]

4. Ogan promoted Evergreen in legislative committee.[120]

5. Ogan was listed as Evergreen's corporate contact in legislative material submitted to the House Oil and Gas Committee hearings on HB 69.[121]

6. HB 69 reduced local control over coal bed methane development, which directly benefited Ogan's employer Evergreen.[122]

7. Ogan did not abstain from voting for HB 69.[123]

8. Ogan's legislative activities enabled Evergreen to acquire coal bed methane leases.[124]

9. Ogan knew that his constituents would be deprived of actual notice of the leases.[125]

10. Ogan did not protect the private property and due process rights of his constituents.[126]

---

[117] **Exhibit 2** at ¶ 1.
[118] **Exhibit 2** at ¶ 5.
[119] **Exhibit 2** at ¶ 1.
[120] **Exhibit 2** at ¶ 3.
[121] **Exhibit 2** at ¶ 3.
[122] **Exhibit 2** at ¶ 4.
[123] **Exhibit 2** at ¶ 4.
[124] **Exhibit 2** at ¶ 2.
[125] **Exhibit 2** at ¶ 2.
[126] **Exhibit 2** at ¶ 1.

Taking all the above factual allegations as true and reading them together, the application describes a course of conduct whereby an elected official took active steps to promote legislation benefiting his employer, including promoting the employer in legislative committee proceedings and voting in favor of that legislation knowing that it would benefit his employer at the expense of his constituents. The application as a whole alleges conduct in sufficient detail to enable voters and petition signatories to understand the nature of the alleged wrongdoing and to permit a meaningful response from Senator Ogan. We therefore conclude the particularity requirement of AS 15.45.500 is satisfied.

We did not include in the above list of facts the allegation that Senator Ogan misstated important facts on March 28, 2003.[127] The application does not indicate what facts Senator Ogan is alleged to have misstated on March 28, 2003, why the facts were important, or how the alleged misstatements relate to the alleged conflict of interest. The absence of such particulars deprives Senator Ogan of the opportunity to meaningfully respond to the allegation that he misstated important facts. Because the allegation that Senator Ogan misstated facts lacks detail necessary to satisfy the purposes of the particularity requirement, it should be stricken.

B. Legal Sufficiency

Having concluded that the allegations are stated with sufficient particularity, we considered whether the facts alleged in the application for a petition to recall Senator Ogan amount to a prima facie showing of any of the four statutory grounds for recall under Title 15, each of which has been asserted by the applicants. A related question is what significance, if any, derives from the fact that the applicants have asserted that the same course of conduct demonstrates all four of the statutory grounds for recall under Title 15. Given the lack of definition of each of the four asserted grounds for recall, their potential overlap, and the fact that recall applicants may obtain clarification on that point only after composing an application and gathering the preliminary signatures necessary for the initial filing, less weight should be given to the precise phrasing of the application and characterization of the facts as applying to each of the four grounds for recall. In order to avoid erecting artificial technical hurdles, we recommend comparing the particular factual allegations as a group to each of the four statutory grounds for recall.

---

[127] **Exhibit 2** at ¶ 3.

1. Neglect of Duties

The application alleges facts that constitute "neglect of duties" as a ground for recall. We have interpreted "neglect of duties" as meaning nonperformance of a duty of office established by applicable law. The precise duties of a legislator are not as clearly defined as the duties for executive branch officials such as the Lieutenant Governor, but even broadly defined, the duties of legislators do not include any obligation to refrain from supporting legislation that alters the notice procedures for matters such as mineral leasing. In the absence of information about a conflict of interest, the assertion that a legislator violated his duties by supporting legislation that enabled such leases to be obtained, is little more than criticism of a policy decision. The duties of an individual legislator such as Ogan do not differ from those of any other legislator, and the legislative body is not prohibited from passing such legislation merely because it may be susceptible to constitutional challenge. To the extent that the application alleges that Senator Ogan neglected his duties by working to pass legislation changing the lease notice standards, the allegation is insufficient. The assertions that "neglect of duties" include the allegations that Senator Ogan promoted legislation "instead of protecting the private property and due process rights of his constituents" and that Senator Ogan's constituents were deprived of their constitutional right of due process should be stricken because, as noted above, neglect of duty cannot be interpreted to include support for legislation that may be subject to constitutional challenge.[128]

The application also asserts that Senator Ogan neglected his duties by failing to recognize an obvious conflict of interest. With respect to conflicts of interest, a legislator's legal obligation is to refrain from taking action in violation of the statutory standards of conduct set forth in the LEA. Whether the allegations suggest a violation of those standards of conduct is discussed below under the rubric of corruption. In this respect, the statutory ground "neglect of duties" overlaps with the ground "corruption."

2. Corruption

The application asserts that Senator Ogan should be recalled due to corruption. We have interpreted "corruption" as a ground for recall under Title 15 as intentional conduct in the performance of work as a legislator motivated by private interests that violates the LEA. Among the provisions in

---

[128] The grounds for recall with redline changes recommended in this opinion are attached as **Exhibit 5**.

the LEA is a prohibition on using public funds for a nonlegislative purpose, or for the private benefit of the legislator or another person.[129] The statutory standard of conduct for legislators also provide that

> Unless required by the Uniform Rules of the Alaska State Legislature, a legislator may not vote on a question if the legislator has an *equity* or ownership interest in a business, investment, real property, lease, or other enterprise if the enterprise is substantial and the effect on that interest of the action to be voted on is greater than the effect on a substantial class of persons to which the legislator belongs as a member of a profession, occupation, industry or region.[130]

Under AS 24.60.100, a legislator "may not represent another person for compensation before an agency, committee, or other entity at the legislative branch."

Read together, the allegations in the application for a petition to recall Senator Ogan allege that Senator Ogan as an employee of Evergreen Resources, promoted Evergreen before at least one legislative committee, supported HB 69 to benefit his employer to the detriment of his constituents and later voted for HB 69. The activity described in the application does not demonstrate a violation of the prohibition on voting set forth in AS 24.60.030 insofar as Senator Ogan is not alleged to have any equity or ownership interest in Evergreen. The LEA does not expressly prohibit voting on legislation that would benefit one's employer. Nor do the allegations indicate that Senator Ogan used any public funds for the private benefit of himself or Evergreen or any other person.

The factual allegations in the application for a petition to recall Senator Ogan do, however, describe a violation of AS 24.60.100, which prohibits legislators from representing another person for compensation before a committee of the legislative branch. The application includes the allegation that Senator Ogan promoted his employer Evergreen in legislative committee and was listed as Evergreen's corporate contact in legislative materials submitted to the House Oil and Gas Committee hearing on HB 69. The application does not expressly assert that Senator Ogan intended a violation of the legislative standards of conduct, or that he engaged in that representation of Evergreen

---

[129] AS 24.60.030(2).
[130] AS 24.60.030(g) (emphasis added).

for the purpose of benefiting himself, but it provides sufficient detail to allege a violation of AS 24.60.100 which, per our interpretation, amounts to "corruption." This allegation also constitutes an allegation of "neglect of duty" insofar as the two grounds overlap on violations of the LEA.

3. Lack of Fitness

The application states that Senator Ogan's conflict of interest between his legislative duties and his activities as a promoter for Evergreen and the coal bed methane industry demonstrate an inability to recognize an obvious conflict showing Senator Ogan's lack of fitness for his office. Like Brown, we have interpreted "lack of fitness" as meaning unsuitability demonstrated by specific facts related to a recall target's conduct in office. Read together, the factual allegations in the application for a petition to recall Senator Ogan sufficiently state lack of fitness as a ground for his recall from office. The asserted grounds, taken as true, describe a specific alleged conflict of interest and explain what basis there is for believing that Senator Ogan's performance of his functions as a legislator have been colored by concern for the private interests of his alleged employer, Evergreen, at the expense of his broader policy making obligations. By providing a specific example of alleged conduct whereby Senator Ogan's performance of his legislative duties is said to have been compromised, the application adequately states grounds by which the electorate could conclude that Senator Ogan is unsuitable for his position as a legislator. In essence, and in this application, "lack of fitness" encompasses the claim that Senator Ogan's conduct created an "appearance[s] of conflict[s] of interest"[131] which, while not specifically violating the LEA, has made him unfit for office.

4. Incompetence

The application for a petition to recall Senator Ogan also asserts that Senator Ogan's alleged conflict of interest demonstrates a failure in ethical judgment that shows incompetence. However, the specific factual allegations contained in the application do not demonstrate that Senator Ogan is unable to perform the duties of his office. The application therefore does not state incompetence as a proper ground for recall.

VIII. **Conclusion**

For the reasons stated above, we recommend that you certify the application for a petition to recall Senator Ogan. The application was timely

[131] AS 24.60.010(2).

filed, names a person subject to recall, and is supported by a sufficient number of qualified subscribers. The application is substantially in the required form, but its grounds include one factual allegation that is insufficient to meet the purposes of the particularity requirement of AS 15.45.500(2). The application also includes unsupported legal assertions and conclusions that should be stricken. Attached as **Exhibit 5** is a statement of the grounds showing which portions have been deleted. We recommend that you use the grounds as set forth in **Exhibit 5**, rather than as submitted by the applicants, to prepare a recall petition in accordance with AS 15.45.560.

If you have any questions, please contact me.

Sincerely,

BANKSTON, GRONNING, O'HARA,
SEDOR, MILLS, GIVENS & HEAPHEY, P.C.

John M. Sedor

JMS/LEF/sll
Enclosure
S3476\02\LTRglaiserJMS2

HB 438 Definitions

Corruption:

HB 438 – means an act done by a person who is subject to recall under AS 15.45.470 with an intent to give some advantage inconsistent with official duty and the rights of others.

Black's - An act done with intent to give some advantage inconsistent with official duty and the rights of others. The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or another person, contrary to duty and the rights of others.

Words and Phrases – The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or another person, contrary to duty and the rights of others. *State v. Barnett, Okl.Cr. App., 69 P.2d 77, 78.*

is an act of an official or fiduciary person who wrongfully acts contrary to duty and to rights of others and its effect vitiates the basic integrity and purity negativing that which is vital to the due course of justice. *U.S. ex rel. Montgomery v. Ragen, D.C.Ill., 86 F.Supp. 382, 390.*

Incompetence:

HB 438 – means substantial inability to perform the duties of office.

Attorney Harold Brown in his August 24, 1992 letter to Charlotte Thickstun, Dir., Division of Elections concluded that "incompetence" means a lack of physical or mental capacity to perform the duties of office.

Judge Richard Savell in ruling on the sufficiency of an application for a petition to recall Lt. Governor Coghill ruled that "incompetence for the purposes of recall must relate to a lack of ability to perform the official's required duties" without including any requirement that the lack of ability stem from mental or physical disability.

Black's – Lack of ability, knowledge, legal qualification, or fitness to discharge the required duty of professional obligation. A relative term, which may be, employed as meaning disqualification, inability or incapacity and it can refer to lack of legal qualifications or fitness to discharge the required duty and to show want of physical or intellectual or moral fitness.

Words and Phrases - the lack of ability or fitness to discharge the required duty. *Hatfield v. New Mexico State Bd. Of Registration for Professional Engineers and Land Surveyors, 290 P.2d 1077, 1080, 60 N.M. 242.*

"Incompetency" as grounds for removal of public officer, has reference to any physical, moral, or intellectual quality, lack of which incapacitates officer to perform his duties, and criticism of a public official does not constitute "incompentency". *Laws 1921, c. 669 §30. Sausbier v. Wheeler, 299 N.Y.S. 466, 473, 252 App.Div. 267.*

"Incompetency" as ground for suspension and removal of officer, refers to any physical, moral, or intellectual quality, lack of which incapacitates one to perform duties of his office. "Incompetency" of officer, as grounds for suspension and removal from office under F.S.A. Const. Art, 4 § 15, may arise fro gross ignorance of official duties or gross carelessness in the discharge of them, or it may arise from lack of judgment and discretion, or from serious physical or mental defect not present at the time of election, although not all physical and mental defects so arising would give ground for suspension. *State ex rel. Hardie v. Coleman, 155 So. 129, 155 Fla. 119, 92 A.L.R. 988.*

Means gross ignorance of official duties or gross carelessness in the discharge of them, or an officer may be found to be incompetent when, by reason of some serious physical or mental defect, not existing at the time of his election, he has become unfit or unable to discharge promptly and properly the duties of his office. *State ex rel. DeBellvue v. Ledoux, La.App., 3 So. 188, 191, 192.*

Lack of fitness

HB 438 – means the existence of long-term physical or mental disability that seriously impairs the official's ability to perform the duties of the office.

Attorney Harold Brown in his August 24, 1992 letter to Charlotte Thickstun, Dir., Division of Elections concluded that "lack of fitness" implied conduct that was unsuitable, inappropriate or improper.

Attorney John M. Sedor in his April 8, 2004 letter to Laura Glaiser, Director, Division of Elections defined "lack of fitness" under Title 15 as referring to conduct in office showing the office holder to be unsuitable through factual detail sufficient to enable the public to understand the charge and the recall target to respond meaningfully.

Black's - not defined

Words and Phrases – not defined

Neglect of Duties

HB 438 – failure to perform a duty of office established by law.

Attorney Harold Brown in his August 24, 1992 letter to Charlotte Thickstun, Dir., Division of Elections interpreted "neglect of duties" as meaningful refusal or unwillingness without sufficient excuse to perform one's duties.

Attorney John M. Sedor in his April 8, 2004 letter to Laura Glaiser, Director, Division of Elections interpreted "neglect of duties" under Title 15 as the nonperformance of a duty of office established by applicable law. An "applicable law" includes implicit related obligations.

Black's – not defined

Words and Phrases – refers to neglect or failure of officer, to do and perform some duty imposed by virtue of his office or required by law. Fla, Const. Art. 4 § 15. – *State ex rel. Hardie v. Coleman, 155 So. 129, 155 Fla. 119, 92 A.L.R. 988- Offic 66.*

l in the preceding general election in the state or in the senate or house
ficial sought to be recalled. (§ 9.74 ch 83 SLA 1960; am § 185 ch 100 SLA
ch 21 SLA 2000)

Iments. — The 2000 amendment, in the introductory language and "house district" for
000, substituted "must" for "shall" "electoral district" in paragraph (6).

10. Grounds for recall. The grounds for recall are (1) lack of fitness,
ce, (3) neglect of duties, or (4) corruption. (§ 9.75 ch 83 SLA 1960)

20. Manner of notice. Notice on all matters pertaining to the applica-
n may be served on any member of the recall committee in person or by
to a committee member as indicated on the application. (§ 9.76 ch 83 SLA

30. Notice of the number of voters. The director, upon request, shall
l committee of the official number of persons who voted in the preceding
1 in the state or in the senate or house district of the official to be recalled.
LA 1960; am § 186 ch 100 SLA 1980; am § 60 ch 21 SLA 2000)

dments. — The 2000 amendment,
2000, substituted "house district"
t."

40. Review of application for certification. The director shall review
and shall either certify it or notify the recall committee of the grounds of
ch 83 SLA 1960; am § 187 ch 100 SLA 1980)

50. Bases of denial of certification. The director shall deny certifica-
rmining that
ication is not substantially in the required form;
cation was filed during the first 120 days of the term of office of the official
l or within less than 180 days of the termination of the term of office of any
to recall;
on named in the application is not subject to recall; or
an insufficient number of qualified subscribers. (§ 9.79 ch 83 SLA 1960; am
SLA 1980)

60. Preparation of petition. Upon certifying the application, the direc-
ribe the form of, and prepare, a petition containing (1) the name and office
to be recalled, (2) the statement of the grounds for recall included in the
) the statement of warning required in AS 15.45.570, (4) sufficient space for
l addresses, and (5) other specifications prescribed by the director to assure
ng and control. Petitions, for purposes of circulation, shall be prepared by
1 a number reasonably calculated to allow full circulation throughout the
ghout the senate or house district of the official sought to be recalled. The

own to the petition, or who knowingly signs more than once for the same proposition at one election, or who signs the petition while knowingly not a qualified voter, is guilty of a class B misdemeanor. (§ 9.81 ch 83 SLA 1960; am § 190 ch 100 SLA 1980)

Sec. 15.45.580. Circulation. The petitions may be circulated only in person throughout the state or senate or house district represented by the official sought to be recalled. (§ 9.82 ch 83 SLA 1960; am § 62 ch 21 SLA 2000; am § 69 ch 82 SLA 2000)

Effect of amendments. — The first 2000 amendment, effective April 28, 2000, substituted "house district" for "election district." The second 2000 amendment, effective July 1, 2000, deleted "only by a sponsor and" following "circulated" and substituted "house district" for "election district."

Sec. 15.45.590. Manner of signing and withdrawing name from petition. Any qualified voter may subscribe to the petition by signing the voter's name and address. A person who has signed the petition may withdraw the person's name only by giving written notice to the director before the date the petition is filed. (§ 9.83 ch 83 SLA 1960; am § 191 ch 100 SLA 1980)

Sec. 15.45.600. Certification of circulator. Before being filed, each petition shall be certified by an affidavit by the person who personally circulated the petition. The affidavit shall state in substance that (1) the person signing the affidavit meets the residency, age, and citizenship qualifications of AS 15.05.010, (2) the person is the only circulator of that petition or copy, (3) the signatures were made in the circulator's actual presence, and (4) to the best of the circulator's knowledge, the signatures are those of the persons whose names they purport to be. In determining the sufficiency of the petition, the director may not count subscriptions on petitions not properly certified. (§ 9.84 ch 83 SLA 1960; am § 192 ch 100 SLA 1980; am § 70 ch 82 SLA 2000)

Effect of amendments. — The 2000 amendment, effective July 1, 2000, substituted "person" for "sponsor" in the first sentence, and in the second sentence substituted "meets the residency, age, and citizenship qualifications of AS 15.05.010" for "is a sponsor" and "circulator's" for "sponsor's" in two places.

Sec. 15.45.610. Filing of petition. A petition may not be filed within less than 180 days of the termination of the term of office of a state public official subject to recall. The sponsor may file the petition only if signed by qualified voters equal in number to 25 percent of those who voted in the preceding general election in the state or in the senate or house district of the official sought to be recalled. (§ 9.85 ch 83 SLA 1960; am § 63 ch 21 SLA 2000)

Effect of amendments. — The 2000 amendment, effective April 28, 2000, substituted "house district" for "election district" in the second sentence.

Sec. 15.45.620. Review of petition. Within 30 days of the date of filing, the director shall review the petition and shall notify the recall committee and the person subject to recall whether the petition was properly or improperly filed. (§ 9.86 ch 83 SLA 1960; am § 193 ch 100 SLA 1980)

zenship night schools
established; however,
control of the federal
of Indian Affairs;
il service area in the
eservation, and that
ortion of those grade
of a single regional

school district or a
3 ch 98 SLA 1966; am
32 ch 124 SLA 1975)

Education and Early De-
for "state Board of Edu-
accordance with sec. 104,

For definition of "school

Title 15. Elections.

Chapter

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

In 1971 "secretary of state" was changed to "lieutenant governor" throughout the title in conformity with the 1970 Alaska constitutional amendment (SJR 2) changing the designation of that office.

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

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

Chapter 05. Qualification of Voters.

Section

Collateral references. — 25 Am. Jur. 2d, Elections, § 1 et seq.

29 C.J.S., Elections, §§ 14-35.

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

(1) is a citizen of the United States;

(2) is 18 years of age or older;

(3) has been a resident of the state and of the house district in which the person seeks to vote for at least 30 days just before the election; and

(4) has registered before the election as required under AS 15.07 and is not registered to vote in another jurisdiction. (§ 1.01 ch 83 SLA 1960; am § 1 ch 125 SLA 1962; am § 1 ch 80 SLA 1963; am § 1 ch 211 SLA 1968; am § 1 ch 88 SLA 1969; am § 1 ch 15 SLA 1970; am § 1 ch 75 SLA 1972; am §§ 1, 38 ch 116 SLA 1972; am §§ 2, 3 ch 197 SLA 1975; am § 1 ch 100 SLA 1980; am § 27 ch 21 SLA 2000)

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

(1) registration and absentee voting procedures, except as otherwise provided in this section, shall be identical to the procedures established in this title;

(2) registration of otherwise qualified persons shall be permitted without regard to a durational residency requirement;

(3) if any citizen who is otherwise qualified to vote in the state for president and vice-president has begun residence in another state after the 30th day preceding the election and, for that reason, does not satisfy the registration requirements of that state, that person shall be allowed to vote for president and vice-president either in person in the precinct in which the person resided immediately before removal, or by absentee ballot as provided in AS 15.20. (§ 1 ch 69 SLA 1967; am § 3 ch 116 SLA 1972)

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

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

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

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

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

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

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

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

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

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

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

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

t
\
t.
o
P.

ch.
pr
tha
P.2

P
elec
1013
Po
is cle
and is
within
such an a[illegible] as his or

Collateral references.
residents of military establi
Residence of students f
ALR3d 797.

Sec. 15.05.030. Lo
crime that constitutes
not vote in a state, fed
the date of the uncondi
the person may registe
(b) The commission
unconditionally discha

VREMS - TIME: 19:30
GVRR280P-R2 (GBVREMS)

STATE OF ALASKA -- DIVISION OF ELECTIONS
NUMBER OF REGISTERED VOTERS BY PARTY WITHIN DISTRICT

DATE: 03/03/2006
PAGE: 3

	TOTAL	A	D	R	N	U	F	G	I	M
REGION 3 REGION III										
DISTRICT										
6	9,759	517	1,621	2,046	1,766	3,508		78	85	79
7	13,282	406	1,687	3,195	2,421	5,039		188	187	115
8	12,925	304	2,053	2,529	2,299	5,144		261	166	116
9	11,108	342	1,965	2,495	1,698	4,290		66	84	131
10	10,874	225	1,899	2,896	1,348	4,111		49	78	229
11	12,855	373	1,244	4,373	1,711	4,831		36	77	171
12	12,110	315	1,197	4,090	1,553	4,537	1	63	100	198
TOTAL REGION III (101 PRECINCTS)	82,838	2,482	11,666	21,624	12,796	31,452	1	731	692	1,039

44248

VREMS - TIME: 19:30
GVRR280P-R2 (GBVREMS)

STATE OF ALASKA -- DIVISION OF ELECTIONS
NUMBER OF REGISTERED VOTERS BY PARTY WITHIN DISTRICT

DATE: 03/03/20[illegible]
PAGE: 4

	TOTAL	A	D	R	N	U	F	G	I	M
REGION 4 REGION IV										
DISTRICT										
37	7,259	388	1,329	1,094	1,164	3,046		40	63	70
38	7,874	642	2,468	795	1,302	2,493		44	51	77
39	7,877	724	2,097	922	1,287	2,619		34	64	40
40	8,381	779	2,014	1,060	1,068	3,249		39	69	44
TOTAL REGION IV (98 PRECINCTS)	31,391	2,533	7,908	3,871	4,821	11,407		157	247	176
STATE TOTAL (439 PRECINCTS)	458,985	13,441	66,023	111,117	69,938	170,273	4	3,723	8,807	5,189

69,938
170,273
240,211

'GPVD090P X3QY VIEW PETITION TOTALS 03/13/2006 11:35
GVREMS GMC528A GUSERS

PETITION ID: 05GAS2 TYPE: INITIATIVE

NAME: AN ACT LEVYING A TAX ON CERTAIN LEASES HAVING KNOWN RESOURCES OF NATUR AL GAS, CONDITIONALLY REPEALING THE LEVY OF THAT TAX, AND AUTHORIZING

REQUIRED SIGNATURES:	31,450	(A) ADDRESS NOT PROVIDED:	583
		(B) DOB NOT MATCHED.. ..:	66
NUMBER OF QUALIFIED:	33,353	(D) DUPLICATE.....:	1,968
(Q) COMPUTER QUALIFIED:	27,952	(I) INACTIVE..... :	35
(M) MANUALLY QUALIFIED:	5,369	(J) NOT IN JURISDICTION.:	
(H) INACTIVE QUALIFIED:	32	(K) PETITION SIGNATURE..:	327
		(N) NAME NOT MATCHED....:	8,171
NUMBER OF UNQUALIFIED:	14,176	(R) NOT REGISTERED.....:	1,074
		(S) SSN NOT MATCHED.....:	843
		(T) DUPLICATE SSN.....:	1
TOTAL SIGNATURES:	47,529	(U) UNABLE TO IDENTIFY..:	976
		(V) VTR NUM NOT FOUND...:	90
		(X) NOT YET COUNTED.....:	13
QUALIFIED SPONSORS:	142	(Z) ADL NOT MATCHED.....:	18
UNQUALIFIED SPONSORS:	3	( ) OTHER.....:	11
		(W) WITHDRAWN.....:	

F1=MENU, F9=QUIT

10% 31.0.450 voted in 2004

2006

450,985
140,535

- no number produced by Div. of Elections 3/13 from last 2004 qualified voters
- myself & Thousands of AK NATIVES + AK VOTERS CHALLENGE the statistics produced by Div. of Elections since all the petition books I & my AHAB partner turned in were 100's of his native tribal blood.
- not receiving their voter reg. cards after I put my name on FED. DOCUMENT

GPVD090P X3QY VIEW PETITION TOTALS 03/13/2006 11:34
GVREMS GMC528A GUSERS

PETITION ID: 05LEGS TYPE: INITIATIVE

NAME: AN ACT RELATING TO A 90-DAY REGULAR SESSION OF THE LEGISLATURE; AND PROVIDING FOR AN EFFECTIVE DATE.

REQUIRED SIGNATURES:	31,450	(A)	ADDRESS NOT PROVIDED:	302
		(B)	DOB NOT MATCHED.....:	32
NUMBER OF QUALIFIED:	33,702	(D)	DUPLICATE.....:	2,268
(Q) COMPUTER QUALIFIED:	25,810	(I)	INACTIVE.....:	22
(M) MANUALLY QUALIFIED:	7,858	(J)	NOT IN JURISDICTION.:	1
(H) INACTIVE QUALIFIED:	34	(K)	PETITION SIGNATURE :	329
		(N)	NAME NOT MATCHED....:	4,846
NUMBER OF UNQUALIFIED:	11,370	(R)	NOT REGISTERED.....:	5590
		(S)	SSN NOT MATCHED.....:	418
		(T)	DUPLICATF SSN.....:	
TOTAL SIGNATURES:	45,072	(U)	UNABLE TO IDENTIFY..:	2,524
		(V)	VTR NUM NOT FOUND...:	41
		(X)	NOT YET COUNTED.....:	
QUALIFIED SPONSORS:	118	(Z)	ADL NOT MATCHED.....:	19
UNQUALIFIED SPONSORS:	8	( )	OTHER.....:	9
		(W)	WITHDRAWN.....:	

F1=MENU, F9=QUIT

Rep. Paul Seaton

From: john vinduska [jvinduska@hotmail.com]
Sent: Wednesday, March 15, 2006 8:49 PM
To: Rep. Paul Seaton
Subject: HB438

Representative Seaton:

I would like to comment on HB438 regarding recall of legislators. The present law makes it extremely difficult to recall anyone. Citizens must now get the required number of signatures twice before it is even put on the ballot where a majority is necessary to recall a corrupt politician. This has only been successful once since Statehood which shows that it is not something to be done frivolously. Making this more difficult will only send a message to the people that no matter how corrupt someone is, the law will protect them.

Sincerely,
Sherri Jackson

Rep. Paul Seaton

From: John Stinson [stinson5@gci.net]
Sent: Wednesday, March 15, 2006 9:38 PM
To: Rep. Paul Seaton
Subject: Problem with HB 438

Dear Mr. Seaton;
I'm a registered Republican in Big Lake, and wish to send you my comments on HB 438 which has been referred to State Affairs.

The provisions for Circulators' meals and Alaska-only voter registration seem fine.

What bothers me are:
1) restriction of application filing within the last 270 days of an official's term; and,
2) requirement of 20% of voter numbers as petitions to file.
These amendments make it harder for Alaskan citizenry to wield a potential tool of accountability. It's rarely used; but i was glad to have the option to enforce Senator accountability in Dist H not quite two years ago

Please help keep our recall option accessible to the voters. Thank you for your attention.

John Stinson
POBox 520665
Big Lake, AK
99652

Rep. Paul Seaton

From: Douglas Abbott [douglasabbott@hotmail.com]
Sent: Thursday, March 16, 2006 1:05 AM
To: Rep. Paul Seaton

Dear Sir:

I see that the corrupt Alaska Legislature is attempting to arrange for a complete lack of accountability by making it even more difficult to recall a legislator. The system works fine. If anything, it is already too difficult to recall one. There ought to be a law under which a legislator would be automatically removed from office if his public actions were contrary to his public statement of intentions. Then we might have some conscience at work.

Please stop this bill.

Douglas Abbott

Rep. Paul Seaton

From: Robin McLean [rmclean@pobox.alaska.net]
Sent: Wednesday, March 15, 2006 11:20 PM
To: Rep. Paul Seaton
Subject: HB 438

Dear Representative Seaton,

I am writing to oppose HB 438 and any other bill that would make it more difficult for citizens to exercise our right (and duty) to recall corrupt officials.

The citizens' right to recall was written into our state Constitution to give the people a save guard against the illegal and unethical acts of our elected officials. As it stands Alaska's recall law is stricter than many states (like California) where recall is "at will" and does not require "cause." Also, as it stands our recall law requires two separate rounds of signature gathering in the official's district, a large percentage of signatures from the district, and reasonable time limits. These demanding requirements have limited the use of the recall statute to very few attempts at recall in the history of our state and fewer successes. As you know, the latest effort at recall directed against Senator Ben Steven failed due to a failure to show sufficient grounds. The Ogan Recall in 2004 was the only legislative recall in state history to succeed on all criterion and make it to the ballot, and in Ogan's case his unethical actions were condemned and notorious statewide. In the Ogan recall the law, though very challenging for citizens in that massive and sparsely populated district, worked properly.

It is hard to understand why the legislature would see fit at this time to make this already rigorously demanding statute - rarely used, and even more rarely successful - even more difficult for the people to utilize. It seems to me that if the legislature would like to strengthen a statute, precious time and effort would be better spent beefing up legislative ethics law, not recall laws.

Please oppose this bill. Thanks for your time and effort for Alaska.

Robin McLean
PO Box 111
Sutton, Ak. 99674

907 745-7009.

Rep. Paul Seaton

From: Joe Sonneman [senator@gci.net]
Sent: Wednesday, March 15, 2006 11:07 PM
To: Rep. Paul Seaton
Subject: HB 438

The Hon. Paul Seaton, Chair, House State Affairs

I understand HB 438 is a bill which would restrict citizen recall and petition efforts.

No additional restriction is needed or wise. The current law is not broke --no need to fix it until it is. Kindly just permanently table bills which attempt to restrict citizen election, recall, initiative, or petition efforts.

Thank you,

Dr. Joe Sonneman
Ph.D., Government
Past Chair, Alaskans for Fair Elections

324 Willoughby
Juneau AK 99801
(907) 463-2624

Rep. Paul Seaton

From: Barbara Belknap [bjbelknap@gci.net]
Sent: Wednesday, March 15, 2006 5:37 PM
To: Rep. Paul Seaton
Subject: HB438

Dear Representative Seaton,

I just found out about this bill, HB438, which would make it more difficult to stage a recall. It seems as if citizens' rights are being eroded by government, particularly politicians in office, on an escalating basis. I do not support this bill and hope that it gets tossed out of the system. There are so many important things for the Legislature to do right now, it is depressing that this bill to thwart the people of this state even exists.

Barbara Belknap
4481 Abby Way
Juneau, AK 99801
780-8602