development necessary to support the system properly and update it for compatibility and capacity purposes, let alone to keep the system technologically up-to-date.

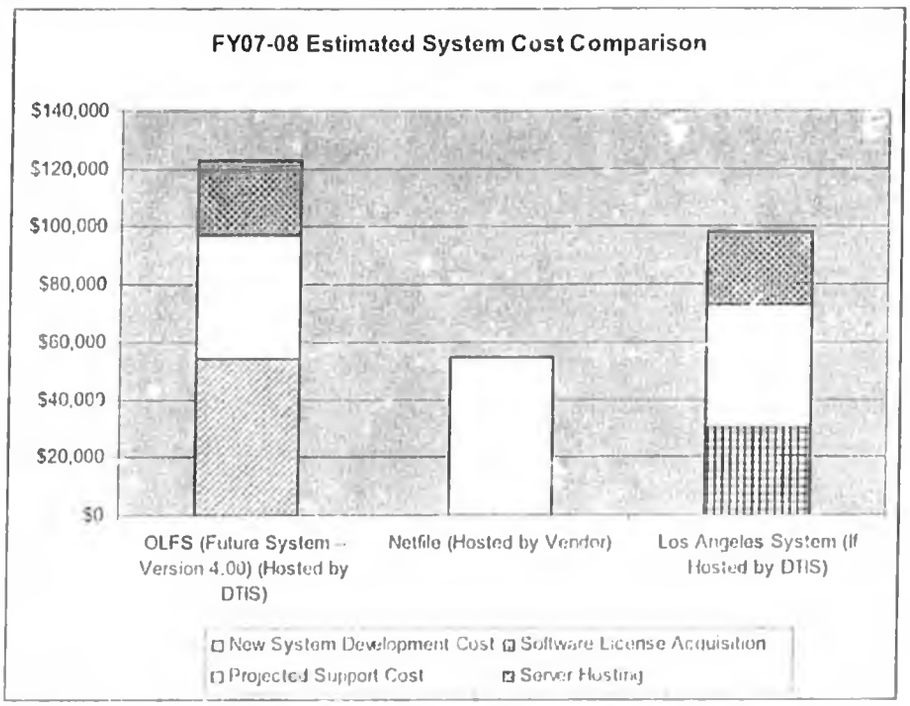
The following chart shows a cost comparison between the three potential vendors. Total cost equals the cost of software development supported financially by the Commission, plus the cost to acquire licensed software, the projected support cost, and server hosting fees. Development costs include producing the software, along with customized features, upgrades, and any additional enhancement costs.

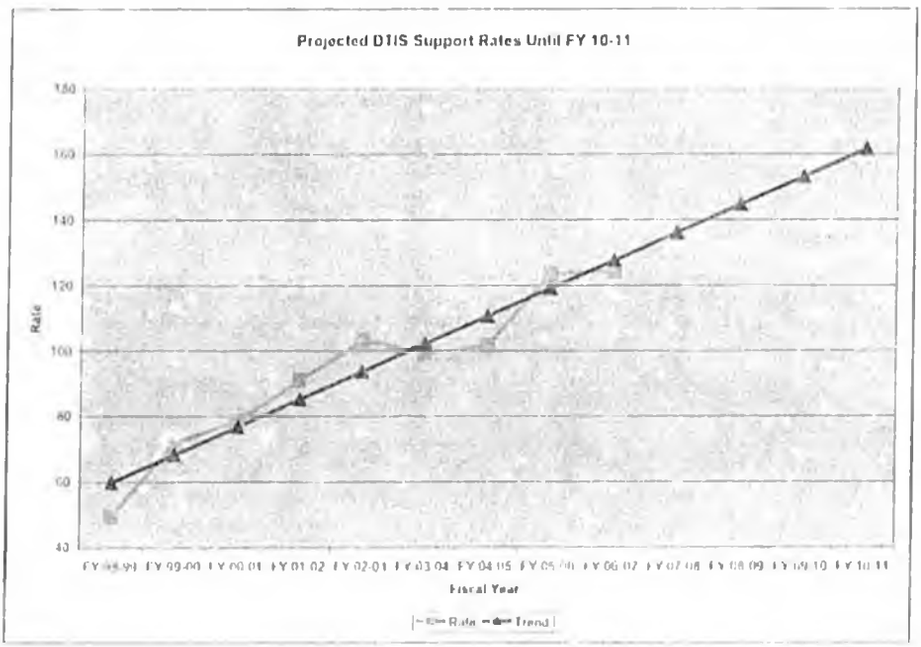
The cost of acquiring a software license provides the San Francisco Ethics Commission (SFEC) the right to use the current version of the software. The projected annual support cost includes the system technical support provided by the vendor.

Server hosting fees include the cost of 24/7 hardware and software monitoring to ensure 99% system uptime. The chart does not include the potential cost of hardware for a system hosted by DTIS. Servers tend to cost roughly $2,000 to $3,000. To obtain the desired 99% uptime guarantee, DTIS recommends at least two servers, and ideally up to four.[1] The SFEC currently has one server.

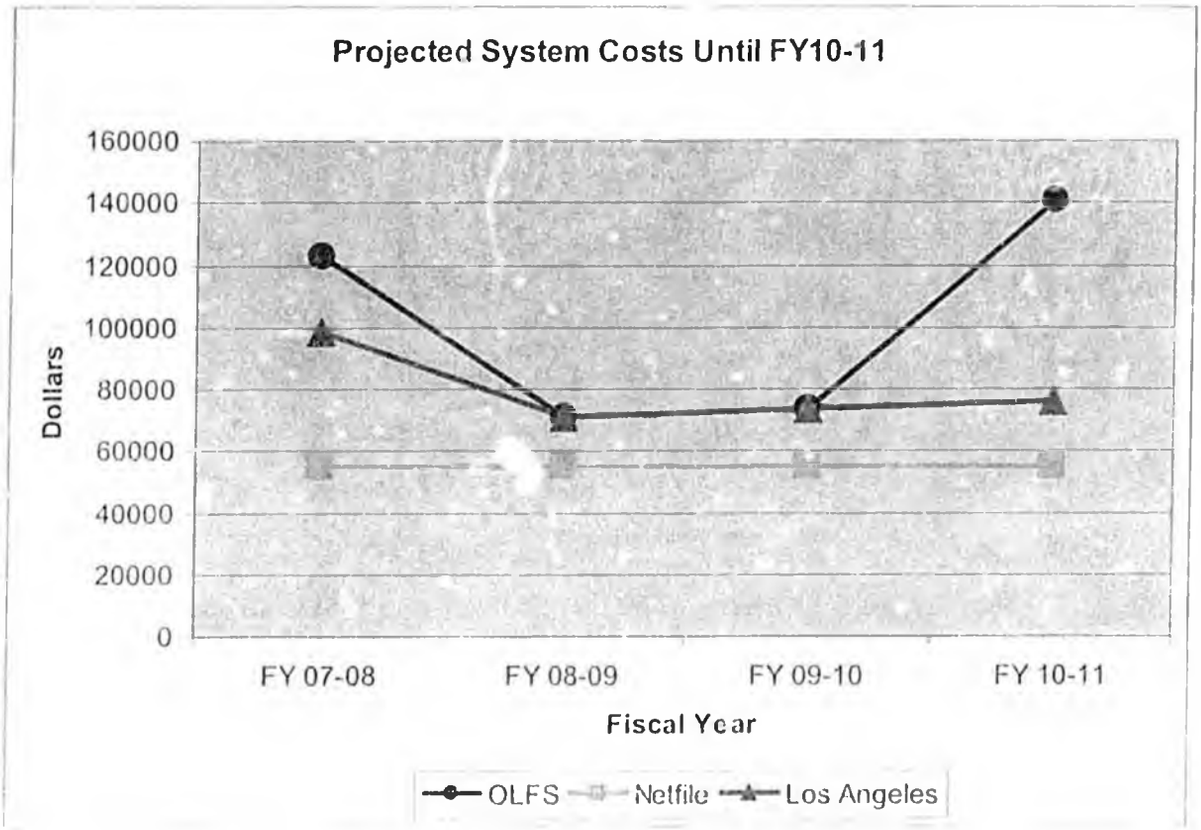
System Upgrade Cost Comparison for a New System in FY07-08			
	OLFS (Future System – Version 4.00) (Hosted by DTIS)	**Netfile (Hosted by Vendor)**	**Los Angeles System (If Hosted by DTIS)**
New System Development Cost	$54,000[2]	$0[3]	Unknown[4]
Software License Acquisition	$0	$0	$30,000[5]
Projected Support Cost	$43,000[6]	$55,000[7]	$43,000[8]
Server Hosting	$26,000[9]	$0[10]	$26,000
Total	**$123,000**	**$55,000**	**$99,000**

The bar chart below compares the estimated cost of each system if the work were done during FY07-08. Each total amount includes the development cost, software license acquisition, projected support cost, and server hosting fees.





Staff projects DTIS support rates to reach $162/per hour by FY10-11 based on DTIS support rates since FY 98-99. In contrast, Netfile's rates in other jurisdictions have not increased in the past four years.



By eliminating the City software development and server hosting cost, the SFEC can significantly reduce annual total cost. This is especially the case in years where major redevelopment of the system occurs to upgrade its capabilities.[11]

Planned Future Systems Comparison

Staff has interviewed each vendor to determine what each would be able to offer for a future OLFS system. The goal of these discussions was to determine if vendors are capable of matching OLFS current capabilities, as well as addressing current system limitations and reliability issues.

Vendors have indicated that they are capable of offering the following features. However, not all of the features vendors indicated can be offered have been developed at this time and in some cases reflect their expected capabilities:

X = Supported Capability
Blank = Unsupported Capability

Criteria	OLFS (Future System – Version 4.00) (Hosted by DTIS)	Netfile (Hosted by Vendor)	Los Angeles System (If Hosted by DTIS)
Servers & Support			
# of Servers	1 (Hosted on Sunset Server) (Up to 4 recommended)	12 (Based on # of Clients - Add as Needed)	1 (Hosted on Sunset Server, (Up to 4 recommended)
# of Simultaneous Licensed Users	Unlimited (Within Server Capacity)	Unlimited (Within Server Capacity)	Unlimited (Within Server Capacity)
# of Simultaneous Submissions	Unlimited (Within Server Capacity)	Unlimited (Within Server Capacity)	Unlimited (Within Server Capacity)
Uptime Guarantee	99% Uptime	99% Uptime	99% Uptime
Daytime Support Hours	8:00 – 5:00	9:00 - 5:00	8:00 - 5:00
After Hours Emergency Support	365/24/7[12]	365/24/7	365/24/7
Browser Support			
Internet Explorer	X	X	X
Gecko (Firefox/Netscape/Mozilla)	X	X	X
Apple Safari	X	X	X
Searchable Database Features			
Election Statistics & Totals	X	X	X
Browsable HTML Statements	X		X
Browsable PDF Statements	X	X	
# of Simultaneous PDF Searches	Unlimited (Within Server Capacity)	Unlimited (Within Server Capacity)	
Advanced Search	X	X	X
Complete Database Downloads in Excel	X	Possible	

Criteria	OLFS (Future System – Version 4.00) (Hosted by DTIS)	Netfile (Hosted by Vendor)	Los Angeles System (If Hosted by DTIS)
Searchable Results Downloads in Excel	X	X	X
Maximum Search Results	Unlimited	Unlimited	5,000 Rows (Adjustable)
Search by Date Range	X	X	X
Search by Contributor Name	X	X	X
Search by Committee Name	X	X	X
Search by Candidate Name	X	X	X
Search by Treasurer Name	X	X	
Search by Report Schedules	X	X	X
Search by Transaction Source	X	X	
Search by Office	X	X	X
Search by State ID	X	X	X
Search by Committee Type	X	X	
Search by Transaction Amount	X	X	X
Search by Amount Range	X	X	X
Search by Occupation/Employer	X	X	X
Search by Location	X	X	X
Search by Summary Page	X	X	
Supported Electronic Forms			
Form 460	X	X	X
Form 461	X	X	
Form 465	X	X	
Form 496	X	X	
Form 497	X	X	
Form 410	X	X	
Form 450	X	X	
Form 501	X	X	
Support Forms Manually Entered			
Form 460	X	X	
Form 461	X	X	
Form 465	X	X	
Form 496	X	X	
Form 497	X	X	
Form 410	X	X	
Form 450	X	X	

Criteria	OLFS (Future System – Version 4.00) (Hosted by DTIS)	Netfile (Hosted by Vendor)	Los Angeles System (If Hosted by DTIS)
Form 501	X	X	
Supported Scanned Paper Forms			
Form 460	X	X	
Form 461	X	X	
Form 465	X	X	
Form 496	X	X	
Form 497	X	X	
Form 410	X	X	
Form 450	X	X	
Form 501	X	X	
Back-Office System			
Kiosk Mode for Public Viewing	X	X	
Web Interface	X	X	X
Attach Scanned Paper Reports to Records	X	X	
Track Paper Reports	X	X	
Track Electronic Reports	X	X	X
PDF/HTML Report Viewing	X	X	
Redacted PDF/HTML Viewing	X	X	
Full Export of Data	X	X	X
SQL Query Support	X		X
Auto Fines Calculation	X	X	
Auto Letter Generation	X	X	
Filer Entry System			
Transaction Records/Balances Transfer to New Reports	X	X	X
Auto-Balance/Summary Page Calculations	X	X	X
Users Guide	X[13]	X	X
Form-Based Data-Entry User Interface			X
Campaign Finance Accounting User Interface	X	X	
Name-Matching for Accuracy	X	X	
User-Controlled Third-Party CAL File Upload System	X	X	X
View Previous Reports	X	X	X
Amend Reports	X	X	X
Search Entries	X	X	X
Filer Training	X[14]	X[15]	

Criteria	OLFS (Future System – Version 4.00) (Hosted by DTIS)	Netfile (Hosted by Vendor)	Los Angeles System (If Hosted by DTIS)
Print Drafts	X	X	X
Account-based Login	X	X	X
Account-based Logout	X	X	X

Findings

Staff has reviewed the cost and features of each system and interviewed each potential vendor and has come to the following conclusions:

- The SFEC's mission is to ensure compliance with ethics and campaign finance disclosure laws; and software is a tool that helps accomplish this goal. Software development is not a core competency of the SFEC. The SFEC should focus on acquiring the tools it needs to accomplish its mission rather than engaging in its development which results in inefficient use of staff time and City resources.

- DTIS has indicated that it could develop a comparable system to Netfile, but the SFEC would bear the cost of its current and long-term development. If development were to occur in FY07-08, a comparable DTIS system would likely double the cost.

- DTIS is in the initial phase of restructuring its organization to a project-based system, which would likely mean the current OLFS developer could create the new OLFS system, but would no longer be responsible for maintenance. The system would be passed on to DTIS support staff who would lack long term expertise.

- Los Angeles staff has indicated that once the SFEC acquires a software license, DTIS would be responsible for customizing and upgrading the system. The Los Angeles system is provided as-is. As of now, it only includes a minimal back-office system and the same number of forms as the current OLFS system.

- Netfile's system provides the benefits of participating in a software consortium since the SFEC would benefit from new features requested by other jurisdictions. Netfile's system upgrades are included in the annual support cost.

- Netfile's current system contains a majority of the features staff has requested. DTIS has stated that it is able to match these features. However, DTIS must produce an entirely new system in order to do so.

- Netfile incurs the cost of servers, maintenance, and hosting. This would save the SFEC approximately $26,000 annually plus the cost of hardware under the current DTIS rate model.

[1] Ethics Staff has indicated to DTIS that the SFEC would be interested in sharing servers with other departments to reduce cost. DTIS does not currently offer this service but will consider it after its reorganization.

[2] DTIS development cost is based on DTIS staff projection of roughly 400 hours of development time at a projected rate of $136/hour. Projected rates are based on a trend line on page 3. DTIS staff time estimates should not be considered as a formal proposal.

[3] Features that can be used by other jurisdictions are not subject to development costs. However, features only used by the SFEC are subject to additional development cost.

[4] The Los Angeles system would likely be subject to additional development cost to customize the system for San Francisco on top of the software acquisition costs. Development would be completed by DTIS. Projected development hours are unknown.

[5] Software license acquisition cost is based on two previous sales by the Los Angeles City Ethics Commission to the City of Long Beach and the County of Los Angeles. See Los Angeles Ethics Commission January 10, 2006 meeting minutes at: http://www.lacity.org/eth/ethminutes/ethethminutes21837849_01082006.pdf. Los Angeles has yet to provide a quote for a SFEC system.

[6] Projected support cost is based on the average number of support hours from FY 01-02 to FY 06-07 multiplied by the projected DTIS support rate of $136/hour. Projected rates were calculated by Ethics staff.

[7] Netfile's projected cost is based on past annual support cost for the City of Santa Clara and City of San Jose. Netfile has not raised prices since acquiring its first agency client four years ago.

[8] Projected support cost for Los Angeles is based on projected DTIS support cost since DTIS would be maintaining the system.

[9] Server hosting cost is calculated based on the rack space used by the server equipment, measured in U's - an industry standard vertical measure that indicates how much rack space a server requires (one u is approximately 1.75 inches of height) as well as the annual software maintenance cost (dependent upon type of server). Server hosting cost reflects the cost of a 1u server. DTIS staff recommends up to four servers using 4u's. Hosting rates are based on the FY2006-07 DTIS rate book. DTIS has indicated that due to their reorganization, rates are subject to change.

[10] Netfile includes the cost of server hosting in the total support cost.

[11] Projected support cost assumes that major development work will occur every 3 years. Total cost equals the projected development plus software license acquisition, support, and current server hosting cost. The Los Angeles system does not include potential major development cost in FY 10-11 because it is not known whether the SFEC would bear the responsibility of future upgrades to the system. Netfile's projected cost is based on past annual support cost for the City of Santa Clara and the City of San Jose. Netfile has not raised prices since acquiring its first agency client four years ago.

[12] DTIS indicated that it would only be able to provide 24 X 7 software support if the entire OLFS application is rewritten as a .NET application, with the conversion funding provided by SFEC, which DTIS has indicated will be a significant investment. The current OLFS system is based on Lotus Domino and DTIS does not have the resources to provide 24 X 7 software support for applications based on this software framework.

[13] A user guide would be subject to additional charges by DTIS.

[14] System training would be subject to additional charges by DTIS.

[15] Netfile will provide initial training for staff and filers. Additional trainings can be requested as needed.

ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

Date: November 13, 2006

To: Members, Ethics Commissioners

From: John St. Croix, Executive Director
By: Steven Massey, Information Technology Officer
Kristian Ongoco, Campaign Finance Officer

Re: Preliminary Report - Electronic Filing Systems Comparison

At its last meeting, the Ethics Commission requested a cost-benefit analysis comparing the available options for replacing the current On-Line Filing System (OLFS). This memorandum is a preliminary report containing the information and data collected thus far. It includes background information regarding the status of the current OLFS system and the problems incurred. In addition, a financial and systems capabilities comparison is included, displaying the current costs and software capabilities of three potential vendors representing City in-house, private sector, and public sector development. A subsequent report will include what additional features each vendor could potentially offer to replace OLFS and estimated development costs.

I. Background

In 1993, San Francisco adopted legislation requiring committees with activity of at least $5,000 in contributions or independent expenditures in a calendar year to file electronically. This allows voters wider access to campaign information and the ability to make informed electoral decisions. To comply with San Francisco's Electronic Filing Ordinance, filers submitted electronic disks created by political software vendors. However, with various electronic formats being submitted, posting information on the website became time consuming and inefficient.

Subsequently, the Ethics Commission passed standards for electronic filings that was later designated by the Secretary of State as the standard format for the state of California, California Electronic Filing Format (CAL) version 2.01 (www.ss.ca.gov/prd/release_letter.htm).

The Department of Telecommunications and Information Services (DTIS) designed San Francisco's On-Line Filing System (OLFS) in 1999. It was created to comply with the Electronic Filing Ordinance and the Political Reform Act, utilizing the standard form assigned by the Fair Political Practices Commission (FPPC). Included is a detailed history of OLFS presented in the Electronic Filing Timeline in Section VI.

25 Van Ness Avenue, Suite 220 • San Francisco, CA 94102-6053 • Phone (415) 252-3100 • Fax (415) 252-3112
E-Mail Address: ethics_commission@sfgov.org Web site: http://sfgov.org/ethics

II. OLFS Components

OLFS has been upgraded by DTIS four times to comply with revised FPPC requirements. The current version of OLFS (version 3.00a) is capable of filing a California Form 460 electronically and can produce a paper printout. Financial information is entered into a web-based data-entry system. OLFS is graphically designed to resemble the Form 460. OLFS is not campaign account management software that tracks contributor information across reporting periods, but rather is a system capable of electronically entering data on individual forms. Filers are able to file original and amended reports.

Once a form is submitted, staff receives an e-mail confirmation including the electronic (CAL) data file. Each filing is manually uploaded by staff using a back-office system into the campaign finance database, which is hosted on the Sun server at DTIS. Submitted reports can be viewed by the public within 24 hours.

OLFS also produces paper copies of reports for filers that electronically file. Paper copies are generated in Adobe PDF format that can be printed using the free Adobe Acrobat Reader or any other compatible PDF viewer.

Filers have the option of using third-party vendors to manage their campaign finance reports. Third-party users generate files in the standard CAL format and e-mail it to the Ethics Commission. Staff manually processes third-party CAL files.

Back-Office Components

The OLFS system includes four software components to manage the back-office duties:

- The *Campaign Filer Log* is a Microsoft Access-based client to the campaign finance database that allows staff to manage filer accounts and determine which filings have been submitted in paper and electronic format. Paper reports are manually logged into the system by staff. Once staff manually uploads the filing, electronic reports are automatically logged. The system can produce a paper printout with a list of all submitted paper and electronic reports, as well as any notices that were sent to the committee. The public does not have electronic access to the campaign filer log and can only obtain the information available in the printed reports.

- The *Back Office Campaign Finance Repository (BOCFR)* is a separate Microsoft Access-based client to the campaign finance database that is primarily used to manually submit filings into the database. The software contains an electronic system log allowing staff to monitor which reports have been successfully submitted into the database.

  Both BOCFR and the Campaign Filer Log allow staff to create tailored SQL queries, which is database syntax used to tell a database which specific columns and rows to produce in a spreadsheet-like format. Staff uses this feature primarily to audit reports. BOCFR can also produce downloads containing all of the reported financial transactions and address information in the database into Microsoft Excel format. Downloads can be burned onto a CD, which is available to the public for one dollar. The Campaign Filer

Log database records are currently unavailable to the public in this format. CD downloads take the system about 10-20 minutes to produce, depending on network traffic and the number of filings in the system.

- OLFS user accounts are managed by a Lotus Notes-based system, which allows staff to setup new filer accounts, and manage login and password information. Staff meets in person with every new filer to the system and manually sets up accounts to access the system.

- OLFS is only capable of electronically submitting the Form 460. Other forms, including Forms 461, 465, 496, and 497 are available in a web-based format which is accessible to the public. Using a Lotus Notes-based system, staff manually enters each of the forms as they are received into the databases. Forms are displayed online immediately after staff enters the report.

Public Search Engine

OLFS includes a public search engine that is accessible through a web facility (http://sunset.ci.sf.ca.us/olfspublish300.nsf) hosted on the Sunset server. The search engine allows the public to search and browse electronically submitted Form 460 records. Data can be viewed on a web page, PDF copies of the form, or downloaded into various Microsoft Excel-compatible formats. A new version of the advanced portion of the search engine was released this past January and allows for more comprehensive searches and a more flexible user interface. Financial records from paper Form 460 reports are not included in the search engine. The site also allows for browsing Form 461, 465, 496, and 497 records that were manually entered by staff.

A more comprehensive list of OLFS features is included in section V of this report.

III. OLFS System Limitations

Software Limitations

Staff depends on OLFS to obtain information, but is limited by its software capabilities to work efficiently. The following limitations are particularly costly and time consuming:

- OLFS relies on the Crystal Reports software package to produce PDF copies of reports. Filers must produce PDF files to submit a Form 460 as a paper copy. Only five users can simultaneously use the Crystal Reports software at one time due to a licensing restriction. This means only five users can simultaneously create print drafts or final reports in OLFS, or view PDF reports on the public search engine, even if the server capacity is capable of handling additional clients. This is particularly frustrating to users and staff when deadlines approach. There are currently 119 active electronic filers.

- Staff manually processes and calculates fines. Fines correspondence and records are tracked using both the Campaign Filer Log and Microsoft Excel spreadsheets. Data is not stored in a single, accessible database.

- Staff is unable to determine when committees have reached $5,000 in contributions or independent expenditures in a calendar year which requires them to file electronically. This process is monitored manually by staff.

- Staff manually determines who should receive correspondence, downloads contact information from the Campaign Filer Log, and mail merges data into letter templates for each correspondence. This process is slow and inefficient.

- All CAL files are received by e-mail and manually processed into BOCFR. This process takes a couple of minutes per third-party filing. Third-party uploaded times vary depending on network traffic and server capacity, which peaks around filing periods.

- Forms 461, 465, 496, and 497 are manually entered into the database. This is time consuming and is susceptible to error.

- Staff is unable to quickly determine which committees have filed Form 460 filings on-time through an automated report. This process is manually conducted by staff using a combination of database downloads and paper-based checklists.

- Filer balances are not carried over from previous reports. Filers who create new reports in OLFS must manually calculate a year-to-date balance and transfer the information to the new report. This is a frequent source of calculation errors by filers on Form 460 summary pages. Filers must also manually instruct the software to calculate current period balances each time a transaction is added to the system.

Reliability

OLFS suffers from a number of problems that affect its reliability and performance. The following is a sample of problems affecting the system:

- When the server software crashes, DTIS and Ethics staff are not automatically notified. Staff must continually monitor the accessibility of OLFS on the web. When the server crashes on a Friday afternoon, the system is often not restored until the following Monday morning. System failures can bring down both the filer data-entry system and the public search engine. DTIS staff does not provide reports for Ethics staff to keep track of the number of hours the system has been down nor a system uptime guarantee.

- OLFS is particularly susceptible to filers who enter non-standard characters. This can prevent filers from amending a report until Ethics or DTIS staff is able to find and remove the character.

- OLFS is subject to a number of runtime errors, or bugs in the system. Bugs must be individually handled on a case-by-case basis with DTIS staff and usually prevent report submission until the cause has been determined. Cases are resolved anywhere from same-day service to a few months.

- The Crystal Reports system is prone to inexplicable failures. Reports that fail to generate are permanently counted as one of the five maximum users allowed to create PDF files until the system is manually reset. If five reports have failed to generate, any subsequent print drafts and final report submissions cannot be produced. The public search engine will also fail to allow users to view PDF reports and instruct users to try again in a few minutes, when in fact this is not true. PDF production cannot be restored until staff is aware of the problem and manually resets the Crystal Reports system.

- Filers who only collect non-itemized contributions are incapable of creating properly formatted PDF reports. Schedules without itemized contributions will not be generated properly. The PDF system requires filers to be in contact with staff who have instructed filers to create dummy records to make reports file properly.

IV. Financial

Since the inception of OLFS in 1999, technology has played a crucial role in the Ethics Commission's budget. For the 2005-2006 fiscal year, $90,579 was allotted to technology expenses. Of this amount, $39,803, or 44% went directly to the maintenance and development of OLFS. The Commission spends an average of $41,035 a year on the system.

In the past few years, the Ethics Commission has put forth additional expenses on the electronic filing system to upgrade the system, attempt to add forms, and fix bugs. Yet, OLFS has continued to pose problems even with additional maintenance.

This chart illustrates the expenditures for each year dedicated to IT Applications Support/Applications Development (OLFS), the total budgeted amount that is allocated to DTIS, and the total Ethics Commission budget.

	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY 03-04[1]	FY 04-05[2]	FY 05-06	FY 06-07
IT Applications Support/Applications Development	$35,912	$62,919	$71,783	$25,519	$36,748	$18,194	$35,530	$39,803	$42,908
Total allocated to DTIS	57,420	88,032	116,579	64,553	143,042	53,755	75,620	90,579	93,495
Total Ethics Commission Budget	475,646	610,931	727,787	877,740	2,156,295	909,518	1,722,389	1,382,441	8,416,109

Without complete data from DTIS this report cannot address all OLFS costs accurately. Support cost, server cost, staff time, and development cost are not clear. Expense details do not explain which work orders were fulfilled at what value.

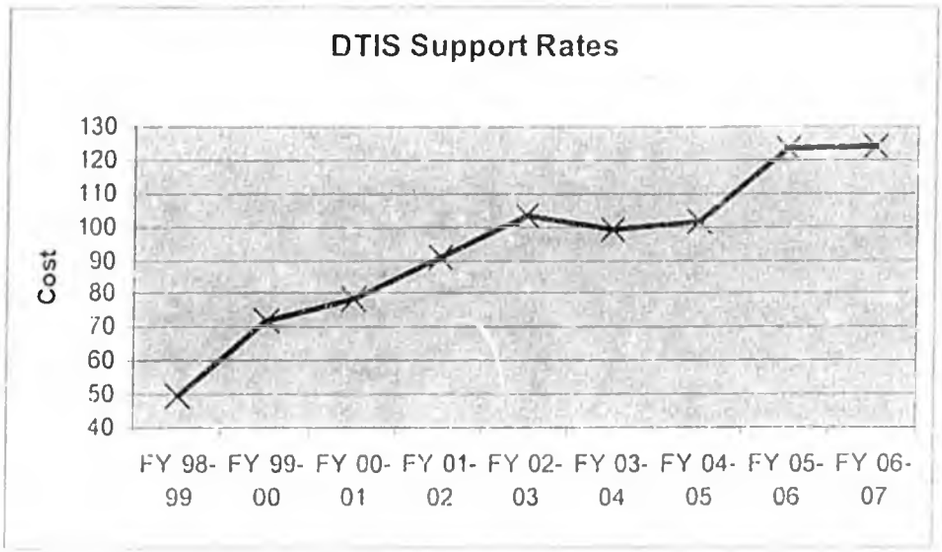
In the most recent evaluation of OLFS, the Ethics Commission Technology Review, conducted in 2002 by the Office of the Controller, a thorough evaluation could not be made due to a lack of budget information. The review was an assessment of the technology tools utilized by the Ethics Commission in terms of efficiency and cost.

[1] FY 03-04 budget decrease due to cuts

[2] Figures from the 2004-2005 and the 2005-2006 fiscal years were taken from the DTIS CIMS Server.

Support Rates

At OLFS' inception, the support rate for DTIS was $49 per hour, and over the past eight years has increased to the current $124 per hour. In FY 04-05 the application development rate was $102, which jumped to $125 in FY 05-06, and has increased to its current rate.



Application development hours have remained level, averaging approximately 313 hours a year, but DTIS rates have increased.

	FY 01-02	FY 02-03	FY 03-04	FY 04-05	FY 05-06	FY 06-07	Average
Application Development Unit hours	326	351	183	350	322	345	313

Source: DTIS

Staff Time

In 1999, the Ethics Commission received 79 electronic filings. During August 2006, the Commission received 124 electronic filings. The number of electronic filings shows a higher level of financial and political activity. With an increase in filings received, the Commission needs to consider the following:

- Each electronic filing must be uploaded manually.
- With increased filings, more technical and administrative problems will arise.
- The difficulty in tracking late filers will increase.
- Higher financial activity equates to greater strain on the system.

The table below displays the estimates in hours per week needed to accomplish each electronic filing task.

Weekly Staff Time Spent On Electronic Filing Tasks during a Filing Period					
	OLFS(Current System - Version 3.00a)	Netfile (Hosted by Vendor)	Los Angeles System (if hosted by DTIS)	Hours Saved Netfile	Hours Saved Los Angeles
Calculating electronic requirement	6 hours	Unknown	6 hours	Unknown	0
Uploading electronic filings	2 hours	Less than an hour	Less than an hour	≈1	≈1
Manually entering 461, 465, 496, and 497 Forms	25 hours	Less than an hour	Less than an hour	≈24	≈24
Troubleshooting OLFS Problems	10 hours	Less than an hour	Unknown	≈10	Unknown
			Total	≈35	≈25

Comparing Costs

The current cost of Netfile's system is $55,000, which includes annual support and ongoing system development cost. Los Angeles has yet to propose a price. The expenditures budgeted for ongoing DTIS application support for this fiscal year is $42,908. This cost does not include major application development. These costs reflect each system's current capabilities. In comparing the values of each system, other factors such as features, efficiency, reliability, and usability must be considered.

V. System Software & Hardware Comparison

Current Systems Comparison

Staff has been in contact with three providers of electronic filing systems in an attempt to survey the market for a new electronic filing system. The following chart compares the current systems' server capacity and software features that are in use today by each vendor. A system provided by the Los Angeles Ethics Commission would be hosted on the Sunset server instead of OLFS, and the servers and support section reflects DTIS' capabilities while using this system.

Criteria	OLFS (Current System -- Version 3.00a) (Hosted by DTIS)	Netfile (Hosted by Vendor)	Los Angeles System (If hosted by DTIS)
Servers & Support			
# of Servers	1 (Hosted on Sunset Server)	12 (Based on # of Clients - Add as Needed)	1 (Hosted on Sunset Server)
# of Simultaneous Licensed Users	Unlimited (Within Server Capacity)	Unlimited (Within Server Capacity)	Unlimited (Within Server Capacity)
# of Simultaneous Submissions	5	Unlimited (Within Server Capacity)	Unlimited (Within Server Capacity)
Uptime Guarantee	None	99% Uptime	None
Daytime Support Hours	Monday – Friday 8:00 - 5:00	Monday – Friday 9:00 - 5:00	Monday – Friday 8:00 - 5:00
After Hours Emergency Support	Available. Not in current support contract.	24/7/365	Available. Not in current support contract
Browser Support			
Internet Explorer	X	X	X
Gecko (Firefox/Netscape/Mozilla)	X	X	X
Apple Safari	X	X	X
Searchable Database Features			
Election Statistics & Totals			X
Browsable HTML Statements	N/A	N/A	X
Browsable PDF Statements	X	X	N/A
# of Simultaneous PDF Searches	5	Unlimited (Within Server Capacity)	N/A
Advanced Search	X	X	X
Complete Database Downloads in Excel	X		
Searchable Results Downloads in Excel	X	X	X
Maximum Search Results	Unlimited	100 Rows	5,000 Rows

Criteria	OLFS (Current System -- Version 3.00a) (Hosted by DTIS)	Netfile (Hosted by Vendor)	Los Angeles System (If hosted by DTIS)
			(Adjustable)
Search by Date Range	X	X	X
Search by Contributor Name	X	X	X
Search by Committee Name	X	X	X
Search by Candidate Name	X	X	X
Search by Treasurer Name	X		
Search by Report Schedules	X	X	X
Search by Transaction Source	X		
Search by Office	X		X
Search by State ID	X		X
Search by Committee Type	X		
Search by Transaction Amount	X	X	X
Search by Amount Range	X	X	X
Search by Occupation/Employer	X		X
Search by Location	X		X
Search by Summary Page	X		
Supported Electronic Forms			
Form 460	X	X	X
Form 461			
Form 465			
Form 496		X	
Form 497		X	
Form 410			
Form 450			
Form 501			
Support Forms Manually Entered			
Form 460			
Form 461	X		
Form 465	X		
Form 496	X		
Form 497	X		
Form 410			
Form 450			
Form 501			
Supported Scanned			

Criteria	OLFS (Current System -- Version 3.00a) (Hosted by DTIS)	Netfile (Hosted by Vendor)	Los Angeles System (If hosted by DTIS)
Paper Forms			
Form 460		X	
Form 461		X	
Form 465		X	
Form 496		X	
Form 497		X	
Form 410		X	
Form 450		X	
Form 501		X	
Back-Office System			
Kiosk Mode for Public Viewing		X	
Web Interface		X	X
Attach Scanned Paper Reports to Records		X	
Track Paper Reports	X	X	
Track Electronic Reports	X	X	X
PDF/HTML Report Viewing		X	
Redacted PDF/HTML Viewing		X	
Full Export of Data	X		X
SQL Query Support	X		X
Auto Fines Calculation		X	
Auto Letter Generation		X	
Filer Entry System			
Transaction Records/Balances Transfer to New Reports		X	X
Auto-Balance/Summary Page Calculations		X	X
Users Guide		X	X
Form-Based Data-Entry User Interface	X		X
Campaign Financ Accounting User Interface		X	
Name-Matching for Accuracy		X	
User-Controlled Third-Party CAL File Upload System		X	X
View Previous Reports	X	X	X
Amend Reports	X	X	X
Search Entries	X	X	X
Filer Training		X	
Print Drafts	X	X	X
Account-based Login	X	X	X
Account-based Logout		X	X

VI. San Francisco Ethics Commission Electronic Filing Timeline

1993	- San Francisco Electronic Filing Ordinance is adopted requiring all campaigns raising $5,000 in contributions or making $5,000 in independent expenditures to file electronically - Campaign filers begin to submit electronic disks produced by political software vendors
1996	Contract with SDR Technologies to create an electronic file management system for $12,000
1997	EC begins posting campaign data to website
January – May 1998	Initial Back Office Campaign Finance Repository released
March – July 1998	Initial EFPOC file Generator released- spreadsheet application in Microsoft Excel, free of cost to all filers
February – July 1999	OLFS 1.0 EFPOC, Print and BOCFR upgrade released
1999	DTIS develops OLFS for July 31, 1999 semi-annual deadline EC receives 79 electronic filings in 1999
April – Sept. 2000	Upgrade to OLFS 2.0 CAL
January 2001	The City of Sacramento purchases OLFS
November 2001 – January 2002	Upgrade OLFS to comply with State filing standards (OLFS 2.5 CAL Upgrade).
2002	San Diego City Clerk and Santa Clara County interested in system
July 2003	SQL Server Upgrade – Electronic files automatically logged.
February 2003	Long Beach Interested in system
August 25, 2003	Electronic Ordinance amendments – changed fines from $10 to $25 a day and required committees that meet the threshold for electronic filing to continue to file electronically until they terminate
October 2003	The MIS staff of the City Attorney's Office has reviewed the security of the Commission's electronic filing system and has found no evidence that the system has been compromised.

	However, the MIS staff recommends that the Commission work with DTIS to improve the password protection system and the backup system
November 2003	Commissioner Planthold requests funding to complete/implement the electronic filing system for campaign consultants ($45,000 was spent), and funding to develop/implement an electronic filing system for lobbyist filings. DTIS has also advised that we need a more robust server for our network
August 14, 2004	Initiated purchase of a new server for May 2005
September - December 2004	The Commission received 31 OLFS complaints
June 2005	New Server arrives
July 26, 2005	DTIS begins work on server
July 31, 2005	111 electronic filings are received with old server
October 6, 2005	DTIS completes the transition of OLFS from the Sunset server to the new server called Sunrise

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 February 14, 2007

SUBJECT: Constitutionality of Amending AS 15.13.040(b); CSHB 6( )
(Work Order No. 25-LS0055\K)

TO: Representative John Harris
Speaker of the House
Attn: Tom Wright

FROM: Alpheus Bullard
Legislative Counsel

You have requested a legal opinion on whether the referenced Committee Substitute for House Bill 6 is constitutional. The potential constitutional violation arises in secs. 2 and 5 of the Committee Substitute for House Bill 6. These two sections amend AS 15.13.040(b) and AS 15.13.070(c), statutory sections that were changed by 2006 Ballot Measure No. 1 initiative. I believe that the bill may be constitutional, but that it is a close question. In this instance, my opinion is without the benefit of a bright-line rule or clear precedent, therefore a review of the relevant legal and historical information is a necessary element in providing a complete answer to your question. Allow me to provide a summary.

Constitutionality of Amending an Initiated Law

Two Alaska court decisions are implicated.

In early 1974, two related initiative petitions were filed with the lieutenant governor. One dealt with conflict of interest, and the other election campaign disclosure. Both petitions were certified as having sufficient signatures and were scheduled for inclusion on a statewide election ballot. The 1974 Legislature considered both matters. The legislature did not take any action on the conflict of interest petition, but did adopt legislation, approved as ch. 76, SLA 1974, on campaign disclosures.

The lieutenant governor concluded that the campaign disclosure enactment was substantially the same as the campaign disclosure petition and voided the initiative. That decision was challenged. The challenger, Cliff Warren, an initiative sponsor, contended that the legislature had short-circuited the initiative process by passing a law determined to be substantially the same as the proposed initiative. In its decision upholding the lieutenant governor's conclusion, the Alaska Supreme Court observed that the legislature enjoys broad authority to amend an initiative:

The final constitutional provision states in pertinent part:

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

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

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

But the legislature's authority to amend is not without limits. At the August 1974 primary election, the voters approved the second initiative petition, the conflict of interest proposal, and it was certified and became law on December 11, 1974. The 1975 Legislature amended the law to change deadlines and to exclude certain former officials, who under the initiative were required to file disclosures, from having to file. Ch. 2, SLA 1975. The law was amended again that session by adding a further delay to the filing deadline. Ch. 25, SLA 1975. Mr. Warren challenged the amendments, contending that the changes were beyond the authority of the legislature to approve and amounted to a "repeal" of the initiated law.

The court rejected his contentions in its decision in Warren v. Thomas, 568 P.2d 400 (Alaska 1977):

> The central issue in the case at bar is whether the legislature has exceeded the broad power by passing an amendment which so vitiates the initiative as to "constitute its repeal." [Warren v. Boucher, 543 P.2d 731,] at 737. Warren argues that the changes are so drastic that they make a mockery of the law, that the trial court erred in concluding the legislation was merely "housekeeping," and that the amendments . . . amount to a repeal of the law. We disagree. "[A]n amendment of an act operates as a repeal of its provisions to the extent that they are materially changed by, and rendered repugnant to, the amendatory act." Meyers v. Board of Supervisors of Los Angeles County, . . . 243 P.2d 38, 42 (Cal. 1952); see also W.R. Grasle

> Company v. Alaska Workmen's Comp. Board, 517 P.2d 999 (Alaska 1974) . . . .
>
> [T]here remains the question whether the amendments so emasculate the law that it is effectively repealed. We conclude that they do not. There are considerable language changes, but these clarify and render the law more precise. The fines for violations of the law have been reduced but the penalties are still significant . . . . Finally, the amended law still imposes substantial disclosure requirements on public officials and effectuates the intent of the electorate that those in a position of public trust be held to a high standard of financial disclosure.
>
> . . .
>
> For the purposes of this appeal it is unnecessary for us to decide at what point an amendment might be so drastic as to constitute a repeal of an initiated law in violation of the Alaska Constitution. In this case the amendments only reduced the penalties for violation of the law and clarified some of the language. We are of the opinion that such an amendment did not constitute a repeal of an initiated law.

Warren v. Thomas, 568 P.2d 400, 402 - 404.

This pair of cases has not been the court's last word. In Yute Air Alaska, Inc. v. McAlpine, 698 P.2d 1173 (Alaska 1985), the court decided an appeal by setting out the full text of the trial court opinion, "which explains the questions presented and, in our view, properly resolves them." Id. at 1175. The trial court opinion, which the Supreme Court acknowledged, declared that "[t]he two Warren cases establish the proposition that the provisions of section 6 of article XI on amendment of adopted initiatives and on voiding pending initiatives vest the legislature with broad powers to protect the state against the untoward effects of initiatives." Id. at 1179.

AS 15.13.040(b)

AS 15.13.040(b) was most recently amended by the 2006 Initiative entitled "An Initiative Relating to contribution limits, lobbyists, and disclosure; and providing for an effective date." The initiative repealed and reenacted AS 15.13.040(b) to provide that groups need only report the "the name, address, principal occupation, and employer of the contributor, and the date and amount contributed by each contributor. . ." for contributions exceeding $100 in the aggregate a year. At that time AS 15.13.040(b) provided that the name, address, date, and amount contributed by each contributor be reported in all instances, and that for contributions in excess of $250 in the aggregate during a calendar year, that the principal occupation and employer of the contributor also be provided. The effect of this section (section three of six) of the initiated law was to dispense with reporting requirements for contributions of $100 or less in the aggregate a year (name, address,

date, and amount up contributed up to $100) and require the additional information of the principal occupation and employer of the contributor for contributions of $100.01 - $250.00 (the principal occupation and employer of the contributer was already required contributor information for contributions in excess of $250).

In a paragraph summarizing the entirety of the initiative, the August 22, 2006 Ballot[1] encapsulated the effect of sec. 3 as "requir[ing] groups to disclose the name, address, occupation, employer, date and amount given by each contributor for contributions more than $100 during a calendar year". The Legislative Affairs Agency Summary in the 2006 Official Primary Election Voter Pamphlet was marginally more informative; "[g]roups would have to report more about donors. For gifts over $100 to a group, the group would have to provide the true source of the gift. The group would also have to report the donor's job and the donor's employer." In the voter pamphlet, in the "Ballot Measure 1, Statement In Support" and "Ballot Measure 1, Statement In Opposition" pages, the lifting of the disclosure requirements for contributions of up to $100 dollars to groups received mention only in the text of the "Statement in Opposition" page as a "change eliminat[ing] the disclosure of some names and addresses". It received no mention in the "Statement of Support." This was the sum of information provided to the electorate about sec. 3 of the initiative.

Conspicuous in its absence from the ballot language and Legislative Affairs Summary of the 2006 Official Primary Election Voter Pamphlet is any mention of how sec. 3 of the initiative would operate to dispense with the required disclosure of the name, address, date, and amount contributed by each contributor for contributions of up to $100 during a calendar year. The change was not reflected in the title of the initiative nor in the summaries provided to the voters. The change, which dispenses with the disclosure of previously required contributor information, is arguably less than consistent with the reduced contribution limits, limitations on lobbying, and more stringent disclosure requirements that made up the other 5/6 of the initiative.

If this initiative is understood as "effectuat[ing] the intent of the electorate" Warren v. Thomas, the operation of the initiative's sec. 3, unexplained to voters, to dispense with the required disclosure of the name, address, date, and amount contributed by each contributor for contributions of up to $100 during a calendar year could be interpreted by the court as effecting something less than the intent or will of the electorate. While sec. 3 of the initiative is the best statement of its contents, the section did not appear on the ballot itself, and where it was printed in the voter pamphlet, the text appeared as it would after enactment. The voter did not have the benefit of comparing the proposed amendment with the existing statutory text. While ignorance of the law may not be an excuse, this was a ballot measure labeled by the "Statement In Support" in the voter pamphlet as the "Take Our State Back" initiative, a measure that would limit campaign

---

[1] See State of Alaska Primary Election August 22, 2006, Official Primary Election Voter Pamphlet.

contributions and "close the soft money loophole" . . . words and phrases poorly reconciled with sec. 3 of the initiative.

AS 15.13.070(c)

AS 15.13.070(c) was also amended by the 2006 Initiative entitled "An Initiative Relating to contribution limits, lobbyists, and disclosure; and providing for an effective date." The initiative repealed and reenacted AS 15.13.070(b) to provide that "[a] group that is not a political party may contribute not more than $1,000 per year" to a candidate, an individual conducting a write-in campaign as a candidate, another group, a nongroup entity, or to a political party. Previous to the passage of the initiative AS 15.13.070(c) had provided that "[a] group that is not a political party may contribute not more than $2,000 per year." The Committee Substitute for House Bill 6 now proposes to further limit such contributions to $500 per year.

The central issue for a court in interpreting the effect of the legislature's amendment to the initiated law is whether the legislature has exceeded their "broad power" by passing an amendment which "so vitiates the initiative as to "constitute its repeal," Warren v. Boucher, at 737. The changes to AS 15.13.070(c) are not drastic, and do not work against the initiative, but further the stated goals of the initiative by further limiting campaign contributions. I don't believe that this amendment, which changes the statute to further the aims endorsed in the initiative itself, would be interpreted by a court to amount to a repeal of the law.

> "[A]n amendment of an act operates as a repeal of its provisions to the extent that they are materially changed by, and rendered repugnant to, the amendatory act." Meyers, at 42.

The amended law imposes substantial campaign contribution restrictions and effectuates the intent of the electorate that campaign contributions from groups be further restricted. If the initiative is understood as "effectuat[ing] the intent of the electorate" Warren v. Thomas, it is my opinion that the Committee Substitute's amendment to this section is constitutional.

Conclusions

It is my opinion that the Committee Substitute's changes to AS 15.13.040(b) and 15.13.070(c) could be interpreted by a court as a constitutional modification. While a court could decide that these sections were key features to the initiative, and the Committee Substitute's changes are unconstitutional, I believe that the "broad power" of the legislature to amend adopted initiatives recognized by the courts is sufficient in this instance to prevent the present amendment from offending art XI, sec. 6 of the Alaska Constitution. The Committee Substitute's amendment to AS 15.13.040(b) and 15.13.070(c) is in keeping with stated goals and rationales of the initiative, and operates

to modify an element of AS 15.13.040(b) that is arguably inconsistent with the initiative's other provisions. For these reasons, I believe a court could find that the present amendment does not operate as a repeal of the initiative's provisions "to the extent that they are materially changed by, and rendered repugnant to, the amendatory act." Meyers, at 42.

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

TLAB:ljw
07-082.ljw

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 February 16, 2007

SUBJECT: Sectional Summary of amendment to CSHB 6( )
(Work Order No. 25-LS0055\K.5)

Amend #2

TO: Representative Craig Johnson
Attn: Jeanne Ostnes

FROM: Alpheus Bullard RAB
Legislative Counsel

You have requested a sectional summary of the above-described amendment.

As a preliminary matter, note that a sectional summary of an amendment should not be considered an authoritative interpretation of the amendment and the amendment itself is the best statement of its contents. If you would like an interpretation of the amendment as it may apply to a particular set of circumstances, please advise.

Section 5. This section amends AS 15.13.050(b) to conform with secs. 7 and 10 by removing any reference to contributions.

Section 6. This section amends AS 15.13.065(a) to conform with secs. 7 and 10 by removing groups (that are not political parties) from those entities that may make a contribution to a candidate and by removing groups from those entities that may make a contribution to a group, nongroup entity, or political party.

Section 7. This section adds subsection (i) to AS 15.13.072, the subsection prohibiting candidates from accepting contributions from groups (that are not political parties).

Section 8. This section amends AS 15.13.074(c) to conform with secs. 7 and 10 by removing groups that are not political parties from those groups prohibited from contributing to a candidate before 18 months ahead of a campaign and after 45 days after an election (such groups being prohibited from making contributions at any time by secs. 7 and

Section 9. This section amends AS 15.13.074(h) to conform with secs. 7 and 10 by removing groups that are not political parties from the subsection's prohibition on contributions between January 1 and the date of the general election of the year of a general election for an election for governor and lieutenant governor (such groups being prohibited from making contributions at any time by secs. 7 and 10).

Section 10. This section adds subsection (j) to AS 15.13.074, the subsection prohibiting groups that are not political parties from making contributions to candidates.

Section 11. This section amends AS 15.13.400(8) (the definition of "group" under the chapter) to conform with secs. 7 and 10 by removing language concerning contributions (groups being prohibited from making contributions by secs. 7 and 10).

Section 12. This section amends AS 15.13.400(13) (the definition of "nongroup entity" under the chapter) to keep groups that are not political parties from falling under the definition of "nongroup entity."

Section 13. This section repeals AS 15.13.070(c), a subsection setting contribution limits for groups that are not political parties, to conform with secs. 7 and 10 (such groups being prohibited from making contributions).

TLAB:med
07-107.med

25-LS0055\K.5
Bullard
2/14/07

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE JOHNSON

TO: CSHB 6( ), Draft Version "K"

Page 1, line 1, following "ontributions":

Insert "**relating to the definition of 'group' and 'nongroup entities';**"

Page 4, lines 9 - 14:

Delete all material and insert:

"* **Sec. 5.** AS 15.13.050(b)

(b) If a group intends to support only one candidate or to [CONTRIBUTE TO OR] expend on behalf of one candidate 33 1/3 percent or more of its funds, the name of the candidate shall be a part of the name of the group. If the group intends to oppose only one candidate or to [CONTRIBUTE ITS FUNDS IN OPPOSITION TO OR] make expenditures in opposition to a candidate, the group's name must clearly state that it opposes that candidate by using a word such as "opposes," "opposing," "in opposition to," or "against" in the group's name. Promptly upon receiving the registration, the commission shall notify the candidate of the group's organization and intent. A candidate may register more than one group to support the candidate; however, multiple groups controlled by a single candidate shall be treated as a single group for purposes of the contribution limit in AS 15.13.070(b)(1).

* **Sec. 6.** AS 15.13.065(a) is amended to read:

(a) **An individual, a group that is a political party, and a nongroup entity may make a contribution** [INDIVIDUALS, GROUPS, NONGROUP ENTITIES, AND POLITICAL PARTIES MAY MAKE CONTRIBUTIONS] to a candidate. An individual [, GROUP,] or nongroup entity may make a contribution to a group, to a nongroup entity, or to a political party.

* **Sec. 7.** AS 15.13.072 is amended by adding a new subsection to read:

(i) A candidate may not accept a contribution from a group that is not a political party.

* **Sec. 8.** AS 15.13.074(c) is amended to read:

(c) A person or group **that is a political party** may not make a contribution

(1) to a candidate or an individual who files with the commission the document necessary to permit that individual to incur certain election-related expenses as authorized by AS 15.13.100 when the office is to be filled at a general election before the date that is 18 months before the general election;

(2) to a candidate or an individual who files with the commission the document necessary to permit that individual to incur certain election-related expenses as authorized by AS 15.13.100 for an office that is to be filled at a special election or municipal election before the date that is 18 months before the date of the regular municipal election or that is before the date of the proclamation of the special election at which the candidate or individual seeks election to public office; or

(3) to any candidate later than the 45th day

(A) after the date of the primary election if the candidate was not nominated at the primary election; or

(B) after the date of the general election, or after the date of a municipal or municipal runoff election.

* **Sec. 9.** AS 15.13.074(h) is amended to read:

(h) Notwithstanding AS 15.13.070, a candidate for governor or lieutenant governor [AND A GROUP THAT IS NOT A POLITICAL PARTY AND THAT, UNDER THE DEFINITION OF THE TERM "GROUP," IS PRESUMED TO BE CONTROLLED BY A CANDIDATE FOR GOVERNOR OR LIEUTENANT GOVERNOR,] may not make a contribution to a candidate for another office, to a person who conducts a write-in campaign as a candidate for other office, or to another group of amounts received by that candidate [OR CONTROLLED GROUP] as contributions between January 1 and the date of the general election of the year of a general election for an election for governor and lieutenant governor. This subsection does not prohibit

[(1) THE GROUP DESCRIBED IN THIS SUBSECTION FROM MAKING CONTRIBUTIONS TO THE CANDIDATES FOR GOVERNOR AND LIEUTENANT GOVERNOR WHOM THE GROUP SUPPORTS; OR

(2)] the governor or lieutenant governor [, OR THE GROUP DESCRIBED IN THIS SUBSECTION,] from making contributions under AS 15.13.116(a)(2)(A)

* **Sec. 10.** AS 15.13.074 is amended by adding a new subsection to read:

(j) A group that is not a political party may not make a contribution to a candidate.

* **Sec. 11.** AS 15.13.400(8) is amended to read:

(8) "group" means

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

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

only one candidate for purposes of AS 15.13.070, whether or not control of the group has been disclaimed by the candidate;

* **Sec. 12.** AS 15.13.400(13) is amended to read:

(13) "nongroup entity" means a person, other than an individual **and other than a group that is not a political party**, that takes action the major purpose of which is to influence the outcome of an election, and that

(A) cannot participate in business activities;

(B) does not have shareholders who have a claim on corporate earnings; and

(C) is independent from the influence of business corporations.

* **Sec. 13.** AS 15.13.070(c) is repealed."

Renumber the following bill section accordingly.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

SARAH PALIN, GOVERNOR

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE: (907)269-5100
FAX: (907)276-3697

February 22, 2007

The Honorable Bob Lynn
State House of Representatives
State Capitol, Room 104
Juneau, Alaska 99801

Re: Constitutionality of HB 6, proposing to amend campaign contribution limits enacted by initiative

Dear Representative Lynn:

As you requested in correspondence dated February 16, 2007, we have reviewed the legislature's authority under the Alaska Constitution to amend a statute enacted by initiative. Specifically, you inquired about the constitutionality of a proposed committee substitute for House Bill 6 ("HB 6"), which would further limit campaign contributions from a group from the $1,000 maximum imposed by initiative to a $500 maximum.

We believe that a court probably would conclude that the legislature has the authority to make this change because the amendment would not invalidate or repeal the initiative and would effectuate the intent of the voters who passed the initiative.

The bill at issue, HB 6, would amend AS 15.13.040 and AS 15.13.070, which govern political contributions to state election campaigns. The bill is one of a package of ethics reform bills and, as proposed, would amend several statutory provisions. You requested only that we review the proposed amendment to AS 15.13.070(c), in Section 5 of Version K of the proposed committee substitute. This proposed amendment would reduce the limit for contributions made by a group that is not a political party to a candidate, group, nongroup entity, or political party from $1,000 to $500.

The $1,000 limit was imposed by a recent voter initiative. In the 2006 Primary Election, the voters approved Ballot Measure 1, which amended several statutes related to campaign contribution limits, lobbying, and disclosure. Entitled the "Take Our State Back" initiative by its supporters, it was an ethics reform proposal designed, in part, to provide greater limitations on campaign contributions. Among other changes, the initiative proposed to decrease the amount a group may give to a candidate or group from

$2,000 to $1,000. According to the initiative's authors, this change would limit "the amount of special interest influence in legislative campaigns," because "[t]he more special interests can contribute [to political campaigns], the more influence they have over our politicians." *See* Statement of Support, 2006 Primary Election Voter Pamphlet. The voters approved the amendments proposed in the initiative and the new laws became effective on December 17, 2006.

Under Article XI, Section 6, of the Alaska Constitution, a voter initiative cannot be repealed for two years, but may be amended at any time. The Alaska Supreme Court recognizes that this constitutional provision gives the legislature broad authority to amend laws enacted through the initiative process. *Warren v. Boucher*, 543 P.2d 731, 737 (Alaska 1975). The central issue in determining the permissible scope of legislative authority is "whether the legislature has exceeded that broad power by passing an amendment which so vitiates the initiative as to constitute its repeal." *Warren v. Thomas*, 568 P.2d 400, 402 (Alaska 1977)(quotation omitted).

The Court in *Warren v. Thomas* reviewed legislative amendments to a conflict of interest law that had been enacted by initiative. The legislative amendments had the effect of repealing certain portions of the law and reduced penalties for violation of the law. Nevertheless, the Court concluded that the amendments were acceptable because they did not "so emasculate the law that it is effectively repealed." *Thomas*, 568 P.2d at 403. In reaching this conclusion, the Court found that, although the fines for violations had been reduced, "the amended law still imposes substantial disclosure requirements on public officials and effectuates the intent of the electorate that those in a position of public trust be held to a high standard of financial disclosure." *Id.*

In a more recent case, *State v. Trust the People*, 113 P.3d 613, 623 (Alaska 2005), the Court reaffirmed its holding in *Thomas*, noting that the Constitution gives the legislature broad powers to amend laws enacted by initiative but that such amendments must effectuate the intent of the electorate and cannot so vitiate an act passed by initiative as to constitute a repeal.

In applying the Court's analysis to this case, the proposed amendment appears to fall squarely within the legislature's amendment power. The proposed law promotes the same goals and common purpose as the initiative. They both seek to impose greater controls over campaign contributions and share the common purpose of campaign finance reform.

In determining voter intent, the Court looks at published arguments in support of an initiative. *Id.* at 622. The statement in support of Ballot Measure 1 in the voter pamphlet indicates that the initiative was proposed with the intent of limiting

contributions by "special interests" in legislative campaigns. To further that goal, the initiative amendments reduced the campaign contribution limits for individuals and groups.

The amendment proposed in HB 6 would not roll back or repeal this reduction, but would further restrict the campaign contribution limit for groups. If the amendment sought to raise the $1,000 limit imposed by the initiative, it might be considered a repeal. Because, however, it further reduces the cap on campaign contributions, it effectuates the intent of the electorate to impose more stringent limits on campaign financing.

Because in this case the proposed amendment promotes the intent and purposes of the initiative, we believe that a court likely would find that it is within the amendment authority of the legislature.

Sincerely,

TALIS J. COLBERG
ATTORNEY GENERAL

By: Brenda B. Page
Brenda B. Page
Assistant Attorney General

BBP:jv

cc: John Bitney, Legislative Liaison
Deborah Behr, Supervisor for Legislation and Regulations

Warren v. Thomas
568 P.2d 400
Alaska 1977.
Sep 02, 1977

Term

568 P.2d 400

Supreme Court of Alaska.
Clifford E. **WARREN**, Appellant,
Frank Harris, Intervenor,
v.
Lowell **THOMAS**, Jr., Lieutenant Governor and the State of Alaska, Appellees.
No. 2919.
Sept. 2, 1977.

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

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

OPINION

CONNOR, Justice.

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

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

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

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

Warren raises two important issues concerning the constitutionality of the legislature's action:
1. Whether the legislature has the power to amend a law enacted by the initiative procedure;
2. Whether the amendments to the initiative constitute a repeal of the initiated law in violation of article XI, s 6 of the Alaska Constitution.
Several additional arguments are raised but do not warrant extensive discussion. [FN2]

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

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

Article XI, s 1, of the Alaska Constitution provides that the people of Alaska may "propose and enact laws by the initiative. . . ."
Article XI, s 6 provides:
"If a majority of the votes cast on the proposition favor its adoption, the initiated measure is enacted. If a majority of the votes cast on the proposition favor the rejection of an act referred, it is rejected. The lieutenant governor shall certify the election returns. An initiated law becomes effective ninety days after certification, is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time. An act rejected by referendum is void thirty days after certification. Additional procedures for the initiative and referendum may be prescribed by law."
[1] According to this plain language the legislature may not repeal a law passed by initiative for two years, but may pass an amendment at any time. We interpret this provision in accordance with the general principle of statutory construction that a constitutional provision should receive a reasonable and practical interpretation in accordance with common sense. [FN3] Cottingham v. State Board of Examiners, 134 Mont. 1, 328 P.2d 907, 915 (1968); 2A Sutherland, Statutory Construction, s 49.03 (4th ed. Sands 1973).[FN4] Moreover, it has been held that in the absence

of a specific restriction the legislature may amend or repeal a law passed by initiative. [FN5]

FN3. Warren correctly points out that the statements of delegates at the constitutional convention concerning the provisions for the initiative and referendum process have limited usefulness as interpretative aids.

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

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

FN5. Cottingham v. State Board of Examiners, 134 Mont. 1, 328 P.2d 907, 913 (1968); Zilesch v. Polk County, 107 Or. 659, 215 P. 578, 582 (1923); cf., e. g., Staples v. Bishop, 225 Ark. 936, 286 S.W.2d 503 (1956). See also Adams v. Bolin, 74 Ariz. 269, 247 P.2d 617 (1952). See generally 6 McQuillin, The Law of Municipal Corporations s 21.03 (3d ed. 1969); Annot., 33 A.L.R.2d 1118, 1121 (1954), and cases collected therein.

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

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

to amend an initiative.[FN7]

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

FN7. We stated:

"The final constitutional provision states in pertinent part:

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

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

intolerable burdens upon established administrative systems. To this end the legislature was given the ability to substitute its judgment for that of the proponents of an initiative.

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

543 P.2d at 737

[3] The central issue in the case at bar is whether the legislature has exceeded that broad power by passing an amendment which so vitiates the initiative as to "constitute its repeal." Id. at 737. Warren argues that the changes are so drastic that they make a mockery of the law, that the trial court erred in concluding the legislation was merely "housekeeping," and that the amendments to AS 39.50 amount to a repeal of the law. We disagree. "(A)n amendment of an act operates as a repeal of its provisions to the

extent that they are materially changed by, and rendered repugnant to, the amendatory act." Meyers v. Board of Sup'rs of Los Angeles County, 110 Cal.App.2d 623, 243 P.2d 38, 42 (1952); see also W. R. Grasle Company v. Alaska Workmen's Comp. Board, 517 P.2d 999 (Alaska 1974). The implied repeal of an act is disfavored and will be limited to that which is necessary to carry out the intent of the legislature. John Hancock Mut. Life Ins. Co. v. Haworth, 68 Idaho 185, 191 P.2d 359, 363 (1948); 1A Sutherland, Statutory Construction, s 23.09 (4th ed. Sands 1972). See also 6 McQuillin Law of Municipal Corporations s 21.09 (3d ed. 1969) (repeal of ordinances by implication disfavored). In the case at bar, one section [FN8] and two subsections [FN9] were expressly repealed in 1975 when the legislature amended the initiated law. Sec. 26, ch. 25, SLA 1975.

FN8. AS 39.50.140 (penalties for accepting bribes).

FN9. AS 39.50.040(b)(6) (duty of trustee of blind trusts to file for trustor); AS 39.50.030(c) (exemption from compliance by Alaska Supreme Court because of profession).

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

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

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

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

Warren challenges the state's reliance on State v. Meyers, 51 Wash.2d 454, 319 P.2d 828 (1957), in support of its argument that the amendments to AS 39.50 do not effectively repeal this law. In Meyers, supra, the people of Washington passed an initiative

providing for the redistricting of the state, using the census tract rather than the election precinct as the unit of population for the purpose of informing senatorial and legislative districts. This was in an effort to cure legislative noncompliance with the constitutional provision on apportionment and to better reflect the population configuration of the state. The legislature amended the initiative by reinstating the use of the election precinct. This action was challenged as violating the state constitutional prohibition against the repeal, but not the amendment, of initiated laws. On appeal the Washington Supreme Court found the amendment to be valid. Defining the words "to amend" broadly, the court said that an "amendment may effectually supplant or destroy the original charter, and institute a new policy altogether." Id., 319 P.2d at 831. The dissent argued that the legislature's action emasculated the theory of the initiative and thwarted the constitutional process. Id., 319 P.2d at 840. Nevertheless, the majority opinion concluded that the legislature properly exercised its discretion in determining that the precinct method was more suitable. Id., 319 P.2d at 834. As Warren argues, there is much merit in the dissent in Meyers as to the scope of the legislature's power to amend laws enacted by initiative, but we are not presented with a similar case. The amendments to AS 39.50, which preserve its basic structure and purpose, fall far short of the drastic changes made to the apportionment scheme by the Washington legislature.

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

AFFIRMED.

Alaska 1977.

Warren v. **Thomas**,

568 P.2d 400

END OF DOCUMENT

Term

Doc 4 of 4

Cite List

STATE OF ALASKA
DIVISION OF ELECTIONS
JUNEAU

CERTIFICATE

I, Loren D. Leman, Lieutenant Governor for the State of Alaska, do hereby certify in accordance with the provisions of AS 15.15.450 that a *Primary Election was held on the 22nd day of August, 2006 pursuant to AS 15.25.020 in the State of Alaska and the following are the certified results for the ballot measures:*

BALLOT MEASURE	VOTES CAST	
	Yes	No
BALLOT MEASURE NO. 1 Campaign Contribution Limits, Lobbying and Disclosure	113,130	41,836

In Testimony Whereof, I have hereunto set my hand and affixed hereto the Seal of the State of Alaska, at Juneau, the Capital, this 19th day of September, A.D. 2006.

Loren D. Leman, Lieutenant Governor
State of Alaska

"An Act relating to contribution limits, lobbyists, and disclosure."

03DISC

AG's File Number: 663-04-0025
Primary Sponsors: Harry Crawford, Eric Croft, David Guttenberg
Contact Information - Karen Compton, 227-2527, www.trust-the-people.org

Application was received in the Lieutenant Governor's Office on September 4, 2003. A copy of the application and signatures were sent to the Department of Law and Division of Elections on September 5, 2003. The Division of Elections determined that there were a sufficient number of sponsor signatures on September 11, 2003. The application was certified on September 19, 2003. Petition booklets were distributed to the initiative committee on September 26, 2003. Petition booklets were submitted to the Division of Elections on September 21, 2004. Lieutenant Governor Leman certified the petition for this initiative as properly filed on November 19, 2004. The proposition was placed on the August 2006 primary election ballot and approved by a vote of:

YES - 113,130
NO - 41,836

Alaska Division of Elections

INITIATIVE PETITION BILL LANGUAGE
by Petition Sponsors

Petition ID: 03DISC

AN ACT RELATING TO CONTRIBUTION LIMITS, LOBBYISTS, AND DISCLOSURE.

Posted 7/13/06

Proposed Bill:

AN ACT RELATING TO CONTRIBUTION LIMITS, LOBBYISTS, AND DISCLOSURE

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

Section 1. AS 15.13.070(b) is amended to read:
(b) an individual may contribute not more than
(1) $500 per year to a nongroup entity for the purpose of influencing the nomination or election of a candidate, to a candidate, to an individual who conducts a write-in campaign as a candidate, or to a group that is not a political party;
(2) $5,000 per year to a political party.

Section 2. AS 15.13.070(c) is amended to read:
(c) A group that is not a political party may contribute not more than $1,000 per year
(1) to a candidate, or to an individual who conducts a write-in campaign as a candidate;
(2) to another group, to a non-group entity, or to a political party.

Section 3. AS 15.13.040(b) is amended to read:
(b)Each group shall make a full report upon a form prescribed by the commission, listing
(1) the name and address of each officer and director;
(2) the aggregate amount of all contributions made to it; and, for all contributions in excess of $100 in the aggregate a year, the name, address, principal occupation, and employer of the contributor, and the date and amount contributed by each contributor; for purposes of this

paragraph, "contributor" means the true source of the funds, property, or services being contributed; and
(3)the date and amount of all contributions made by it and all expenditures made, incurred or authorized by it.

Section 4. AS 24.45.171(8) is amended to read:
(8) "lobbyist" means a person who
(A) is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, to communicate directly or through the person's agents with any public official for the purpose of influencing legislation or administrative action for more than 10 hours in any 30-day period in one calendar year; or
(B) represents oneself as engaging in the influencing of legislative or administrative action as a business, occupation or profession.

Section 5. AS 24.60.200 is amended to read:
Sec. 24.60.200. Financial disclosure by legislators, public members of the committee, and legislative directors. A legislator, a public member of the committee, and a legislative director shall file a disclosure statement, under oath and on penalty of perjury, with the Alaska Public Offices Commission giving the following information about the income received by the discloser, the discloser's spouse or domestic partner, the discloser's dependent children, and the discloser's nondependent children who are living with the discloser:
(1)the information that a public official is required to report under AS 39.50.030, other than information about gifts;
(2)as to income in excess of $1,000 received as compensation for personal services, the name and address of the source of the income, and a statement describing the nature of the services performed; if the source of income is known or reasonably should be known to have a substantial interest in legislative, administrative, or political action and the recipient of the income is a legislator or legislative director, the amount of income received from the source shall be disclosed;
(3) as to each loan or loan guarantee over $1,000 from a source with a substantial interest in legislative, administrative, or political action, the name and address of the person making the loan or guarantee, the amount of the loan, the terms and conditions under which the loan or guarantee was given, the amount outstanding at the time of filing, and whether or not a written loan agreement exists.

Section 6. Effective Date. This Act takes effect January 1, 2005.

End

Initiative Petition Status Report

Alaska Division of Elections Home Page

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

May 24, 1999

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

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

Dear Governor Knowles:

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

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

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

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

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

Legal Standard

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

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

Main Changes made to the Initiative

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

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

- Limit possession to one ounce and six plants.

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

- Allow access to the registry in criminal investigations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

Sincerely,

Deborah E. Behr

for Bruce M. Botelho
Attorney General

BMB:DJG:jf

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FRANK H. MURKOWSKI, GOVERNOR

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

May 19, 2004

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

Re: HB 417 -- amending the definition of "project" in the act establishing the Alaska Natural Gas Development Authority
Our File: 883-0[illegible]-0044

Dear Governor Murkowski:

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

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

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

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

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

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

Sincerely,

for Gregg D. Renkes
Attorney General

GDR:LHH:tag

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Sarah Palin, Governor

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

February 26, 2007

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

Re: Amendment of Laws Enacted by Initiative

Dear Representative Stoltze:

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

1. Summary of the case law

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Talis J. Colberg
Attorney General

Enclosures

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

25-LS0055\K.5
Bullard
2/14/07

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE JOHNSON

TO: CSHB 6( ), Draft Version "K"

Page 1, line 1, following "**contributions**":

Insert "**relating to the definition of 'group' and 'nongroup entities';**"

Page 4, lines 9 - 14:

Delete all material and insert:

"* **Sec. 5.** AS 15.13.050(b)

(b) If a group intends to support only one candidate or to [CONTRIBUTE TO OR] expend on behalf of one candidate 33 1/3 percent or more of its funds, the name of the candidate shall be a part of the name of the group. If the group intends to oppose only one candidate or to [CONTRIBUTE ITS FUNDS IN OPPOSITION TO OR] make expenditures in opposition to a candidate, the group's name must clearly state that it opposes that candidate by using a word such as "opposes," "opposing," "in opposition to," or "against" in the group's name. Promptly upon receiving the registration, the commission shall notify the candidate of the group's organization and intent. A candidate may register more than one group to support the candidate; however, multiple groups controlled by a single candidate shall be treated as a single group for purposes of the contribution limit in AS 15.13.070(b)(1).

* **Sec. 6.** AS 15.13.065(a) is amended to read:

(a) **An individual, a group that is a political party, and a nongroup entity may make a contribution** [INDIVIDUALS, GROUPS, NONGROUP ENTITIES, AND POLITICAL PARTIES MAY MAKE CONTRIBUTIONS] to a candidate. An individual [, GROUP,] or nongroup entity may make a contribution to a group, to a nongroup entity, or to a political party.

* **Sec. 7.** AS 15.13.072 is amended by adding a new subsection to read:

(i) A candidate may not accept a contribution from a group that is not a political party.

* **Sec. 8.** AS 15.13.074(c) is amended to read:

(c) A person or group **that is a political party** may not make a contribution

(1) to a candidate or an individual who files with the commission the document necessary to permit that individual to incur certain election-related expenses as authorized by AS 15.13.100 when the office is to be filled at a general election before the date that is 18 months before the general election;

(2) to a candidate or an individual who files with the commission the document necessary to permit that individual to incur certain election-related expenses as authorized by AS 15.13.100 for an office that is to be filled at a special election or municipal election before the date that is 18 months before the date of the regular municipal election or that is before the date of the proclamation of the special election at which the candidate or individual seeks election to public office; or

(3) to any candidate later than the 45th day

(A) after the date of the primary election if the candidate was not nominated at the primary election; or

(B) after the date of the general election, or after the date of a municipal or municipal runoff election.

* **Sec. 9.** AS 15.13.074(h) is amended to read:

(h) Notwithstanding AS 15.13.070, a candidate for governor or lieutenant governor [AND A GROUP THAT IS NOT A POLITICAL PARTY AND THAT, UNDER THE DEFINITION OF THE TERM "GROUP," IS PRESUMED TO BE CONTROLLED BY A CANDIDATE FOR GOVERNOR OR LIEUTENANT GOVERNOR,] may not make a contribution to a candidate for another office, to a person who conducts a write-in campaign as a candidate for other office, or to another group of amounts received by that candidate [OR CONTROLLED GROUP] as contributions between January 1 and the date of the general election of the year of a general election for an election for governor and lieutenant governor. This subsection does not prohibit

[(1) THE GROUP DESCRIBED IN THIS SUBSECTION FROM MAKING CONTRIBUTIONS TO THE CANDIDATES FOR GOVERNOR AND LIEUTENANT GOVERNOR WHOM THE GROUP SUPPORTS; OR

(2)] the governor or lieutenant governor [, OR THE GROUP DESCRIBED IN THIS SUBSECTION,] from making contributions under AS 15.13.116(a)(2)(A)

* **Sec. 10.** AS 15.13.074 is amended by adding a new subsection to read:

(j) A group that is not a political party may not make a contribution to a candidate.

* **Sec. 11.** AS 15.13.400(8) is amended to read:

(8) "group" means

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

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

only one candidate for purposes of AS 15.13.070, whether or not control of the group has been disclaimed by the candidate;

*** Sec. 12.** AS 15.13.400(13) is amended to read:

(13) "nongroup entity" means a person, other than an individual **and other than a group that is not a political party**, that takes action the major purpose of which is to influence the outcome of an election, and that

(A) cannot participate in business activities;

(B) does not have shareholders who have a claim on corporate earnings; and

(C) is independent from the influence of business corporations.

*** Sec. 13.** AS 15.13.070(c) is repealed."

Renumber the following bill section accordingly.

25-LS0055\K.2
Bullard
2/13/07

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE JOHNSON

TO: CSHB 6( ), Draft Version "K"

Page 1, line 1, following "**to**":

Insert "**reporting of campaign contributions and expenditures; limiting**"

Page 4, following line 8:

Insert a new bill section to read:

"* **Sec. 5.** AS 15.13.040(m) is amended to read:

(m) The commission **shall require** [MAY REQUEST] that the information required under this chapter be submitted electronically but **may, when extraordinary circumstances warrant an exception,** [SHALL] accept any information required under this chapter that is typed in clear and legible black typeface or hand-printed in dark ink on paper in a format approved by the commission or on forms provided by the commission and that is filed with the commission."

Renumber the following bill sections accordingly.

Page 4, following line 14:

Insert new bill sections to read:

"* **Sec. 7.** AS 15.13.078(c) is amended to read:

(c) On and after the date determined under AS 15.13.110 as the last day of the period ending three days before the due date of the report required to be filed under AS 15.13.110(a)(1) **for expenditures** and until the date of the election for which the report is filed, a candidate may not give or loan to the candidate's campaign the candidate's money or other thing of value of the candidate in an amount that exceeds

$5,000.

* **Sec. 8.** AS 15.13.110(a) is amended to read:

(a) Each candidate, group, and nongroup entity shall make a full report **of expenditures** in accordance with AS 15.13.040 for the period ending three days before the due date of the report and beginning on the last day covered by the most recent previous report. If the report is a first report, it must cover the period from the beginning of the campaign to the date three days before the due date of the report. If the report is a report due February 15, it must cover the period beginning on the last day covered by the most recent previous report or on the day that the campaign started, whichever is later, and ending on February 1 of that year. The report shall be filed

(1) 30 days before the election; however, this report is not required if the deadline for filing a nominating petition or declaration of candidacy is within 30 days of the election;

(2) one week before the election;

(3) 105 days after a special election; and

(4) February 15 for expenditures made [AND CONTRIBUTIONS RECEIVED] that were not reported previously, including, if applicable, all amounts expended from a public office expense term account established under AS 15.13.116(a)(8) and all amounts expended from a municipal office account under AS 15.13.116(a)(9), or when expenditures were not made [OR CONTRIBUTIONS WERE NOT RECEIVED] during the previous year.

* **Sec. 9.** AS 15.13.110(b) is amended to read:

(b) Each contribution [THAT EXCEEDS $250 AND THAT IS MADE WITHIN NINE DAYS OF THE ELECTION] shall be reported to the commission by date, amount, and contributor within 72 [24] hours of receipt by the candidate, group, campaign treasurer, or deputy campaign treasurer. Each contribution to a nongroup entity for the purpose of influencing the outcome of an election [THAT EXCEEDS $250 AND THAT IS MADE WITHIN NINE DAYS OF THE ELECTION] shall be reported to the commission by date, amount, and contributor within 72 [24] hours of receipt by the nongroup entity.

* **Sec. 10.** AS 15.13.110(e) is amended to read:

(e) A group formed to sponsor an initiative, a referendum or a recall shall report 30 days after its first filing with the lieutenant governor. Thereafter each group shall report **all contributions received within 72 hours after receipt and shall report** within 10 days after the end of each calendar quarter on the [CONTRIBUTIONS RECEIVED AND] expenditures made during the preceding calendar quarter until reports are due under (a) of this section."

Renumber the following bill section accordingly.

Nancy Manly

From: Rep. Bob Lynn
Sent: Friday, January 19, 2007 6:36 PM
To: Rep. Bob Lynn; Nancy Manly; Nancy Manly; infosica@gci.net
Subject: FW: HBs 6& 20

From: Jackie Endsley [mailto:jendsley@Ibew1547.Org]
Sent: Friday, January 19, 2007 3:19 PM
To: Rep. Bob Lynn
Subject: HBs 6& 20

I am in definite opposition to House Bills 6 & 20. I find these bills regarding PAC contributions overly restrictive and believe this is simply more political "jockeying" in our overwhelmingly partisan Alaskan legislature.

I strongly support PACs and feel that working families and working people need this meager ability to contribute to the candidates that support their issues.

The voters of Alaska have spoken: IT IS TIME TO STOP PARTISAN POLITICS IN ALASKA.

Please do not support these bills.

Jackie Endsley
IBEW Local 1547
Community Relations Coordinator
3333 Denali St., Suite 200
Anchorage, AK 99503
(907) 777-7257
(907) 777-7264 (fax)

Alaska State Legislature

Session: (Jan-May)
State Capitol, Room 208
Juneau, AK 99801-1182
(907) 465-4859
Fax (907) 465-3799

Interim: (June-Dec)
716 West 4th Avenue, Suite 300
Anchorage, AK 99501-2133
(907) 269-0129
Fax (907) 269-0128

John Harris
Speaker of the House

MEMORANDUM

To: Representative Bob Lynn, Chair
House State Affairs Committee

From: Representative John Harris
Speaker of the House

Date: January 17, 2007

Subject: Hearing Request for HB 6

Please consider this request to hear House Bill 6: Campaign Contributions, before your committee at your earliest possible convenience.

Background materials for the bill will be forthcoming. If you have questions or need additional information, please contact Tom Wright of my staff at 465-4859.

Thank you for your consideration of this request to schedule HB 20.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB006
() Publish Data:

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

Title: An Act relating to campaign contributions by groups that are not political parties...
RDU: AK Public Offices Commission
Component: AK Public Offices C mission

Sponsor: Harris, Ramras, Hawker, Chenault, et al.
Requester: House State Affairs
Component No.: 70

Expendit res/Revenues (Thousands of Dollars)

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budge' proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill amen 's the campaign disclosure law by reducing the amount a group may contribute to a candidate or another group from $1,000 to $500.

This bill should have no fiscal impact on the agency.

Prepared by: Brooke Miles, Executive Director
Phone 907-334-1726
Division: Alaska Public Offices Commission
Date/Time 2/2/07 2:28 p.m.
Approved by: Kevin Brooks, Deputy Commissioner
Date 2/2/2007
Agency: Department of Administration

25-LS0055\K.12
Bullard
3/5/07

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE HARRIS

TO: CSHB 6( ), Draft Version "K"

Page 1, line 15:

Delete ", address, **principal occupation, and employer**"

Insert "**and** [,] address [,]"

Page 2, line 2:

Delete "[AND"

Insert "and"

Page 2, lines 3 - 5:

Delete all material and insert:

"(D) for contributions in excess of **$100** [$250] in the aggregate during a calendar year, the principal occupation and employer of the contributor; [AND]"

Page 2, line 16:

Delete "**$250**"

Insert "**$100**"

Page 2, lines 18 - 29:

Delete all material.

Renumber the following bill sections accordingly.

Page 3, lines 19 - 24:

Delete all material and insert:

"(3) for all contributions described in (2) of this subsection, the name **and** [,] address [,] **of each contributor and the** date [,] and amount **of each contribution from** [CONTRIBUTED BY] each contributor and, for all contributions described in (2) of this subsection in excess of **$100** [$250] in the aggregate during a calendar year, the principal occupation and employer of the contributor; and"

25-LS0055\K.10
Bullard
2/27/07

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE HARRIS

TO: CSHB 6( ), Draft Version "K"

Page 1, line 15:

Delete ", address, **principal occupation, and employer**"

Insert "**and** [,] address [,]"

Page 2, line 2:

Delete "[AND"

Insert "and"

Page 2, lines 3 - 5:

Delete all material and insert:

"(D) for contributions in excess of **$100** [$250] in the aggregate during a calendar year, the principal occupation and employer of the contributor; [AND]"

Page 2, lines 24 - 25:

Delete ", address, principal occupation, and employer"

Insert "**and** [,] address [, PRINCIPAL OCCUPATION, AND EMPLOYER]"

Page 2, line 26, following "contributor":

Insert "**, and for all contributions in excess of $100 in the aggregate during a calendar year, the principal occupation and employer of each contributor**"

Page 3, lines 19 - 24:

Delete all material and insert:

"(3) for all contributions described in (2) of this subsection, the name **and** [,] address [,] **of each contributo. and the** date [,] and amount **of each contribution from** [CONTRIBUTED BY] each contributor and, for all contributions described in (2) of this subsection in excess of **$100** [$250] in the aggregate during a calendar year, the principal occupation and employer of the contributor; and"

25-LS0055\K.8
Bullard
2/21/07

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE HARRIS

TO: CSHB 6( ), Draft Version "K"

Page 1, line 15:

Delete ", address, **principal occupation, and employer**"

Insert "**and** [,] address [,]"

Page 2, line 2:

Delete "[AND"

Insert "and"

Page 2, lines 3 - 5:

Delete all material and insert:

"(D) for contributions in excess of $250 in the aggregate during a calendar year, the principal occupation and employer of the contributor; [AND]"

Page 2, lines 24 - 25:

Delete ", address, principal occupation, and employer"

Insert "**and** [,] address [, PRINCIPAL OCCUPATION, AND EMPLOYER]"

Page 2, line 26, following "contributor":

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Alaska State Legislature

Chairman
State Affairs Committee

Vice-Chairman
Economic Development, Trade & Tourism Committee

Member
Judiciary Committee
Joint Armed Services Committee

Finance Subcommittees
Corrections
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety

A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

E-Mail: Representative_Bob_Lynn@legis.state.ak.us
"Bob Lynn's Alaska Blog" RepBobLynnBlog.com

Session:
Alaska State Capitol
Juneau, AK 99801-1182

Phone: (907) 465-4931
Fax: (907) 465-4316
Toll Free: (800) 870-4391

Interim:
716 W. 4th Ave., #650
Anchorage, AK 99501-2133

Phone: (907) 269-0205
Fax: (907) 269-0207

FAX

To: Tom Wright

Fax #: 799

From: Representative Bob Lynn
Alaska State Capitol, room 104
Juneau, AK 99801-1182

Phone: 907-465-4931
Fax: 907-465-4316

# of Pages (including cover): 4

Re: AG Opinion HB 6

Comments:

Bob hasn't seen this yet - just wanted to forward it on to you :)

Nancy

"Bob Lynn Communicates"

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

SARAH PALIN, GOVERNOR

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE: (907)269-5100
FAX: (907)276-3697

February 22, 2007

The Honorable Bob Lynn
State House of Representatives
State Capitol Room 104
Juneau, Alaska 99801

Re: Constitutionality of HB 6, proposing to amend campaign contribution limits enacted by initiative

Dear Representative Lynn:

As you requested in correspondence dated February 16, 2007, we have reviewed the legislature's authority under the Alaska Constitution to amend a statute enacted by initiative. Specifically, you inquired about the constitutionality of a proposed committee substitute for House Bill 6 ("HB 6"), which would further limit campaign contributions from a group from the $1,000 maximum imposed by initiative to a $500 maximum.

We believe that a court probably would conclude that the legislature has the authority to make this change because the amendment would not invalidate or repeal the initiative and would effectuate the intent of the voters who passed the initiative.

The bill at issue, HB 6, would amend AS 15.13.040 and AS 15.13.070, which govern political contributions to state election campaigns. The bill is one of a package of ethics reform bills and, as proposed, would amend several statutory provisions. You requested only that we review the proposed amendment to AS 15.13.070(c), in Section 5 of Version K of the proposed committee substitute. This proposed amendment would reduce the limit for contributions made by a group that is not a political party to a candidate, group, nongroup entity, or political party from $1,000 to $500.

The $1,000 limit was imposed by a recent voter initiative. In the 2006 Primary Election, the voters approved Ballot Measure 1, which amended several statutes related to campaign contribution limits, lobbying, and disclosure. Entitled the "Take Our State Back" initiative by its supporters, it was an ethics reform proposal designed, in part, to provide greater limitations on campaign contributions. Among other changes, the initiative proposed to decrease the amount a group may give to a candidate or group from

$2,000 to $1,000. According to the initiative's authors, this change would limit "the amount of special interest influence in legislative campaigns," because "[t]he more special interests can contribute [to political campaigns], the more influence they have over our politicians." *See* Statement of Support, 2006 Primary Election Voter Pamphlet. The voters approved the amendments proposed in the initiative and the new laws became effective on December 17, 2006.

Under Article XI, Section 6, of the Alaska Constitution, a voter initiative cannot be repealed for two years, but may be amended at any time. The Alaska Supreme Court recognizes that this constitutional provision gives the legislature broad authority to amend laws enacted through the initiative process. *Warren v. Boucher*, 543 P.2d 731, 737 (Alaska 1975). The central issue in determining the permissible scope of legislative authority is "whether the legislature has exceeded that broad power by passing an amendment which so vitiates the initiative as to constitute its repeal." *Warren v. Thomas*, 568 P.2d 400, 402 (Alaska 1977)(quotation omitted).

The Court in *Warren v. Thomas* reviewed legislative amendments to a conflict of interest law that had been enacted by initiative. The legislative amendments had the effect of repealing certain portions of the law and reduced penalties for violation of the law. Nevertheless, the Court concluded that the amendments were acceptable because they did not "so emasculate the law that it is effectively repealed." *Thomas*, 568 P.2d at 403. In reaching this conclusion, the Court found that, although the fines for violations had been reduced, "the amended law still imposes substantial disclosure requirements on public officials and effectuates the intent of the electorate that those in a position of public trust be held to a high standard of financial disclosure." *Id.*

In a more recent case *State v. Trust the People*, 113 P.3d 613, 623 (Alaska 2005), the Court reaffirmed its holding in *Thomas*, noting that the Constitution gives the legislature broad powers to amend laws enacted by initiative but that such amendments must effectuate the intent of the electorate and cannot so vitiate an act passed by initiative as to constitute a repeal.

In applying the Court's analysis to this case, the proposed amendment appears to fall squarely within the legislature's amendment power. The proposed law promotes the same goals and common purpose as the initiative. They both seek to impose greater controls over campaign contributions and share the common purpose of campaign finance reform.

In determining voter intent, the Court looks at published arguments in support of an initiative. *Id.* at 622. The statement in support of Ballot Measure 1 in the voter pamphlet indicates that the initiative was proposed with the intent of limiting

contributions by "special interests" in legislative campaigns. To further that goal, the initiative amendments reduced the campaign contribution limits for individuals and groups.

The amendment proposed in HB 6 would not roll back or repeal this reduction, but would further restrict the campaign contribution limit for groups. If the amendment sought to raise the $1,000 limit imposed by the initiative, it might be considered a repeal. Because, however, it further reduces the cap on campaign contributions, it effectuates the intent of the electorate to impose more stringent limits on campaign financing.

Because in this case the proposed amendment promotes the intent and purposes of the initiative, we believe that a court likely would find that it is within the amendment authority of the legislature.

Sincerely,

TALIS J. COLBERG
ATTORNEY GENERAL

By: Brenda B. Page
Brenda B. Page
Assistant Attorney General

BBP:jv

cc: John Bitney, Legislative Liaison
Deborah Behr, Supervisor for Legislation and Regulations

TRANSACTION REPORT

FEB-21-2007 11:56 PM

FOR: REP LYNN 4654316

SEND

DATE	START	RECEIVER	PAGES	TIME	NOTE
FEB-21	11:54 PM	3799	4	1'32"	OK

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1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501-1994
phone: (907) 269-5101
fax: (907) 276-3697

FAX TRANSMITTAL SHEET

DATE: February 22, 2007 TIME: 11:33 AM TOTAL PAGES: 1

From: Brenda Page
Assistant Attorney General
Attorney General's Office
Anchorage

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: The Honorable Bob Lynn
465-4316

RE: HB 6

IF YOU DO NOT RECEIVE ALL THE PAGES, OR HAVE ANY PROBLEMS WITH THE TRANSMITTAL, PLEASE CALL Kelly @ (907) 269-5101.

Nancy Manly

To: 'Tom Wright'

Subject: AG Opinion Timeline

Tom: I just got a call from AG office. They "think" they will have an opinion down to Bob by Thursday. Just wanted to give you this update. I'll let you know if that changes and/or when we get it.

Nancy
x2794

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Harris bill raises stink level alert in Capitol halls

MYRL THOMPSON/Juneau
Report

Warning: This may be an especially peculiar Juneau Report. I think I may have cabin fever or something ... those of you who have read my reports over the years, will certainly understand. In particular, I blame Reps. John Harris and Jay Ramras, a dream about a hog and a long ago trip.

You'll see the connection soon enough.

On hog farming and ethics bills

Many years ago, I was traveling with my girlfriend on a cross-country genealogical field trip that included stops in the out-of-the-way towns that made up part of her family heritage. One particular Midwest town left an imprint on my memory that I have never forgotten.

The name of the town has long escaped me, but a particular odor that preceded our arrival by quite some miles never did. We were dumbfounded by that smell, which seemed only to grow stronger as we neared a predetermined spot on our itinerary. Our eyes were literally watering, and it seemed that all the oxygen had been sucked out of the air by the time we arrived at our destination.

As our car slowed to a stop at a small store directly in front of a group of locals wearing bib overalls, one of the men pointed to our Alaska license plates, and all eyes were directed to my girlfriend and me. As soon as we exited the car we were bombarded with obviously genuine questions.

"Are you folks lost?" "Are you from Alaska?" "What are you doing way out here?"

Before either of us answered their string of questions, we both blurted out, simultaneously, "What's that smell?"

Without so much as a blink of an eye, the largest of the old fellows said, "What smell?"

That was the start of a very eventful and interesting day. These folks had never met Alaskans, and we had never met hog farmers before.

We soon found ourselves talking, laughing and exchanging tall tales about our lives and homes. (My girlfriend's family name in this town was "Harris.")

Now, to tell you the truth, I had not thought about that day for some years - at least not until I was sitting in a House State Affairs Committee hearing here in Juneau last week. Listening to Rep. John Harris trying to explain his House Bill 6 on ethics to the committee brought it all clearly - and