

October 6, 2017

The Honorable Byron Mallott  
Lieutenant Governor  
P.O. Box 110015  
Juneau, Alaska 99811-0015

Re: *17AKGA Ballot Measure Application Review*  
AGO No. JU2017200579

Dear Lieutenant Governor Mallott:

You asked us to review an application for an initiative entitled “An Act relating to government accountability to the People of the State of Alaska; and providing for an effective date” (17AKGA). Because the application complies with the specific constitutional and statutory provisions governing the initiative process, we recommend that you certify the application.

**I. The proposed initiative bill.**

The bill proposed by this initiative would amend several provisions of Title 24 of the Alaska Statutes relating to legislative conflicts of interest and payments to legislators. The bill would also add a provision to Title 15 related to campaign finance. The bill is eleven sections long, and generally provides as follows:

**Section 1** would add to the uncodified law a statement of findings and intent. The statement provides that the people of the State of Alaska find that government must be accountable to the people. According to this statement, the government fails to be accountable when it endangers Alaska’s economy and state functions by failing to pass a timely annual budget, uses taxpayer dollars to pay for foreign travel that does not benefit Alaskans, allows foreign corporate interests to spend “unlimited amounts of money to influence” Alaska’s elections, fails to address many of legislators’ financial conflicts of interest, and permits lobbyists to “give unlimited food and drink to legislators.”

**Sections 2, 3, and 4** would amend existing provisions of AS 24.60.030 (entitled “Prohibited conduct and conflicts of interest”). The amendments would prohibit a legislator from directly or indirectly taking or withholding official action or exerting official influence that could substantially benefit or harm the financial interests of certain people. Those people include any member of the legislator’s immediate family, any employer of the legislator or of a member of the legislator’s immediate family, anyone with whom the legislator is negotiating for employment, and anyone from whom the legislator or a member of the legislator’s immediate family received more than \$10,000 of income in the preceding twelve months. The amendments would further require that a

legislator declare conflicts of interest before voting in committee, and ask to be excused from voting in a house of the legislature, if the legislator or a member of the legislator's immediate family has a substantial financial interest that the action to be voted on would affect to a greater extent than it affects the general public. A legislator would still be able to participate in public debate and vote on budget bills under these restrictions. Finally, the amendments would add new definitions of "financial interest" and "substantially benefit or harm."

**Sections 5 and 6** would amend existing provisions of AS 24.45.121 ("Prohibitions") governing the conduct of lobbyists, and AS 24.60.080 ("Gifts"), governing gifts to legislators and legislative employees. The amendments would specify that allowable gifts of food and beverages from a lobbyist to a legislator or legislative employee for immediate consumption are limited to de minimis food and nonalcoholic beverages.

**Section 7** would amend existing AS 24.10.130 ("Moving expenses and per diem allowance"). The amendments would provide that no legislator is entitled to a per diem allowance after the 121st day of a regular legislative session until the first day after the legislature passes an appropriations bill fully funding state operating expenditures or the first day of the next regular legislative session, whichever is earlier.

**Section 8** would amend existing provisions of AS 24.10.120 ("Method of payment") to prohibit payment for travel by legislators to final destinations outside the United States unless the legislator files a public report with the Legislative Affairs Agency "clearly evidencing how such travel benefits the state and serves a legislative purpose."

**Section 9** would add a new section to AS 15.13 ("State Election Campaigns") restricting the financing of state election campaigns by foreign-influenced corporations. Specifically, such corporations could not make, promise to make, or agree to make a covered expenditure with respect to a candidate in an election, a contribution to a group, or a contribution to a person that makes covered expenditures or contributions unless that person segregates contributions from foreign nationals and foreign-influenced corporations. This section would define "corporation," "covered expenditure," "electioneering expenditure," "media communication," "membership communication," "shareholder communication," "election," "foreign national," "foreign-influenced corporation," and "foreign owner." The section would also require the Alaska Public Offices Commission to promulgate implementing regulations, including, by July 1, 2019, regulations to provide guidance to corporations for determining the percentage of their foreign ownership.

**Section 10** contains a severability clause.

**Section 11** provides for an effective date of July 1, 2019.

## II. Analysis.

Under AS 15.45.070, the lieutenant governor must review an application for a proposed initiative bill within sixty calendar days of receipt and either “certify it or notify the initiative committee of the grounds for denial.” The application for the 17AKGA initiative was filed on August 30, 2017. The sixtieth calendar day after the filing date is October 30, 2017.<sup>1</sup> Under AS 15.45.080, certification shall be denied if: “(1) the proposed bill to be initiated is not confined to one subject or is otherwise not in the required form; (2) the application is not substantially in the required form; or (3) there is an insufficient number of qualified sponsors.”

### A. Form of the proposed initiative bill.

In evaluating an application for an initiative bill, you must determine whether the application is in “proper form.”<sup>2</sup> Specifically, you must decide whether the application complies with “the legal procedures for placing an initiative on the ballot, and whether the initiative contains statutorily or constitutionally prohibited subjects which should not reach the ballot.”<sup>3</sup>

The form of an initiative bill is prescribed by AS 15.45.040, which requires four things: (1) that the bill be confined to one subject; (2) that the subject be expressed in the title; (3) that the bill contain an enacting clause stating: “Be it enacted by the People of the State of Alaska”; and (4) that the bill not include prohibited subjects. An initiative includes a prohibited subject when it makes or repeals appropriations; enacts local or special legislation; dedicates revenue; or creates courts, defines their jurisdiction, or prescribes their rules.<sup>4</sup> You may deny certification only if the measure violates one or more of these restrictions, or if “controlling authority establishes its unconstitutionality,”

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<sup>1</sup> Although Sunday, October 29 is actually the sixtieth calendar day, AS 01.10.080 suggests that the next business day, October 30, is the legal deadline.

<sup>2</sup> Alaska Const. art. XI, § 2.

<sup>3</sup> *McAlpine v. Univ. of Alaska*, 762 P.2d 81, 87 n.7 (Alaska 1988).

<sup>4</sup> AS 15.45.010; Alaska Const. art. XI, § 7.

for example, if it mandates racially segregated schools in violation of *Brown v. Board of Education*.<sup>5</sup>

This initiative bill meets all four requirements of AS 15.45.040. The bill is confined to one subject, the subject is expressed in the title, the bill has the required enacting clause, and the bill does not include a prohibited subject. The bill is also not clearly unconstitutional under controlling authority.

In reviewing this initiative bill, we carefully considered whether it violates the single-subject rule, particularly because of the inclusion of section 9, related to campaign finance. We took guidance from the Alaska Supreme Court’s statements that it avoids applying the single-subject rule too narrowly, requiring only that all parts of a proposal “fall under some one general idea” and “be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.”<sup>6</sup>

In *Croft v. Parnell* the court held—for the first time—that an initiative violated the single-subject rule.<sup>7</sup> The bill in *Croft* would have created a voluntary program to provide public campaign funding to candidates for state office and would have created a new oil production tax, with a “soft dedication” of the revenue from the new tax to fund the program.<sup>8</sup>

Although the court broadly construes the single-subject rule, it concluded that the bill in *Croft* violated a main purpose of the rule—preventing logrolling.<sup>9</sup> It described logrolling as “appealing to different constituencies by including distinct provisions calculated to obtain sufficient votes to pass a measure.”<sup>10</sup> The court observed that some voters could be driven to support the bill in *Croft* entirely by animosity toward the oil and gas industry, while others could be equally motivated by strong feelings of support for

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<sup>5</sup> *Kodiak Island Borough v. Mahoney*, 71 P.3d 896, 900 n. 22 (Alaska 2003) (citing *Brown v. Bd. of Educ.*, 349 U.S. 294 (1955)).

<sup>6</sup> *Croft v. Parnell*, 236 P.3d 369, 372–73 (Alaska 2010); *Gellert v. State*, 522 P.2d 1120, 1123 (Alaska 1974) (quoting *Johnson v. Harrison*, 50 N.W. 923, 924 (Minn. 1891)).

<sup>7</sup> *Croft*, 236 P.3d at 374.

<sup>8</sup> *Id.* at 370–71.

<sup>9</sup> *Id.* at 374.

<sup>10</sup> *Id.*

the jobs and tax revenue generated by that industry.<sup>11</sup> “Either way,” the court held, “coupling the approval of a new oil production tax with approval of a program to publicly fund elections deprives the voters of an opportunity to send a clear message on each subject encompassed by the Sponsors’ initiative.”<sup>12</sup>

We do not believe 17AKGA implicates the court’s core concern in *Croft*. Given the considerable breadth with which the court construes the single-subject rule, we believe the court would uphold 17AKGA against a single-subject challenge. All parts of 17AKGA are aimed at one general idea: holding elected officials accountable to the public, from the funding of their campaigns to their conduct in office. 17AKGA enables voters to send a clear message on that single subject.

**B. Form of the application.**

The form of an initiative application is prescribed by AS 15.45.030, which provides that the application must include the

- (1) proposed bill;
- (2) printed name, the signature, the address, and a numerical identifier of not fewer than 100 qualified voters who will serve as sponsors; each signature page must include a statement that the sponsors are qualified voters who signed the application with the proposed bill attached; and
- (3) designation of an initiative committee consisting of three of the sponsors who subscribed to the application and represent all sponsors and subscribers in matters relating to the initiative; the designation must include the name, mailing address, and signature of each committee member.

The application on its face meets the first and third requirements, as well as the latter portion of the second requirement regarding the statement on the signature page. With respect to the first clause of the second requirement, we understand that the Division of Elections has determined that the application contains the names, signatures, addresses, and numerical identifiers of 176 qualified voters.

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

### **III. Proposed ballot and petition summary.**

We have prepared a ballot-ready petition title and summary to assist you in complying with AS 15.45.090(2) and AS 15.45.180, as is our practice. Alaska Statute 15.45.180(a) requires that the ballot proposition “give a true and impartial summary of the proposed law.” The same statute limits the number of words in the title of an initiative to twenty-five and the number of words in the body of the summary to fifty times the number of sections in the proposed law. “Section” in AS 15.45.180(a) is defined as “a provision of the proposed law that is distinct from other provisions in purpose or subject matter.”

This bill has eleven sections. Therefore, the number of words in the summary may not exceed 550. There are 14 words in the title and 201 words in the following summary, which we submit for your consideration:

#### **An Act Relating to Government Accountability to the People of the State of Alaska**

This act would restrict a legislator from taking or withholding official action that would help or harm the financial interests of certain people. These people include a legislator’s family, employer, potential employer, and anyone from whom the legislator or his or her immediate family earned more than \$10,000 in the prior year. The act would require a legislator to declare conflicts of interest before voting in a legislative committee. And it would require a legislator to ask to be excused from voting in the legislature if the legislator has a financial conflict. The act would prevent lobbyists from offering or giving legislators gifts of alcoholic drinks or significant food. The act would ban legislators from receiving per diem after the first 121 days of a regular legislative session, until they pass a budget bill or the next regular session begins. The act would prohibit the state from paying for foreign travel by legislators, unless it clearly benefits the state and serves a legislative purpose. The bill would also restrict money that foreign-influenced corporations could spend to influence a state or local candidate election. The Alaska Public Offices Commission would adopt regulations to enforce this part of the act.

Should this initiative become law?

Under AS 15.80.005(b), “[t]he policy of the state is to prepare a neutral summary that is scored at approximately 60,” using the Flesch test formula described in AS 15.80.005(c). This summary has a Flesch test score of 38.12. While this is below the

target readability score of 60, meeting that target is a goal, not a requirement.<sup>13</sup> The Alaska Supreme Court has upheld ballot summaries scoring as low as 33.8.<sup>14</sup> Given the nature of this initiative bill and the difficulty of describing its provisions simply without compromising accuracy and neutrality, we believe the summary satisfies the readability standards of AS 15.80.005.

#### **IV. Conclusion.**

The proposed bill and application are in the proper form and the application complies with the constitutional and statutory provisions governing the use of the initiative. We therefore recommend that you certify the initiative application and notify the initiative committee of your decision. You may then begin to prepare petitions in accordance with AS 15.45.090.

Please contact us if we can be of further assistance to you on this matter.

Sincerely,

JAHNA LINDEMUTH  
ATTORNEY GENERAL

By:

Elizabeth M. Bakalar  
Assistant Attorney General

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<sup>13</sup> See AS 15.80.005(d) (providing that a court may not enjoin election or election results for failure to comply with readability requirements).

<sup>14</sup> 2007 Op. Att’y Gen. (Oct. 17), 2007 WL 3118191, at \*10 (noting Flesch test score of 33.8); *Pebble Ltd. P’ship ex rel. Pebble Mines Corp. v. Parnell*, 215 P.3d 1064, 1082–84 (Alaska 2009) (approving adequacy of summary).