



THE STATE
of **ALASKA**
GOVERNOR MICHAEL J. DUNLEAVY

Department of Law

CIVIL DIVISION

P.O. Box 110300
Juneau, Alaska 99811
Main: 907.465.3600
Fax: 907.465.2520

September 1, 2023

The Honorable Nancy Dahlstrom
Lieutenant Governor
P.O. Box 110015
Juneau, Alaska 99811-0015

Re: *23RCF2 Ballot Measure Application Review*
AGO No. 2023102269

Dear Lieutenant Governor Dahlstrom:

You asked us to review an initiative application for a proposed bill entitled:

An Act restoring campaign contribution limits for campaigns for state and local office. (23RCF2).

We review initiatives to ensure they meet constitutional and statutory requirements, without considering the merits of any initiative. This application and the proposed bill are in the proper form. The proposed bill could be challenged as unconstitutional if it were enacted, but it is not clearly unconstitutional under controlling authority, including a recent decision by the Ninth Circuit Court of Appeals. Therefore, we recommend that you certify the application.

I. The proposed bill

The bill proposed by this initiative has nine sections. It would increase limits on contributions to campaigns for state and local offices in AS 15.13.070 after some of these limits were struck down by the Ninth Circuit in 2021.¹

Section 1 would add a section to the uncodified law listing findings and intent. It states that campaign contribution limits are needed to secure equal rights, preserve election integrity, and ensure that political power and influence does not depend solely on wealth.

¹ *Thompson v. Hebdon*, 7 F.4th 811, 816 (9th Cir. 2021).

Section 2 would limit contributions by an individual to a candidate or election-related group to \$2,000 each election cycle. It would also limit an individual's contributions to a political party or other group to \$5,000 each year.

Section 3 would limit contributions by a group other than a political party to \$4,000 to each candidate in each election cycle and \$5,000 to another group or a political party each year.

Section 4 would limit contributions by an election-related group to \$4,000 to another election-related group or a candidate in each election cycle and \$5,000 to a group or political party each year.

Section 5 would limit contributions to joint campaigns for governor and lieutenant governor to \$4,000 per person per election cycle and \$8,000 per group per election cycle.

Section 6 would allow for unlimited contributions by individuals, groups other than political parties, and election-related groups to independent expenditure groups. It would also index all the contribution limits in AS 15.13.070 to inflation, updating them every 10 years beginning in 2031.

Section 7 would replace the term "campaign period" with "election cycle."

Section 8 would define "election cycle" as the period beginning when a candidate becomes eligible to receive contributions and ending when the final report for the campaign is due.

Section 9 would provide for prospective application and severability.

II. Analysis

Under AS 15.45.070, the lieutenant governor must review an initiative application within 60 calendar days of receipt and "certify it or notify the initiative committee of the grounds for denial." The Division of Elections received the application for 23RCF2 on July 5, 2023. Sixty calendar days later is September 3, 2023.

In evaluating an initiative application, the lieutenant governor must determine whether it is in the "proper form."² Under AS 15.45.080, the lieutenant governor must deny certification 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

² Alaska Const. art. XI, § 2.

form; or (3) there is an insufficient number of qualified sponsors.” This means the lieutenant governor 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.”³ This requires consideration of both the form of the application and the form of the proposed bill.

A. Form of the application

The form of an initiative application is prescribed by AS 15.45.030, which requires that an application 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 23RCF2 application includes the proposed bill and the requisite statement on each signature page. It also designates an initiative committee of three sponsors, who provided their information. We understand the Division of Elections has reviewed the sponsor signatures and determined that the application contains the signatures and addresses of 122 qualified voters, which satisfies the 100-sponsor requirement.

B. Form of the proposed bill

The form of a proposed bill is prescribed by AS 15.45.040, which requires that (1) the bill be confined to one subject; (2) the subject be expressed in the title; (3) the bill contain an enacting clause that states, “Be it enacted by the People of the State of Alaska”; and (4) the bill include no prohibited subjects. The lieutenant governor may deny certification if a proposed bill does not meet these requirements or if “controlling

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

authority establishes its unconstitutionality.”⁴ The bill proposed by 23RCF2 meets the statutory requirements and is not clearly unconstitutional under existing authority.

1. The proposed bill satisfies AS 15.45.040.

First, the bill is confined to the subject of campaign finance. The Alaska Supreme Court has upheld an initiative application addressing not just campaign finance but also primary and general elections.⁵ The bill proposed by 23RCF2 addresses just one of these topics, so it complies with the single-subject rule. This office has advised that two prior campaign finance initiatives also complied with this rule.⁶

Next, the proposed bill includes the requisite enacting language and a title that expresses the subject of campaign finance, which is not a prohibited subject. Under article XI, section 7 of the Alaska Constitution and AS 15.45.010, a proposed bill may not dedicate revenue; make or repeal appropriations; create courts, define their jurisdiction, or prescribe their rules; or enact local or special legislation. Like prior campaign finance initiatives, 23RCF2 does not address these prohibited subjects.⁷

2. The proposed bill is not clearly unconstitutional.

In reviewing an initiative application, the lieutenant governor does not conduct a comprehensive pre-election review of the constitutionality of a proposed bill, but may reject a bill if it “proposes a substantive ordinance where controlling authority establishes its unconstitutionality.”⁸ This is a high bar; examples of clearly unconstitutional bills include a bill that would mandate school segregation based on race and a bill that would call for Alaska’s secession from the United States.⁹

⁴ *Kohlhaas v. State*, 147 P.3d 714, 717 (Alaska 2006) (quoting *Kodiak Island Borough v. Mahoney*, 71 P.3d 896, 900 (Alaska 2003)); *State v. Vote Yes for Alaska’s Fair Share*, 478 P.3d 679, 690 n.58 (Alaska 2021).

⁵ *Meyer v. Alaskans for Better Elections*, 465 P.3d 477, 498 (Alaska 2020).

⁶ 2003 Op. Alaska Att’y Gen. (Aug. 25), 2003 WL 23506867, at *2 (citing 1995 Inf. Op. Att’y Gen. (Apr. 18)).

⁷ *Id.*

⁸ *Kohlhaas*, 147 P.3d at 717 (quoting *Kodiak Island Borough*, 71 P.3d at 900); *Pebble Ltd. P’ship ex rel. Pebble Mines Corp. v. Parnell*, 215 P.3d 1064, 1077 (Alaska 2009) (permitting “pre-election review of initiatives where the initiative is clearly unconstitutional or clearly unlawful”); *State v. Tr. the People*, 113 P.3d 613, 625 n.50 (Alaska 2005); *Vote Yes for Alaska’s Fair Share*, 478 P.3d at 690 n.58.

⁹ *Kohlhaas*, 147 P.3d at 717.

The campaign contribution limits proposed by this bill are not clearly unconstitutional. Although the Ninth Circuit, on remand from the U.S. Supreme Court, recently struck down Alaska's prior individual contribution limits,¹⁰ that ruling does not clearly establish that these new proposed limits would be unconstitutional.

That case, *Thompson v. Hebdon*, began in 2015 when plaintiffs challenged the constitutionality of Alaska's \$500 limits on contributions by individuals to candidates and to groups.¹¹ The district court and the Ninth Circuit initially upheld these limits, but the U.S. Supreme Court vacated and remanded for reconsideration.¹² The Supreme Court noted that the lowest individual-to-candidate contribution limit it had ever upheld, if adjusted for inflation, came to about \$1,600 per election cycle.¹³ It also noted that indexing limits to inflation was necessary to prevent them from becoming too low.¹⁴

In 2021, the Ninth Circuit issued a revised decision on remand that struck down Alaska's \$500 individual-to-candidate and individual-to-group limits as too low.¹⁵ It held that the low individual-to-candidate limit significantly restricted funding for candidates trying to challenge incumbents and should be indexed for inflation. And it concluded that Alaska had not shown a need for unusually low contribution limits due to particularly serious quid pro quo corruption or the appearance of such corruption in Alaska.¹⁶ The court likewise determined that Alaska's low individual-to-group limit was not necessary to prevent donors from evading the limit on contributions to candidates.¹⁷

Here, the proposed bill would enact contribution limits that are not clearly unconstitutional under the *Thompson* precedent. The bill would restore individual contribution limits by increasing the amounts and indexing them to inflation. The individual-to-group and individual-to-candidate limits would increase from \$500 to

¹⁰ *Thompson*, 7 F.4th at 815–16.

¹¹ *Id.* The plaintiffs also challenged the limits on contributions by subdivisions of political parties and by nonresidents of Alaska. *Id.* at 816–17 (*citing* AS 15.13.070(d), AS 15.13.072(a)(2), (e)(3)). The Ninth Circuit upheld the political-party limit and struck down the nonresident limit, which is not affected by the proposed bill. *Id.* at 823–24.

¹² *Id.* at 816 (*citing Thompson v. Hebdon*, 140 S. Ct. 348, 350 (2019)).

¹³ *Thompson*, 140 S. Ct. at 350.

¹⁴ *Id.* at 351.

¹⁵ *Thompson*, 7 F.4th at 824.

¹⁶ *Id.* at 819–22.

¹⁷ *Id.* at 823.

\$5,000 and \$2,000, respectively. These limits would then increase with inflation in 2031 and every decade thereafter. The proposed limits are significantly higher than those invalidated in *Thompson*, above the \$1,600 (if updated for inflation) limit the Supreme Court noted it had previously approved, and indexed to inflation. Although the proposed limits might nonetheless be challenged in court if enacted, they are not clearly unconstitutional under controlling authority.

The proposed bill would also increase other contribution limits. Groups that are not political parties could contribute \$4,000 to candidates and \$5,000 to political parties and other groups, instead of \$1,000 to each. “Nongroup entities”—essentially, election-related rather than business-related corporations¹⁸—could contribute \$4,000 to candidates and to other election-related groups and \$5,000 to groups and political parties, rather than \$1,000 to each. Individuals and groups could also contribute up to \$4,000 and \$8,000, respectively, to joint campaigns for governor and lieutenant governor, instead of \$1,000 and \$2,000. These limits would also increase with inflation. Like the individual limits, these proposed limits could be challenged, but they are not clearly unconstitutional under controlling authority.

Finally, the proposed bill provides that the various contribution limits do not apply to contributions to independent expenditure groups, noting that the purpose of this explicit carve-out is “to comply with federal caselaw.” This provision appears consistent with caselaw and is not clearly unconstitutional either.¹⁹

IV. Proposed ballot title and summary

We have prepared a ballot title and summary to assist you in complying with AS 15.45.090 and AS 15.45.180, as is this office’s standard practice. Under AS 15.45.090(a)(2), petitions for a certified initiative must include “an impartial summary of the subject matter of the bill.” Under AS 15.45.180(a), the lieutenant governor may also have to prepare a ballot proposition, including a “true and impartial summary of the proposed law,” and a ballot title. The ballot title must “indicate the general subject of the proposition” in 25 words or less, and the word count of the summary must be less than 50 times the number of sections in the proposed bill.²⁰ The

¹⁸ AS 15.13.400(14)

¹⁹ See *Alaska Pub. Offs. Comm’n v. Patrick*, 494 P.3d 53, 58 (Alaska 2021), *cert. denied*, 142 S. Ct. 779 (2022).

²⁰ AS 15.45.180(a). “Section” here means “a provision of the proposed law that is distinct from other provisions in purpose or subject matter.” *Id.*

proposition must adhere to the readability policy described in AS 15.80.005 and ask whether the proposed bill should become law.²¹

The bill proposed by 23RCF2 has nine sections, which would allow a summary of up to 450 words. Below is a ballot title with 6 words and a summary with 92 words. Using the readability formula described in AS 15.80.005(c), the summary has a score of 61.6, which exceeds the target score of 60. We submit this ballot title and summary for your consideration:

An Act Limiting Contributions to Campaigns

This act would change the amount of money that people and groups can give to state and local political campaigns. A court ruling in 2021 removed the limits on contributions by individuals. With this act, individuals could give \$2,000 to candidates and \$5,000 to political parties. Groups besides political parties could give \$4,000 to candidates and \$5,000 to other parties or groups. Individuals could also give \$4,000 to joint campaigns for governor and lieutenant governor, and groups could give \$8,000. These limits would increase with inflation every ten years beginning in 2031.

Should this initiative become law?

V. Conclusion

This initiative application is in the proper form. Both the application and the proposed bill comply 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 a petition under AS 15.45.090.

Please contact us if we can further assist you on this matter.

Sincerely,

TREG TAYLOR
ATTORNEY GENERAL

By: _____
Thomas S. Flynn
Assistant Attorney General

²¹ AS 15.45.180(b).