



THE STATE  
*of* ALASKA  
GOVERNOR MICHAEL J. DUNLEAVY

Department of Law

CIVIL DIVISION

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September 1, 2023

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

Re: *23PPTW Ballot Measure Application Review*  
AGO No. 2023102272

Dear Lieutenant Governor Dahlstrom:

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

An Act preventing the expenditure of public funds for any process by which political parties select their official nominees or endorsed candidates for office. (23PPTW).

We review initiatives to ensure they meet constitutional and statutory requirements, without considering the merits of any initiative. While this application is in the proper form, the proposed bill is not. It would limit the legislature's ability to appropriate funds for partisan primaries or similar processes in the future, so it makes an appropriation in violation of the subject-matter restrictions on initiatives. We recommend that you decline to certify this application.

**I. The proposed bill**

The bill proposed by this initiative has three sections, which would prohibit the legislature from funding partisan primaries.

**Section 1** would add a section to the uncodified law listing findings and intent. It states that while political parties are important, it is not in the public interest to spend public funds on party primaries or other nomination processes.

**Section 2** would prohibit the use of public funds for the selection of political parties' candidates in general elections. Public funds could still be used for open primaries.

**Section 3** would add a section to the uncodified law providing for 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 23PPTW 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.”<sup>1</sup> 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 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.”<sup>2</sup> 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

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<sup>1</sup> Alaska Const. art. XI, § 2.

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

sponsors and subscribers in matters relating to the initiative; the designation must include the name, mailing address, and signature of each committee member.

The 23PPTW 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 112 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 authority establishes its unconstitutionality.”<sup>3</sup>

The bill proposed by 23PPTW does not meet all of these requirements. The bill is confined to the single subject of party nominees, as expressed in the title, and it includes the requisite enacting language. But the bill includes a prohibited subject because it would constrain the legislature’s appropriation power.

Under article XI, section 7 of the Alaska Constitution and AS 15.45.010, an initiative may not dedicate revenue or make or repeal appropriations.<sup>4</sup> To determine whether an initiative makes an appropriation, the Alaska Supreme Court considers whether it deals with a public asset and whether it appropriates that asset.<sup>5</sup> To answer the second question, the Court focuses on the two “core objectives” of the prohibition on appropriations by initiative: preventing the “give-away” of state assets to private hands and preserving the legislature’s ability to allocate resources.<sup>6</sup> Thus, an initiative effectively makes an appropriation “if it fails ‘to ensure that the legislature, and *only* the

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<sup>3</sup> *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).

<sup>4</sup> Although not at issue here, initiatives also may not enact local or special legislation or create courts, define their jurisdiction, or prescribe their rules.

<sup>5</sup> *Hughes v. Treadwell*, 341 P.3d 1121, 1125 (Alaska 2015).

<sup>6</sup> *Mallott v. Stand for Salmon*, 431 P.3d 159, 166 (Alaska 2018).

legislature, retains control over the allocation of state assets among competing needs’— by forcing the legislature to make a particular allocation decision in the future . . . .”<sup>7</sup>

The Alaska Supreme Court has made it clear that initiatives that prevent appropriations are prohibited, just like initiatives that direct appropriations. In *Alliance of Concerned Taxpayers, Inc. v. Kenai Peninsula Borough*, the Court rejected an argument that the constitutional and statutory prohibition on appropriations applied only to initiatives that direct the “outflow” of public assets.<sup>8</sup> It held instead that an initiative violates the core objective of legislative control over appropriations “when it allocates public assets *away* from a particular purpose.”<sup>9</sup> Therefore, a requirement that voters approve large capital projects effected an appropriation because voters could deny a project, preventing the government from appropriating money for that project.<sup>10</sup> The Court held that “an initiative may make an impermissible appropriation not only when it designates public assets for some particular use, but also when it allocates those assets *away from* a particular group or purpose.”<sup>11</sup> The prevention or direction of appropriations are two sides of the same coin.

Here, there is “no question” that the public funds involved in 23PPTW are public assets.<sup>12</sup> Nor can there be any question that 23PPTW would appropriate this asset. By preventing the expenditure of public funds on partisan primaries or any other process that determines party nominees, the bill would direct this asset away from this purpose and constrain the legislature’s ability to allocate funds.

This is true even though the immediate practical effect of this constraint is not obvious. Under current law, the State does not conduct partisan primaries, which determine the nominees of political parties. Instead, it conducts nonpartisan primaries, which narrow the field of candidates but do not determine the nominees of parties or

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<sup>7</sup> *Id.* (quoting *McAlpine*, 762 P.2d at 88).

<sup>8</sup> 273 P.3d 1128, 1136 (Alaska 2012).

<sup>9</sup> *Id.* at 1137.

<sup>10</sup> *Id.* at 1138.

<sup>11</sup> *Id.*, n.45 (citing 2 Proceedings of the Alaska Constitutional Convention 941 (Dec. 16, 1955) (noting that initiatives cannot “nullify [government functions] by cutting off appropriations for them”)); *Stand for Salmon*, 431 P.3d at 169 (explaining that initiatives cannot “completely eliminate[] the legislature’s ability to allocate assets”).

<sup>12</sup> *See All. of Concerned Taxpayers, Inc.*, 273 P.3d at 1137 (“There is no question that the municipal funds involved are public assets; no item is more clearly a public asset than public revenue.”)

groups.<sup>13</sup> It thus may seem unlikely, under current law, that the legislature would seek to allocate public funds to partisan primaries. But the law could change to require the State to conduct partisan primaries in the future, as it did in the past, in which case the legislature might wish to direct public funds towards this purpose.<sup>14</sup> And even without such a change, political parties are free to privately conduct partisan nomination processes, and this initiative would prevent the legislature from directing public funds to help them. Just like potential future capital projects<sup>15</sup> or natural resources decisions,<sup>16</sup> the legislature must retain control over this resource allocation decision.

## V. Conclusion


While this initiative application is in the proper form, the proposed bill constrains appropriations and thus contains a prohibited subject. We recommend that you deny the application and notify the sponsors of your decision.

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

Sincerely,

TREG TAYLOR  
ATTORNEY GENERAL

By:

  
Thomas Flynn  
Assistant Attorney General

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<sup>13</sup> AS 15.25.010.

<sup>14</sup> See former AS 15.25.010 (2020) (amended Feb. 28, 2021).

<sup>15</sup> *All. of Concerned Taxpayers, Inc.*, 273 P.3d at 1138.

<sup>16</sup> *Stand for Salmon*, 431 P.3d at 167.