



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

Department of Law

CIVIL DIVISION

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August 21, 2023

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

Re: *23TLAL Ballot Measure Application Review*
AGO No. 2023102271

Dear Lieutenant Governor Dahlstrom:

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

An Act establishing term limits for Members of the Alaska State Legislature. (23TLAL).

We review initiatives to ensure they meet constitutional and statutory requirements, without considering the merits of any initiative. Because the application is not in the proper form and because term limits cannot be imposed by initiative, we recommend that you deny the application.

I. The proposed bill

The bill proposed by this initiative has one section. It would limit legislators to 12 consecutive years of service, unless six years have passed since they last served. It would also limit legislators to 20 total years of service. If any legislators had served 12 or more consecutive years or 20 or more total years when the bill becomes effective, they would be allowed to finish their current terms. Any legislative service in the house or senate would count towards these limits and legislators would not be eligible for appointment, nomination, or election if they exceed these limits.

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 23TLAL on June 23, 2023. Sixty calendar days later is August 22, 2023.

In evaluating an initiative application, the lieutenant governor must determine whether it is in the “proper form.”¹ 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.”² 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 23TLAL application does not meet these requirements. It includes the proposed bill and designates an initiative committee of three sponsors, who provided their information. But it does not include enough sponsors who signed signature pages with the required language. The first three signature pages include the statement, “I am a qualified voter in the State of Alaska and acknowledge that the proposed bill . . . was attached at the time I signed the signature page.” The remaining five signature pages do

¹ Alaska Const. art. XI, § 2.

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

not include any similar statement. Without that statement, the signatures on these pages do not count towards the total number of sponsors. If the signatures on these five pages were included, we understand the Division of Elections has determined that the application contains the signatures and addresses of 109 qualified voters. But without these five pages, there are only approximately 30 sponsors. Because there are insufficient sponsors on the qualifying signature pages, the application should be denied.³

B. Form of the proposed bill

While this application could be denied solely for lack of sponsors, it should also be denied because the bill it proposes is clearly unconstitutional under prior Alaska Supreme Court precedent. The bill may otherwise meet statutory requirements about form, but it proposes legislative term limits, which the Court has determined can only be imposed by a constitutional amendment, not by initiative.

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 includes no prohibited subjects. The bill proposed by 23TLAL meets these requirements.⁴ It is limited to the single subject of legislative term limits, as expressed in the title. It includes the requisite enacting language. And it does not include any prohibited subjects, meaning that it does not dedicate revenue; make or repeal appropriations; create courts, define their jurisdiction, or prescribe their rules; or enact local or special legislation.⁵

The bill does, however, propose legislation that is clearly unconstitutional under controlling precedent. The lieutenant governor does not conduct a comprehensive, pre-election review of the constitutionality of a proposed bill but may reject an initiative if it “proposes a substantive ordinance where controlling authority establishes its

³ See 1994 Op. Alaska Att’y Gen. (Aug. 1), 1994 WL 562168, at *1 (recommending denial of an initiative application because the signature pages did not include the required statement); 1993 Op. Alaska Att’y Gen. (Sept. 21), 1993 WL 566448, at *2 (noting that this “office has consistently recommended rejection of initiative applications when the application form fails to include the statement that the sponsors signed the application with the proposed bill attached” and citing prior opinions).

⁴ See 1994 Op. Alaska Att’y Gen. (Aug. 1), 1994 WL 562168, at *2 (finding that a term-limits initiative complied with AS 15.45.020).

⁵ See Alaska Const. art. XI, § 7; AS 15.45.010.

unconstitutionality.”⁶ Here, controlling Alaska Supreme Court precedent establishes that legislative term limits violate the Alaska Constitution.

In *Alaskans for Legislative Reform v. State*, the Alaska Supreme Court held that “the only way that term limits might be imposed would be a constitutional amendment.”⁷ The Court adopted the superior court’s reasoning that a term limit would be an additional qualification for legislative office.⁸ Because the Alaska Constitution sets the age, residency, and other qualifications for legislators, it would have to be amended to add any other qualifications, including term limits.⁹ And because the constitution “cannot be amended by initiative,” the Court concluded that an initiative proposing legislative term limits was unconstitutional.¹⁰ The Court, therefore, upheld the lieutenant governor’s pre-election denial of a legislative term-limit initiative.¹¹ The Court’s holding was consistent with this office’s prior advice concluding that term limits could be enacted only through a constitutional amendment and not by initiative.¹² The U.S. Supreme Court has similarly concluded that imposing term limits on federal officeholders would require amending the U.S. Constitution.¹³

⁶ *Kohlhaas v. State*, 147 P.3d 714, 717 (Alaska 2006) (quoting *Kodiak Island Borough v. Mahoney*, 71 P.3d 896, 900 (Alaska 2003)); *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. Trust the People*, 113 P.3d 613, 625 n.50 (Alaska 2005); *Vote Yes for Alaska’s Fair Share*, 478 P.3d 679, 690 n.58 (Alaska 2021).

⁷ 887 P.2d 960, 966 (Alaska 1994).

⁸ *Id.*

⁹ *Id.* at 961 (citing Alaska Const. art. II, § 2).

¹⁰ *Id.* at 962 n.1.

¹¹ *Id.* at 966.

¹² 1990 Op. Alaska Att’y Gen. (Feb. 5), 1990 WL 518014, at *1 (citing Alaska Const. art. XIII, § 1); see 1994 Op. Alaska Att’y Gen. (Aug. 1), 1994 WL 562168, at *2 (advising approval of an initiative that allowed write-in candidates and thus did not prohibit candidates from serving after reaching the term limit, reasoning that it was not clearly unconstitutional because it was “not an absolute bar to election to the legislature”); 1998 Op. Alaska Att’y Gen. (May 1), 1998 WL 1182111, at *2 (noting previous approval of an initiative requiring a term-limit designation on the ballot, which did not prohibit candidates from serving after reaching the term limit).

¹³ *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 783 (1995).

Since *Alaskans for Legislative Reform v. State*, the Alaska Supreme Court has narrowed the scope of pre-election review of initiatives.¹⁴ But it has not retreated from its holding that legislative term limits require a constitutional amendment.¹⁵

Because *Alaskans for Legislative Reform* remains good law,¹⁶ 23TLAL should be denied. The proposed bill would prohibit legislators from serving more than 20 total years, or 12 consecutive years without six intervening years off. The Alaska Constitution sets the qualifications for legislators and any attempt to add term limits to these qualifications by initiative is clearly unconstitutional under the controlling authority of *Alaskans for Legislative Reform*.

III. Conclusion

This initiative application does not include enough sponsors and the proposed bill is clearly unconstitutional, so 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

¹⁴ *Kodiak Island Borough*, 71 P.3d at 899 (holding that initiatives may not be denied when they simply “raise constitutional questions,” but instead only when they are “clearly unconstitutional”).

¹⁵ In *Trust the People*, 113 P.3d at 627, the Court noted that *Kodiak Island Borough* disavowed the type of pre-election merits review conducted in *Alaskans for Legislative Reform*. But nothing in *Kodiak Island Borough* disturbs the holding in *Alaskans for Legislative Reform* that legislative (as opposed to municipal) term limits require a constitutional amendment.

¹⁶ See *Kohlhaas v. State*, 223 P.3d 105, 111 (Alaska 2010) (citing *Alaskans for Legislative Reform* for the proposition that Alaskans “may not use the initiative process to propose constitutional amendments”); *Noy v. State*, 83 P.3d 538, 542 n.16 (Alaska Ct. App. 2003) (also citing *Alaskans for Legislative Reform*).