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Attorneys for Plaintiffs Felisa Wilson, George Martinez, and Yarrow Silvers

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the
2021 REDISTRICTING PLAN.)
Case No. 3AN-21-08869CI)
_____)

MOTION TO PRECLUDE REDIRECT QUESTIONING
IN ABSENCE OF CROSS-EXAMINATION

On the afternoon of Thursday, January 20, 2022, counsel for the East Anchorage Plaintiffs conferred with counsel for the Alaska Redistricting Board (“Board”) regarding the intended scope and order of the witness testimony for the January 21 trial day. At that time, during this exchange, attached as Exhibit A hereto, the East Anchorage Plaintiffs indicated that they intended only to call three of the Board members, after which counsel for the Board informed the East Anchorage Plaintiffs that he intended to conduct a re-direct examination of all the Board members, regardless of whether the East Anchorage Plaintiffs intended to cross-examine them.

The Board's proposal is contrary to well-established trial procedure and court order, and would be prejudicial to the East Anchorage Plaintiffs. As such, the East Anchorage Plaintiffs move the Court for a clarifying order precluding the opportunity for the Board to offer "re-direct" testimony of witnesses the East Anchorage Plaintiffs do not intend to cross-examine. Doing so would be inconsistent with the Court's previous ruling and parameters. Re-direct questioning without a cross-examination is simply direct questioning.

In this proceeding, the Court has been unequivocal that the parties are only permitted to elicit direct testimony from witnesses through affidavit, particularly where, as here, the Board did not designate any of its members as live direct testimony witnesses. Furthermore, there is no prejudice to the Board precluding re-direct: the Board was permitted to submit affidavits after the parties took the depositions of the Board members. Of the two Board members that the East Anchorage Plaintiffs did not intend to cross, Ms. Marcum was deposed on January 4, and Mr. Simpson was deposed on January 8; the Board's affidavits (which were due after all Board members were deposed) were filed on January 12. The Board had ample time and opportunity to address any matters or questions which arose during these depositions in these direct testimony affidavits, and is not entitled to endless opportunities to supplement such direct testimony where its witnesses have not been subject to cross-examination.

DATED this 20th day of January, 2022.

BIRCH HORTON BITTNER & CHEROT
Attorneys for Plaintiffs

By: /s/ Holly C. Wells

Holly C. Wells, ABA #0511113
Mara E. Michaletz, ABA #0803007
William D. Falsey, ABA #0511099

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 20th day of January, 2022, a true and correct copy of the foregoing document was served electronically on the following:

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BIRCH HORTON BITTNER & CHEROT

By: /s/ Martha K. Marshall
Believed to be transmitted without error
from tmarshall@bhb.com at approx. 10:15 p.m.

From: Holly Wells
Sent: Thursday, January 20, 2022 3:44 PM
To: Singer, Matthew; Mike Schechter; Stacey C. Stone; Eva Gardner; Robin O. Brena; nclark@sonosky.com; Jake Staser
Cc: Baxter, Lee C.; Mara Michaletz; Zoe Danner; William Falsey; Tempest Evans
Subject: Supplemental Affidavit

Matt,

We do disagree. Given your apparent unwillingness to seek guidance from the court, we will prepare a filing so the judge is aware of these issues and we can get swift clarity before trial begins tomorrow morning. That said, we just read your supplemental affidavit of Torkelson and are, to say the least, very confused. First, there are a lot of documents referenced and pictured in the affidavit but almost no cites to the record or production regarding these documents. That said, we are moving really fast trying to prepare for tomorrow morning and want to confirm with you that the pictures and referenced data analyses are not included in the record before we file a motion to strike some or all of Mr. Torkelson's supplemental affidavit.

East Anchorage Plaintiffs have made every effort to mitigate the prejudicial impact of your repeated and intentional abuses of process throughout this proceeding. Please be aware that East Anchorage Plaintiffs may be seeking sanctions for the conduct of the Board during these proceedings and the substantial due process costs that they have had on our clients. While our team and our clients are focused on tomorrow's trial, our decision to delay any request for sanctions at this time is by no means intended as a waiver.

Thank you,

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From: Singer, Matthew <MSinger@SCHWABE.com>
Sent: Thursday, January 20, 2022 2:59 PM
To: Holly Wells <hwells@BHB.com>
Cc: Baxter, Lee C. <LBaxter@SCHWABE.com>; Mara Michaletz <mmichaletz@BHB.com>
Subject: RE: Friday witnesses

External Email Address

We most certainly are entitled to re-direct the witnesses. We already discussed this with the court and I think the issue is settled. If you disagree and want to contact the judge, please do so.

Matthew Singer

Shareholder

D: 907-339-7129

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SCHWABE, WILLIAMSON & WYATT

CLIENT SHOWCASE | INNOVATING FOR GOOD

From: Holly Wells <hwells@BHB.com>

Sent: Thursday, January 20, 2022 2:56 PM

To: Singer, Matthew <MSinger@SCHWABE.com>

Cc: Baxter, Lee C. <LBaxter@SCHWABE.com>; Mara Michaletz <mmichaletz@BHB.com>

Subject: RE: Friday witnesses

Matt:

Thank you for the heads up on the trial witnesses. They will be available in the following order: Dunsmore, Wilson, and then Dr. Hensel.

During my meeting with Mara we decided to cross-examine Nicole Borromeo, Melanie Bahnke, and John Binkley. However, this was before we received your declaration that you intended to redirect your witnesses despite whether or not we crossed them. The Board prepared and filed its affidavits days (and in one case over a full week) after their depositions were completed and had ample opportunity to “redirect” these Board members on their deposition testimony in your original affidavits. Further, East Anchorage Plaintiffs have not raised a single objection to the affidavit testimony submitted by the Board. Conversely, East Anchorage Plaintiffs requested only the opportunity to cross examine Board members Bahnke and Borromeo within the scope of their affidavit testimony submitted by the Board, an opportunity afforded all other plaintiffs and the Board itself. Please remember that, unlike the Board, East Anchorage Plaintiffs did not have the ability to cross examine these Board members on the content of their affidavits at the depositions because, as noted above, the affidavits were received after the depositions took place.

This is obviously an important issue and with trial beginning tomorrow, please let us know as soon as possible if you intend to insist on the position expressed in your email. In such a case, we should contact the judge together so we can resolve this dispute before tomorrow morning.

Thank you

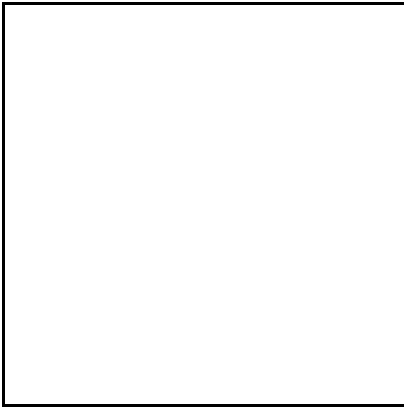
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From: Singer, Matthew <MSinger@SCHWABE.com>
Sent: Thursday, January 20, 2022 2:12 PM
To: Holly Wells <hwells@BHB.com>
Cc: Baxter, Lee C. <LBaxter@SCHWABE.com>; Mara Michaletz <mmichaletz@BHB.com>
Subject: Friday witnesses

External Email Address

Holly,
I would like to cross-examine Felicia Wilson, David Dunsmore and Chase Hensel. I expect the first two will be about five minutes each, maybe less. I have a more extensive cross for Chase.

I will have Board witnesses available in this order as soon as we wrap our cross examination of your witnesses:

Bethany Marcum
Nicole Borromeo
Melanie Bahnke
Budd Simpson
John Binkley

If we get close to the end of the, I may need to swap the order of the last two because John is not available on Monday. If you opt not to cross the three who voted in favor of the senate pairings, I will do a short re-direct of each with regard to questions asked of them in deposition.

Matthew Singer
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