

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

LA QUEN NÁAY ELIZABETH
MEDICINE CROW, AMBER LEE, and
KEVIN MCGEE,

Plaintiffs,

vs.

DIRECTOR CAROL BEECHER, in her
official capacity, LT. GOVERNOR
NANCY DAHLSTROM, in her official
capacity, and the STATE OF ALASKA,
DIVISION OF ELECTIONS,

Defendants,

vs.

DR. ARTHUR MATHIAS, PHILLIP
IZON, and JAMIE R. DONLEY,

Intervenors.

**PLAINTIFFS' COMBINED REPLY
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT AND
OPPOSITION TO DEFENDANTS'
AND SPONSORS' CROSS-MOTIONS
FOR SUMMARY JUDGMENT**

Case No.: 3AN-24-05615CI

I. INTRODUCTION

In their Motion for Summary Judgment,¹ Plaintiffs ask this Court to answer a straightforward, threshold legal question, one that the parties agree presents no disputed

¹ See generally Plaintiffs' Motion for Summary Judgment (Apr. 24, 2024) [hereinafter Plaintiffs' Motion].

factual issues:² Did the Division of Elections (“the Division”) violate its own statutes and regulations when it certified initiative petition 22AKHE as “properly filed,” even though the petition did not actually meet the statutory requirements until *after* the mandatory filing deadlines had passed?³ The answer to this question is yes, which compels this Court to grant Plaintiffs’ motion.

The Division arbitrarily treated the Sponsors of 22AKHE as if they had actually filed a qualified petition with the required certified signatures on January 12, 2024. But this cannot be the case, because all of the parties have stipulated that the petition that was filed on that date was patently defective.⁴ In reality, the Sponsors did not file a complete and qualified ballot measure petition until well after all relevant deadlines had expired, and the Division did not have the legal authority to toll those deadlines just because the Sponsors waited until the last minute to file their petition. Accordingly, this Court should GRANT Plaintiffs’ motion, DENY Defendants’ and the Sponsors’ cross-motions, and enjoin the Division from placing 22AKHE on the statewide general election ballot this November.

² See Order Granting Stipulation and Proposed Order for Expedited Deadlines and Resolution at 2 (Apr. 23, 2024) [hereinafter First Stipulation]; see also *id.* at ¶ III.2.

³ See *id.* at ¶¶ II.30-32, II.46, II.50-51, II.54.

⁴ See *id.* at ¶¶ II.19, II.22-44, II.54; see also 6 AAC 25.240(f).

II. ARGUMENT

A. 22AKHE Had A Patent Defect On The Late Date It Was Filed.

A “patent defect” is a defect that appears to make it impossible for a ballot measure petition to satisfy the requirements to qualify for the ballot.⁵ And because 22AKHE was patently defective on the day it was filed, that filing date cannot be used for determining whether 22AKHE qualifies for the ballot.

There is no dispute that on January 12, 2024, the Sponsors filed a statutorily and constitutionally noncompliant petition with the Division of Elections;⁶ the Sponsors’ filing included over 60 booklets whose certifications were unnotarized and therefore defective on that date, meaning the Division was prohibited from counting them.⁷ There is no dispute that, without those uncountable signatures in the defective booklets, 22AKHE could not qualify for the ballot.⁸ And there is also no dispute that on February 7, 2024, when the one-year ballot measure filing deadline expired, the Sponsors *still* had not filed — and the Division did not have in its possession — a sufficient number of booklets

⁵ See 6 AAC 25.240(f) (“A petition that at the time of submission contains on its face an insufficient number of booklets or signed subscriber pages required for certification will be determined by the director to have a patent defect.”).

⁶ See First Stipulation at ¶¶ II.19, II.22-44, II.54.

⁷ See *id.* at ¶¶ II.19, II.30-44, II.54.

⁸ See *id.* at ¶ II.54 (“If all of the signatures in the 62 booklets that the Sponsors returned to the Division were invalidated, the Division could not certify the petition because there would only be sufficient signatures in 26 of the 40 house districts.”); see also Exhibit 10 to First Stipulation.

comprising a petition that would satisfy the statutes governing ballot measures.⁹ These defects alone require this Court to order the Division to invalidate 22AKHE’s qualification for the ballot.

To the extent the Sponsors found themselves up against constitutional and statutory deadlines, it was a predicament entirely of their own making, caused solely by their decision to file 22AKHE at a late date.¹⁰ Even the fact that the Sponsors’ “resubmitted” petition was returned to the Division in a piecemeal fashion (and after the one-year filing deadline) is not permitted.¹¹ Statutory and regulatory requirements must have meaning, and the Sponsors cannot be allowed to violate the law just because they decided to file a patently-defective petition at the very last minute.

B. The Division’s And The Sponsors’ Interpretation Of AS 15.45.130 Is Unlawful And Illogical; Neither “Piecemeal” Nor Post-deadline Corrections Are Allowed.

The Division and the Sponsors contend that the “or corrected” language in AS 15.45.130 allows the Division to engage in a bespoke and uncodified “curing process” for initiative petition booklets on a rolling basis, all while ignoring the rest of the statutory

⁹ See First Stipulation at ¶¶ II.26, II.29, II.36-39, II.44, II.50, II.54; see also Exhibit 9 to First Stipulation.

¹⁰ See First Stipulation at ¶¶ II.19, II.49-50; see also Plaintiffs’ Motion at 18-19 & nn.80-81.

¹¹ See 6 AAC 25.240(c) (“All petition booklets must be filed together as a single instrument[.]”); 6 AAC 25.240(f) (“A petition that contains a patent defect and that is filed . . . (2) before the deadline specified in (d) of this section will be declared incomplete and *all* petition booklets *will* be returned to the committee or designee for resubmission[.]” (emphasis added)).

scheme related to ballot initiatives.¹² According to them, the Division can disregard the plain language of its own regulation, statutes, and administrative guidance, as well as mischaracterize initiative case law, to justify its conduct.¹³

The Division does not have this type of unbridled authority. Yet that is exactly what the Division and Sponsors ask this Court to condone: the Division’s decisions to (1) ignore its own regulations that require initiative petitions to be accepted and rejected as a whole;¹⁴ and (2) suspend all statutory deadlines applicable to the filing of such petitions.¹⁵ But the law does not authorize the Division to take either of these actions.

The Division asks this Court to read the “or corrected” language in AS 15.45.130 so broadly in order to allow sponsors to submit a patently-defective petition on the filing deadline, and then allow the Division’s 60-day review period to somehow toll all statutory deadlines while sponsors attempt to “fix” any defective petition booklets as they are discovered. But this piecemeal correction process is in direct violation of the process

¹² See generally Defendants’ Opposition and Cross-Motion for Partial Summary Judgment (May 10, 2024) [hereinafter Defendants’ Opposition and Cross-Motion]; Intervenors/Sponsors’ Amended Opposition to Plaintiffs’ Motion for Summary Judgment and Cross-Motion for Summary Judgment (May 11, 2024) [hereinafter Intervenors’ Amended Opposition and Cross-Motion].

¹³ See Defendants’ Opposition and Cross-Motion at 11-27; Intervenors’ Amended Opposition and Cross-Motion at 13-18.

¹⁴ See 6 AAC 25.240.

¹⁵ See AS 15.45.140 (one year filing deadline); AS 15.45.190 (deadlines concerning placement on the ballot); see also AS 15.45.150 (requiring review of a filed petition by the Division within 60 days).

required by the Division’s own specific regulation, and all of the Sponsors’ “corrections” occurred well after the strict (and mandatory) one-year filing deadline had passed.

Because AS 15.45.130’s “or corrected” language does not permit the piecemeal “curing” of unnotarized certifications, and any corrections must still be fully addressed before the applicable statutory deadlines, this Court should grant Plaintiffs’ motion and deny the Division’s and the Sponsors’ cross motions.

1. Alaska Supreme Court case law requires that election deadlines be strictly enforced, and that election statutes must be interpreted in light of the statutory and regulatory scheme of which they are a part.

At first glance, the Division and Sponsors’ argument about the “or corrected” language in AS 15.45.130 sounds sensible.¹⁶ After all, why would the legislature use the phrase “or corrected” if initiative sponsors could never make “corrections”?

But both the Division and the Sponsors rely on a deceptively selective reading of the applicable statutory and regulatory regime — and the facts in this case — that forces the Court to ignore both longstanding precedents mandating strict compliance with elections deadlines, as well as basic principles of statutory construction requiring courts to interpret statutes in context. They do so to justify gifting the Sponsors with an uncodified and impermissible “grace period” to “cure” a facially defective initiative petition. When the statute is examined in context, and when the applicable legislative

¹⁶ See AS 15.45.130 (“In determining the sufficiency of the petition, the lieutenant governor may not count subscriptions on petitions not properly certified at the time of filing *or corrected before the subscriptions are counted.*” (emphasis added)).

and regulatory history is considered, it is evident that AS 15.45.130 grants the Division no such power; both the “single instrument” rule and the statutory deadlines must still be obeyed.

As recently as last year, in a case examining the application of Alaska’s newly-passed election system to a special Congressional election, the Alaska Supreme Court “affirm[ed] that election deadlines are *mandatory*, and therefore substantial compliance is not sufficient, absent substantial confusion or impossibility.”¹⁷ The Supreme Court did *not* say — as the Sponsors seem to suggest — that “election deadlines are mandatory only for candidate filings,” or that “election deadlines are relaxed for ballot measures.”¹⁸ Rather, the Court simply reiterated, *without qualification*, that “*election deadlines are mandatory*,” and subject to strict compliance “absent substantial confusion or impossibility.”¹⁹

¹⁷ *Guerin v. State*, 537 P.3d 770, 779 (Alaska 2023) (emphasis added) (quoting *State v. Marshall*, 633 P.2d 227, 235 (Alaska 1981)).

¹⁸ *See* Intervenors’ Amended Opposition and Cross-Motion at 17.

¹⁹ *See Guerin*, 537 P.3d at 779 (emphasis added) (quoting *Marshall*, 633 P.2d at 235); *see also State v. Jeffery*, 170 P.3d 226, 234 (Alaska 2007) (“[I]t is ‘well established, both in Alaska and other jurisdictions, that election law filing deadlines are to be strictly enforced.’” (quoting *Falke v. State*, 717 P.2d 369, 373 (Alaska 1986))); *Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173, 1178 (Alaska 1985) (“[T]he statutory provisions neither express nor imply *any* tolling of time.” (emphasis added)). Neither the Sponsors nor the Division argue that the filing deadline at issue was confusing or impossible to meet. *See generally* Defendants’ Opposition and Cross-Motion; Intervenors’ Amended Opposition and Cross-Motion.

Our Supreme Court also elaborated on a key principle of statutory construction relevant here: “[w]hen a statute . . . is part of a larger framework or regulatory scheme, [it] must be interpreted in light of the other portions of the regulatory whole.”²⁰ Further, when courts “engage in statutory construction, [they] must, whenever possible, interpret each part or section of a statute with every other part or section, so as to create a harmonious whole,”²¹ and “two potentially conflicting statutes . . . must be interpreted ‘with a view toward reconciling the conflict[.]’”²²

When these standards are applied to the Division’s actions here, it becomes clear that the Division’s and the Sponsors’ reading of the “or corrected” language in AS 15.45.130 is incorrect. In context, this statute cannot be read to override the Division’s own “single instrument” filing requirement, or to void all other statutory deadlines for filing the necessary signatures to qualify an initiative for the ballot.

When AS 15.45.130 is reviewed as “part of a larger framework or regulatory scheme,” and “interpreted in light of the other portions of the regulatory whole,” it becomes clear that the post-deadline, piecemeal cure process the Division engaged in here

²⁰ *Guerin*, 537 P.3d at 778 (alterations in original) (quoting *Alaska Ass’n of Naturopathic Physicians v. State*, 414 P.3d 630, 636 (Alaska 2018)).

²¹ *Id.* at 779 (quoting *State v. Progressive Cas. Ins. Co.*, 165 P.3d 624, 629 (Alaska 2007)).

²² *Id.* (first alteration in original) (quoting *Allen v. Alaska Oil & Gas Conservation Comm’n*, 147 P.3d 664, 668 (Alaska 2006)).

was unlawful.²³ There is no indication from the plain language of this statute, the legislative history, or the regulatory scheme that the “or corrected” language was intended to have the sweeping effect of overriding both the regulatory process (including the “single instrument rule”) and the statutory filing deadlines found in AS 15.45.140 and AS 15.45.190.

Finally, although it is discussed again below, it is important to note at the outset that *the Division’s interpretation of the relevant legislative history is dead wrong*.²⁴ The “or corrected” language was indeed part of the proposed legislation (“HB 94”) at the time the Director testified that sponsors should take care not to file their petitions “at the last minute,” (i.e., just prior to the statutory deadlines) because doing so would risk running out of time to cure any patent defects discovered by the Division.²⁵

²³ *Id.* at 778 (quoting *Alaska Ass’n of Naturopathic Physicians*, 414 P.3d at 636).

²⁴ *See* Defendants’ Opposition and Cross-Motion at 23-24.

²⁵ *See* HB 94, Version 24-GH1048\A, at 11 (Jan. 21, 2005) [hereinafter Version A of HB 94] (Appendix 4) (showing that the “or corrected before the subscriptions are counted” was in HB 94 — albeit in a different section of the proposed legislation — on the day it was introduced); Plaintiffs’ Motion at 22 (showing that the Division’s Director testified about timing issues that could arise for last-minute petition filings on March 25, 2005, or over two months after the “or corrected” language had been proposed); *see also infra* Subsection II.B.3 and accompanying text. The “or corrected” language remained in HB 94 throughout all seven versions of the proposed legislation.

2. When AS 15.45.130 is considered in the context of the statutory and regulatory regime, it is evident that the Division’s manufactured “cure” process was unlawful.

All of the statutory and regulatory timelines, deadlines, and technical requirements governing the circulation of ballot initiative petition booklets and the filing of the single instrument petition are part of a “regulatory whole” that the Court must enforce.²⁶ This “whole” includes: (1) the one-year filing deadline in AS 15.45.140 that requires initiative sponsors to file their entire initiative petition within one year from the date that the lieutenant governor notifies them that the petitions were ready for delivery;²⁷ (2) the lieutenant governor’s 60-day review period;²⁸ (3) the requirement that only signatures in properly certified booklets may be counted;²⁹ (4) the requirement that a petition be filed before the legislative session has convened in order to appear on the first election held after adjournment;³⁰ and (as discussed below) (5) “the single instrument” and “all petition booklets” requirements in 6 AAC 25.240 that undermine the Division’s position that an initiative petition may be returned piecemeal to the Sponsors in order to “correct” individual defective booklets.³¹

²⁶ See *Guerin*, 537 P.3d at 778 (quoting *Alaska Ass’n of Naturopathic Physicians*, 414 P.3d at 636).

²⁷ See AS 15.45.140.

²⁸ See AS 15.45.150.

²⁹ See AS 15.45.130.

³⁰ See AS 15.45.190.

³¹ See 6 AAC 25.240.

Read together, all of these requirements ensure that only the properly *certified* signatures of qualified voters are to be counted.³² And any filing of those signatures must be accomplished within the tight timelines and deadlines that the Division is under to run elections,³³ and that the legislature is under to act on the same subject matter.³⁴

There is *zero* evidence that when the legislature amended AS 15.45.130 in 2005 by enacting HB 94, it intended to allow for post hoc corrections to petitions, allowing ballot measures advance to the ballot despite lacking sufficient certified signatures when the applicable deadlines expired. This is something the legislature easily could have explicitly allowed had it intended to, but it did not.³⁵ In fact, the Director’s testimony at that time demonstrates that they had *no* such intent; the Division acknowledged that the strict statutory deadlines would still apply to ballot measure petitions.³⁶

³² See AS 15.45.130 (“[T]he lieutenant governor may not count subscriptions on petitions not properly certified[.]”); 6 AAC 25.240(g) (“The signatures contained in a petition booklet . . . will not be counted . . . if the person who circulated the petition did not complete the certification affidavit for the booklet as required by AS 15.45.130[.]”).

³³ See AS 15.45.140; AS 15.45.150; 6 AAC 25.240(d); *see also* AS 15.45.190.

³⁴ If the legislature enacts “substantially the same measure” as a ballot initiative after the petition has been filed, but before the date of the election, the initiative “petition is void.” Alaska Const. art. XI, § 4; *see* AS 15.45.210.

³⁵ In fact, the legislature arguably expressed the *opposite* intent when it repealed the ability of ballot measure sponsors to file supplemental petitions after a petition is initially found to lack enough signatures in certified booklets to qualify. *See* Plaintiffs’ Motion at 14-16 (explaining the legislative history for the repeal of former AS 15.45.170 (1997)); *see also* Appendices 1-3 to Plaintiffs’ Motion.

³⁶ *See* Plaintiffs’ Motion at 21-23; *see also id.* at 22 (explaining, in response to a question about circulator requirements, that improper circulator certifications could

This Court should recognize that the Division’s bold assertion — that “the current version of AS 15.45.130 did not include the ‘or corrected’ language” when the former Division Director testified in 2005 that petitions could be invalidated if initiative sponsors turn in defective petition booklets at the last minute — is *completely false*.³⁷ In reality, that language *was* indeed a part of the 2005 legislation at that time, but was simply in a different section.³⁸ And the fact that the Director explained the natural limits of this “or corrected” language in response to a question concerning circulator requirements does not change the meaning of those comments; corrections may be permitted, so long as sufficient time remains for sponsors to correct the petition before the deadlines run.³⁹

Accordingly, the legislative history — and specifically the Director’s contemporaneous testimony — strongly supports the Plaintiffs’ commonsense interpretation that petition filing deadlines are still mandatory, and that the 2005 amendments to AS 15.45.130 were not intended to give the Division the blanket authority

invalidate petition booklets, and that waiting until “the last minute” may not give sponsors of initiatives enough time to “resolve[]” that “problem”).

³⁷ See Defendants’ Opposition and Cross-Motion at 23-24 (emphasis omitted); see also Plaintiffs’ Motion at 22-23; Version A of HB 94 at 11 (Appendix 4) (showing that the “or corrected” language was in the proposed legislation as of January 21, 2005).

³⁸ See Version A of HB 94 at 11 (Appendix 4) (including the “or corrected” language in then-Section 24). This is consistent with the sectional summary that was included as an exhibit in the Sponsors’ originally-filed opposition and cross motion. See Exhibit A at 11 to Intervenors/Sponsors’ Opposition to Plaintiffs’ Motion for Summary Judgment and Cross-Motion for Summary Judgment (May 10, 2024).

³⁹ See Defendants’ Opposition and Cross-Motion at 23-24; Plaintiffs’ Motion at 21-23.

to suspend them.⁴⁰ After all, it would be an absurd outcome for a petition with booklets using a false notary and a fake or unauthorized notary stamp to be given preferential treatment over a petition with booklets who did not use a notary at all.⁴¹ Because the law requires the filing of properly *certified* signatures by the deadline, and not *uncertified* signatures, the Division did not have the discretion to allow the Sponsors to add brand-new certifications to petition booklets well after the deadline.

⁴⁰ This is also supported by the legislature’s decision to repeal AS 15.45.170 — a prior curing process for ballot initiatives — which allowed sponsors to “amend and correct” their petition “within 30 days” by submitting newly-certified booklets. *See* former AS 15.45.170 (1997); *see also* Plaintiffs’ Motion at 14-16; Appendices 1-3 to Plaintiffs’ Motion.

⁴¹ Even *if* this Court is inclined to agree with the Division and the Sponsors that the “or corrected before subscriptions are counted” language allows the Division to permit corrections to small technical defects after filing — which it should not — this language cannot be interpreted to allow correction of the significant “patent defects” that the parties agree were present here. Alaska Statute 15.45.130 provides that each petition booklet *must* be certified by affidavit by the circulator for that booklet. *See* AS 15.45.130 (“[T]he lieutenant governor may not count subscriptions on petitions not properly certified[.]”); 6 AAC 25.240(g) (“The signatures contained in a petition booklet . . . will not be counted . . . if the person who circulated the petition did not complete the certification affidavit for the booklet as required by AS 15.45.130[.]”). Submitting booklets that were “notarized” by someone who is *not* a notary is equivalent to submitting booklets that are *completely* unnotarized, meaning they cannot be counted. *See* First Stipulation at ¶¶ II.22-34, II.47, II.54. This is not a small technicality. The parties agree that this is a fatal patent defect, rendering the booklets uncountable until corrected. *See id.* Again, this Court should not accept the Division’s and the Sponsors’ broad interpretation of AS 15.45.130’s “or corrected” language. But if it does, allowing the correction of *minor* deficiencies like a failure to list a city might be permissible, because that is very different from the situation here where the *entire* certification is defective. *See, e.g.,* First Stipulation at ¶ II.25. Even in that instance the Division would still need to comply with its own “single instrument” requirement, and all mandatory deadlines. *See* AS 15.45.140; AS 15.45.190; 6 AAC 25.240. And the Division and the Sponsors did not follow those requirements here. *See* First Stipulation at ¶¶ II.19, II.22-44, II.47, II.49-52.

3. Elections deadlines are mandatory and not mere procedural “technicalities” requiring this Court to give leniency.

The statutory deadlines applicable to filing ballot measure petitions are not mere “technicalities” that justify deference to the Sponsors and subscribers. None of the ballot initiative cases cited by the Division and Sponsors in support of their oppositions and cross-motions justify — let alone *mention* — suspending elections deadlines to approve late-filed ballot measure petitions. That is because “election deadlines are mandatory,” and there is no exception to their application here.⁴²

Statutory filing deadlines for ballot initiatives do not present a merely “technical” issue. When the Alaska Supreme Court first articulated in *Boucher v. Engstrom* that “doubts as to technical deficiencies or failure to comply with the exact letter of procedure will be resolved in favor” of preserving the people’s access to the initiative process, the Court was referring to the initiative *application* stage.⁴³ That is when the lieutenant governor ensures that the text of a proposed ballot measure meets the liberal constitutional and statutory standards for use of the initiative, and allows the sponsors to obtain petition booklets and begin gathering signatures.⁴⁴

⁴² See *Guerin*, 537 P.3d at 779 (quoting *Marshall*, 633 P.2d at 235).

⁴³ 528 P.2d 456, 462 (Alaska 1974) (quoting *Cope v. Toronto*, 332 P.2d 977, 979 (Utah 1958)).

⁴⁴ At this stage, the Courts verify that the bill: (1) is confined to a single subject; (2) contains no constitutionally restricted subject matter; and (3) includes an enacting clause and title. See Alaska Const. art. XI, § 7; AS 15.45.010; AS 15.45.030; AS 15.45.040.

The application certification phase is the very first hurdle in the initiative filing process, and precedes the petition circulation and signature-gathering stage.⁴⁵ At *that* initial point in the process, “all technical deficiencies” favor the Sponsors so that their application can pass the first and most forgiving hurdle of certification.⁴⁶ But that is separate and distinct from the petition *circulation* phase of the initiative process, a process which depends on the work of agency professionals and commissioned notaries who certify petition booklets under penalty of perjury.⁴⁷

Neither the Division nor the Sponsors cite — and Plaintiffs cannot locate — *any* ballot measure case in which the Alaska Supreme Court has *ever* applied the “technical deficiency” *Boucher* standard to the petition-gathering or *signature verification* phase. This makes sense, because it is ultimately the Division’s responsibility (and not the public’s) to verify that an initiative petition is properly filed with enough certified signatures, and to keep it off the ballot if it is not.⁴⁸ Equally important is that none of the case law the Division or the Sponsors cite involves a missed filing deadline or a late-returned and resubmitted “corrected” petition, partial or whole, which violates that deadline.

⁴⁵ See *Meyer v. Alaskans for Better Elections*, 465 P.3d 477, 490-91 (Alaska 2020).

⁴⁶ See *Boucher*, 528 P.2d at 462.

⁴⁷ See AS 15.45.130; AS 15.45.150; 6 AAC 25.240.

⁴⁸ See AS 15.45.130; AS 15.45.150; 6 AAC 25.240.

A perfect example is *N.W. Cruiseship Association of Alaska v. State*.⁴⁹ There, the Alaska Supreme Court allowed a cruise ship tax initiative (designated by the Division as “03CTAX”) to reach the ballot after cruise industry groups challenged the validity of qualifying signatures, and ultimately found that the group had met the requisite signature threshold.⁵⁰ The critical distinction is that the sponsors of 03CTAX submitted their petition to the Division on October 19, 2004,⁵¹ more than three months before the 2005 legislature convened,⁵² and with a greater-than 30-day buffer for the Division’s 60-day review period.⁵³ In other words, the sponsors of 03CTAX filed their petition with plenty of time for the Division to fully review the signatures, and for the sponsors to re-submit them if necessary, prior to the start of the next legislative session. And more critically, there was no evidence in that case that the Division returned *any* booklets to the sponsors or allowed them to resubmit defective booklets in the middle of its count to “correct” deficiencies *past the one-year filing deadline*.

⁴⁹ See generally 145 P.3d 573 (Alaska 2006).

⁵⁰ See *id.* at 575-76. The Supreme Court adopted in full the superior court’s deep dive into the validity of signatures in the petition booklets, thus decimating Intervenors’ argument, addressed *infra*, that such a proceeding is impermissible. See *infra* Subsection II.C.1 and accompanying text; see also *N.W. Cruiseship Ass’n*, 145 P.3d at 582-90.

⁵¹ See *N.W. Cruiseship Ass’n*, 145 P.3d at 575.

⁵² The legislature convenes “on the fourth Monday in January.” See Alaska Const. art. II, § 8.

⁵³ See AS 15.45.150.

At this stage, 22AKHE does not face a “technical deficiency” or “procedural requirement” problem that the Sponsors could argue deserves the Court’s leniency to avoid disenfranchisement.⁵⁴ With respect to *this* motion, 22AKHE has a statutory *deadline* problem, *not* a voter deference problem. This new problem was not faced by the sponsors of 03CTAX, because those sponsors did not wait to file their petition at the very last minute. And the Division certainly did not return any petition booklets back to the sponsors of 03CTAX for correction and resubmission after the filing deadline in that case.

Similarly, in *Resource Development Council for Alaska, Inc. v. Vote Yes for Alaska’s Fair Share*, the Supreme Court overturned the paid circulator limit in AS 15.45.130.⁵⁵ But again, that challenge did not involve the Division disregarding statutory deadlines, or the staggered filing of “corrected” petitions after those deadlines.⁵⁶ Additionally, in *Planned Parenthood of Alaska v. Campbell*, the Court considered the sufficiency of a ballot measure summary; nothing in that case involved missed deadlines or “corrected” and resubmitted petition booklets.⁵⁷ And in *Yute Air Alaska, Inc. v.*

⁵⁴ See *Boucher*, 528 P.2d at 462. That question could be relevant if and when this Court delves into the particular signatures and booklets challenged on factual bases. See Plaintiffs’ Motion at 2.

⁵⁵ See 494 P.3d 541, 543 (Alaska 2021).

⁵⁶ See *id.* at 544-45.

⁵⁷ See 232 P.3d 725, 727-34 (Alaska 2010). The particular outcome of this decision has no precedential value. See Alaska App. R. 106(b).

McAlpine, the Court considered a single subject and executive power challenge.⁵⁸ Again, the Court did not deal with missed deadlines or individually resubmitted, “corrected” petition booklets.⁵⁹

It is worth emphasizing that the Division has no special “agency expertise” in interpreting a statutory or regulatory filing deadline.⁶⁰ That is made clear by the Division’s easily uncovered error regarding the relevancy of the Director’s testimony about the interpretation of the “or corrected” language.⁶¹ It is the role of courts — not administrative agencies — to apply their independent judgment to statutes and regulations like those at issue here.⁶² When faced with *ambiguous* statutes, the Alaska Supreme Court has deferred “to the division’s expertise in the conduct of elections.”⁶³ But in this case

⁵⁸ See 698 at 1175-79.

⁵⁹ See *id.*

⁶⁰ See, e.g., *Jeffery*, 170 P.3d at 234-36 (ordering the removal of two judges who had failed to meet required deadlines); *Falke*, 717 P.2d at 370-76 (disqualifying a potential candidate who did not finish filing the required paperwork until ten minutes after the deadline).

⁶¹ See Defendants’ Opposition and Cross-Motion at 23-24; See Version A of HB 94 at 11 (Appendix 4); see also *supra* Subsection II.B.2 and accompanying text.

⁶² See *Republican Governors Ass’n v. APOC*, 485 P.3d 545, 549 (Alaska 2021) (“[W]e substitute our own judgment ‘where the agency’s specialized knowledge and experience would not be particularly probative on the meaning of the statute.’” (quoting *Marathon Oil Co. v. State*, 254 P.3d 1078, 1082 (Alaska 2011))).

⁶³ See *Falke*, 717 at 374 n.9.

— as in prior cases litigating election deadlines⁶⁴ — “the statutory filing deadline involved here is not ambiguous,” and the Division is not entitled to deference.⁶⁵

Again, the Sponsors chose to file their petition at the last minute.⁶⁶ In so doing, they risked that they might lack a sufficient number of certified signatures — the only signatures that may ultimately be counted — to advance 22AKHE to the ballot. That is why initiative sponsors typically follow the Division’s recommendation to “collect signatures well OVER the required amount to account for duplicate signatures and signatures that cannot be counted,”⁶⁷ because signatures in uncertified petition booklets *cannot* be counted.⁶⁸

In order to appear on the general election ballot this November, the law required the Sponsors to file a sufficient petition before January 16, 2024.⁶⁹ The Sponsors filed their petition with the Division on January 12, 2024, the last business day before this deadline.⁷⁰ And in order to appear on *any* election ballot, the Sponsors were required to

⁶⁴ See *Guerin*, 537 P.3d at 779, 782; *Jeffery*, 170 P.3d at 234; *Yute Air*, 698 P.2d at 1178; *Falke*, 717 P.2d at 373-74; see also Plaintiffs’ Motion at 25-26 & nn.105-106.

⁶⁵ See *Falke*, 717 at 374 n.9.

⁶⁶ See First Stipulation at ¶¶ II.19, II.49-50; see also Plaintiffs’ Motion at 18-19 & nn.80-81.

⁶⁷ See Exhibit A at 9 (emphasis in original) to Complaint for Injunctive and Declaratory Relief (Apr. 2, 2024) [hereinafter Complaint].

⁶⁸ See AS 15.45.130 (“[T]he lieutenant governor may not count subscriptions on petitions not properly certified[.]”).

⁶⁹ See First Stipulation at ¶ II.49; see also AS 15.45.190.

⁷⁰ See First Stipulation at ¶ II.19; see also Plaintiffs’ Motion at 19 n.81.

file 22AKHE by February 7, 2024, as any petition filing completed after that deadline has “no force or effect.”⁷¹ To permit 22AKHE to reach the ballot, this Court would need to ignore these clear statutory deadlines, since the Division did not have a sufficient number of certified signatures by those critical dates.⁷²

It is also easy to see the absurd outcome that would result if the Court accepts the Division’s interpretation of AS 15.45.130. If one set of sponsors file a petition with no notarizations at all on the last day to do so, the Division will reject their petition entirely — with no suspension of the filing deadlines and no “curing” opportunity — because that petition’s “patent defect” will be obvious.⁷³ But if another set of sponsors were to file a petition with faulty or fraudulent notarizations, they would somehow be entitled to an additional 60 days to fix those booklets that contain the exact same problem, because the Division might fail to detect this issue upon its initial review.

It makes no sense for sponsors with *false* notarizations to somehow get 60 additional days to correctly file petition booklets when compared to sponsors who *properly* file petitions, or sponsors who fail to get *any* notarizations at all. The Division’s suggested approach is completely arbitrary, and if anything actually *encourages* the filing

⁷¹ AS 15.45.140(b); *see* First Stipulation at ¶ II.50.

⁷² *See* First Stipulation at ¶¶ II.22-44, II.54; *see also* Exhibit 9 to First Stipulation.

⁷³ *See* 6 AAC 25.240(f) (stating that when a facially insufficient petition is filed prior to the filing deadline “all booklets” must be returned for “resubmission” and that any subsequent filing must be completed before the one-year deadline).

of petitions with faulty or fraudulent certifications to “hoodwink” the Division during its initial review in order to gain access to 60 days of extra time.

Had the Division not ignored the full statutory scheme and properly followed its own regulation, it would have returned the Sponsors’ petition back to them in its entirety when the patent defect was detected.⁷⁴ This Court should confirm that election deadlines must be strictly enforced, and conclude that the Sponsors simply did not meet those deadlines.⁷⁵

4. The Division violated its own regulation in allowing for a piecemeal “curing” process, even though 22AKHE was patently defective when the Sponsors filed it on January 12.

The Division cherry-picks portions of 6 AAC 25.240 to support their fabricated “curing” period being applied to a patently defective petition.⁷⁶ There is no dispute that the petition the Sponsors filed on January 12 was “patently defective” under 6 AAC 25.240(f), because the Sponsors submitted over 60 booklets that were not certified.⁷⁷ When this defect was detected, the Division properly refused to count all of the signatures in the affected booklets, thus reducing the number of subscribers by a facially-disqualifying amount.⁷⁸

⁷⁴ See AS 15.45.130; AS 15.45.140; AS 15.45.150; 6 AAC 24.240.

⁷⁵ See *Guerin*, 537 P.3d at 779, 782; *Jeffery*, 170 P.3d at 234; *Yute Air*, 698 P.2d at 1178; *Falke*, 717 P.2d at 373-74; see also Plaintiffs’ Motion at 25-26 & nn.105-106.

⁷⁶ See Defendants’ Opposition and Cross-Motion at 17-20.

⁷⁷ See First Stipulation at ¶¶ II.19, II.22-44, II.54.

⁷⁸ See *id.* at ¶¶ II.22-44, II.54.

Once it was clear to the Division that, without these booklets, 22AKHE could not qualify, the petition had a patent defect.⁷⁹ And it is at this critical moment when the Division was compelled by 6 AAC 25.240(f)(2) to return “all petition booklets” to the Sponsors for later resubmission of the entire petition.⁸⁰ But the Division did not do so.

There is no dispute that the Sponsors did not return the “cured” petition booklets to the Division until after the one-year filing deadline had lapsed.⁸¹ And the Division violated its own regulation when it returned only the defective booklets to the Sponsors; under 6 AAC 25.240, the Division was actually required to declare the petition “incomplete” and return “*all petition booklets*” to the Sponsors “for resubmission.”⁸² This resubmission process would necessarily have triggered a new filing date that must *still be before the one-year petition filing deadline*,⁸³ not before the Division’s separate 60-day review period ends.⁸⁴ And by accepting the “resubmission” of those individual

⁷⁹ See 6 AAC 25.240.

⁸⁰ See 6 AAC 25.240(f) (“A petition that at the time of submission contains . . . an insufficient number of booklets . . . required for certification will be determined by the director to have a patent defect. . . . A petition that contains a patent defect and that is filed . . . (2) before the deadline specified in (d) of this section will be declared incomplete and *all* petition booklets *will be returned* to the committee or designee for resubmission; the resubmitted petition *must* be filed by the deadline specified in (d) of this section.” (emphasis added).

⁸¹ See First Stipulation at ¶¶ II.26, II.29, II.36-39, II.43-44, II.50; see also Exhibit 9 to First Stipulation.

⁸² 6 AAC 25.240(f)(2) (emphasis added).

⁸³ See AS 15.45.140.

⁸⁴ See AS 15.45.150.

booklets after the one-year deadline had run, the Division violated its own regulation yet again, because subsection (f)(2) specifically requires that such a resubmission must be completed “by the deadline specified in (d) of this section,” which is a restatement of the statutory one-year filing deadline.⁸⁵

In short, there is nothing in AS 15.45.130 or 6 AAC 25.240 allowing initiative Sponsors to correct a petition *after the filing deadline* — in fact, 6 AAC 25.240(f)(2) explicitly *prohibits* it. And to the extent the statute permits a piecemeal correction process at all, it certainly does not permit it during the Division’s separate 60-day review period so that sponsors can somehow extend the statutory filing deadline.⁸⁶

There is also no evidence that the Division has a “longstanding and continuous practice” of returning defective petition booklets one-by-one to sponsors during the 60-day review period at all, much less after the one-year filing deadline has tolled.⁸⁷ Accordingly, the Court need not give *any* “weight” to the Division’s interpretation of AS 15.45.130, AS 15.45.140, or 6 AAC 25.240, because “the Division . . . must apply all statutorily mandated election deadlines as written in the statute.”⁸⁸ In fact, it speaks volumes that the Division was unable to produce *any* documentary evidence showing that

⁸⁵ See 6 AAC 25.240(d), (f)(2).

⁸⁶ See *Guerin*, 537 P.3d at 779, 782; *Jeffery*, 170 P.3d at 234; *Yute Air*, 698 P.2d at 1178; *Falke*, 717 P.2d at 373-74; see also Plaintiffs’ Motion at 25-26 & nn.105-106.

⁸⁷ See *Guerin*, 537 P.3d at 782 (quoting *Alaska Jud. Council v. Kruse*, 331 P.3d 375, 381 (Alaska 2014)).

⁸⁸ See *id.*

it has *ever* used this process for *any* other initiative petition before.⁸⁹ If such evidence existed, the Division would have provided it.

The lack of any documented practice is supported by the fact that the Division’s training guidance which “allows” for this process could *not* have been provided to Sponsors as the Division falsely suggests;⁹⁰ the guidance the Division relies on was only revised in December 2023,⁹¹ long after the Sponsors received their petition booklets⁹² and received their training.⁹³ And the guidance that presumably *was* provided to the Sponsors (revised in January 2023), makes *no mention* of any such curing process whatsoever, let alone a concurrent suspension of the statutory filing deadlines.⁹⁴ To the contrary, that guidance correctly states: “If there are not enough qualified subscribers to the petition . . . a supplemental petition cannot be filed.”⁹⁵ In practice, the curing process granted to the Sponsors functioned as a de facto “supplemental petition,” allowing them to add

⁸⁹ See First Stipulation at ¶ II.48 (“The Division . . . cannot document prior instances of returning individual petition booklets to initiative sponsors after the sponsors had submitted their petitions, so that the sponsors could correct errors on the certification pages before the Division completed its review of the petition booklets.”).

⁹⁰ See Defendants’ Opposition and Cross-Motion at 14-15 (claiming that the Sponsors had “received the Initiative Petition Training Handbook when they all attended the Division’s training session”).

⁹¹ See Exhibit A at 1 to Complaint (showing that it was revised on December 22, 2023).

⁹² See First Stipulation at ¶ II.4.

⁹³ See *id.* at ¶ II.7 (“All of the Sponsors attended this training on February 8, 2023.”).

⁹⁴ See *generally* Exhibit E to Complaint.

⁹⁵ See Exhibit E at 14 to Complaint.

thousands of qualified signatures to a petition that was patently defective when filed on January 12, 2024.⁹⁶

For reasons that remain unclear, the Division insists on ignoring the best evidence of its own long-standing interpretation of the “or corrected” language. That evidence is the plain language of its own regulation, and merits the Court’s close attention because it has the force of law.⁹⁷

6 AAC 25.240(c) provides that “[a]ll petition booklets must be filed together *as a single instrument*,” thereby making a clear distinction between a complete “petition” and individual “petition booklets.”⁹⁸ The Division argues that the “single instrument” requirement exists simply to manage incoming booklets.⁹⁹ But in so doing, the Division completely ignores subsection (f)(2), which provides that in the event a “patent defect” is discovered in a petition — and if Sponsors filed their petition before the year-long signature collection period elapsed — “*all petition booklets* will be returned to the committee or designee for resubmission,” and “the *resubmitted petition* must be filed by”

⁹⁶ This “supplemental petition” practice for ballot initiatives was repealed in 1998. *See* former AS 15.45.170 (1997); *see also* Plaintiffs’ Motion at 14-16; Appendices 1-3 to Plaintiffs’ Motion.

⁹⁷ *See Stosh’s I/M v. Fairbanks N. Star Borough*, 12 P.3d 1180, 1185 (Alaska 2000); K. DAVIS, ADMINISTRATIVE LAW TREATISE § 5.03 at 252 (Supp. 1970) (“Regulations will have the force of law if the statute has granted authority to the administrator to issue them.”).

⁹⁸ *See* 6 AAC 25.240(c) (emphasis added).

⁹⁹ *See* Defendants’ Opposition and Cross-Motion at 17-18.

the one-year filing deadline.¹⁰⁰ This “patent defect” language is not limited to the moment a petition is filed; once a patent defect is discovered in a submitted petition, either the process outlined in 6 AAC 25.240(f)(1) or (2) applies.¹⁰¹ **In other words, by the plain language of the Division’s own regulation, the Sponsors of 22AKHE were explicitly precluded from correcting a patent defect and returning needed petition booklets to the Division piecemeal after the one-year filing deadline.**¹⁰²

This irreconcilable conflict between the Division’s actions and its own regulation cannot be the result of mere oversight. That is because 6 AAC 25.240 has been amended *five times* since the “or corrected” language was added to AS 15.45.130 in 2005.¹⁰³ If the Division’s strained and illogical interpretation of AS 15.45.130 was “long-held” by the Division, how could a regulation that is in direct conflict with that interpretation persist for nearly 20 years? The answer is that there is no “longstanding” interpretation of the Division; just new non-binding language written in December 2023 that conflicts with the Division’s own regulation.¹⁰⁴

¹⁰⁰ See 6 AAC 25.240(f)(2) (emphasis added).

¹⁰¹ See 6 AAC 25.240(f).

¹⁰² See 6 AAC 25.240(f)(2).

¹⁰³ Since 2005, 6 AAC 25.240 has been amended on: (1) May 14, 2006 (Register 178); (2) April 25, 2008 (Register 186); (3) February 28, 2014 (Register 209); (4) February 10, 2018 (Register 225); and (5) February 24, 2022 (Register 241). The Division does not claim that its revised guidance from December 2023 was the result of a regulatory process. See Exhibit A to Complaint.

¹⁰⁴ See Exhibit A at 4 to Complaint (“**Information in these instructions . . . does not replace the requirements of the Alaska Constitution, Alaska Statutes, and the**”).

Because the Division’s actions are completely at odds with 6 AAC 25.240 and the applicable statutes, this Court should grant Plaintiffs’ motion and deny the Divisions’ and the Sponsors’ cross motions.

C. This Court Has Original Jurisdiction and Plaintiffs Bear the Burden of Proof.

The Sponsors have also cross-moved for summary judgment that there is no “de novo” review (and by that, they mean *any* review) allowed by this Court of any fraudulent collection of signatures by Sponsors or their agents.¹⁰⁵ The Sponsors’ arguments are easily dismissed. In opposing this argument, Plaintiffs also hereby adopt and incorporate their arguments made in their Opposition to the Intervenors’ Motion to Convert.¹⁰⁶

1. The Court has the power to review and make findings as to any fraudulent signature collection practices and certifications of signatures.

Alaska Statute 15.45.240 provides that: “Any person aggrieved by a determination made by the lieutenant governor under AS 15.45.010-15.45.220 may *bring an action in the superior court* to have the determination reviewed within 30 days of the date on which notice of the determination was given.”¹⁰⁷ Here, Plaintiffs timely “[brought] an action in

Alaska Administrative Code. It is recommended that the Initiative Committee . . . review the above reflected laws.” (emphasis added)).

¹⁰⁵ See Intervenors’ Amended Opposition and Cross-Motion at 18-27.

¹⁰⁶ See generally Plaintiffs’ Opposition to Intervenors’ Motion to Convert the Case into an Administrative Appeal (May 17, 2024) [hereinafter Opposition to Motion to Convert].

¹⁰⁷ AS 15.45.240 (emphasis added).

the superior court” for exactly that purpose: to have this Court review the Division’s certification of 22AKHE as “properly filed” under AS 15.45.140 and 15.45.160.¹⁰⁸ The lieutenant governor’s own letter dated March 8, 2024, which certified 22AKHE as being properly filed, also referenced any person’s right to “bring an action in the superior court to have the determination reversed.”¹⁰⁹

By its plain language, AS 15.45.240 permits an original action.¹¹⁰ Plaintiffs are absolutely entitled to judicial review of “the circulation of each and every one of the 641 petition booklets the Sponsors’ submitted to the Division,”¹¹¹ just as in any other elections litigation that directly challenges the counting of individual ballots, signatures, or other actions by the Division.¹¹²

The Sponsors concede in their separately filed Motion to Convert that the Division did not review, consider, or make *any* factual findings as to the Sponsors’ signature

¹⁰⁸ See generally Complaint.

¹⁰⁹ See Attachment 1 at 2 to Opposition to Motion to Convert.

¹¹⁰ See AS 15.45.240.

¹¹¹ See Intervenors’ Opposition and Cross-Motion at 4, 19-21.

¹¹² The Alaska Election Code is littered with opportunities to do exactly what Sponsors claim is improper here: detailed, often tedious and time-consuming original litigation over the Division’s actions regarding the counting or non-counting of votes or signatures. See AS 15.10.100 (allowing an original superior court action challenging the Division’s decision on precinct boundaries); AS 15.45.460 (allowing an original superior court action challenging the Division’s decision on a referendum); AS 15.45.720 (allowing an original superior court action challenging the Division’s decision on a recall); AS 15.50.027 (allowing an original superior court action challenging the ballot title and proposition of a constitutional amendment); see also *N.W. Cruiseship Ass’n*, 145 P.3d at 582-90.

collection process or the presence (or lack thereof) of any fraud.¹¹³ Amazingly, according to the Sponsors, there is simply no vehicle at all to challenge the improper certification of an initiative petition, even where — as here — there appears to have been a significant amount fraud in the collection and certification of signatures. This cannot be the case.

If the legislature meant this sort of challenge to be an “appeal,” the statutes would require the Division to have a process for investigating complaints of fraud, and would explicitly provide for an “appeal”¹¹⁴ of such findings as they do in other parts of the Election Code that explicitly allow for administrative appeals¹¹⁵ rather than an “action in superior court.”¹¹⁶ There is no “appeal as provided by law” that would invoke this Court’s

¹¹³ See Intervenors/Sponsors’ Motion to Convert the Case into an Administrative Appeal at 3, 8, 11-12, 14 (May 13, 2024). Plaintiffs’ agree with the Sponsors that the Division did not do this type of review or consideration. If they had, by way of example, the Division would not have counted 22AKHE petition booklet 0967 (which it did). The Division had received a call about that particular booklet being left unattended at Tudor Bingo. See First Stipulation at ¶¶ II.15-16; see also Exhibit 4 to First Stipulation. There is even a statement written across multiple lines in the booklet that states: “SAY YES TO RANK CHOICE!!” Yet because that booklet was submitted, the Division counted all of the otherwise qualified signatures in that booklet. See Intervenors’ Opposition and Cross-Motion at 24-25 (acknowledging that 22AKHE petition booklet 0967 was submitted and counted by the Division).

¹¹⁴ See AS 22.10.020(g).

¹¹⁵ See AS 15.07.150 (allowing for administrative appeals from the Division’s denial of voter registration); AS 15.20.510 (regarding recounts: “[a] candidate or any person who requested a recount who has reason to believe an error has been made involving any question or proposition or the validity of any ballot may appeal to the superior court in accordance with applicable court rules governing appeals in civil matters.”).

¹¹⁶ See AS 15.45.240 (“Any person aggrieved by a determination made by the lieutenant governor under AS 15.45.010 — 15.45.220 may bring an action in the superior

administrative jurisdiction under AS 22.10.020(d), and there is no failure to exhaust administrative remedies.

Superior courts have historically held bench trials in election cases for challenges such as this,¹¹⁷ or reserved judgment if factual findings needed to be made.¹¹⁸ And the Alaska Supreme Court has held that the superior court has jurisdiction to hear and determine elections litigation regardless of whether the legislature did or did not specifically provide for “any preliminary administrative determination.”¹¹⁹ This is consistent with the superior court’s broad, general jurisdiction to issue declaratory and injunctive relief of exactly the type requested and permitted here.¹²⁰

In short, this Court has jurisdiction to directly adjudicate, as an original action, both the legal and factual disputes related to the Division’s qualification of 22AKHE.

court to have the determination reviewed within 30 days of the date on which notice of the determination was given.”).

¹¹⁷ See e.g., *Vazquez v. State*, 544 P.3d 1178, 1181-83 (Alaska 2024); *Pruitt v. State*, 498 P.3d 591, 595-96 (Alaska 2021); *Nageak v. Mallott*, 426 P.3d 930, 938-39 (Alaska 2018).

¹¹⁸ See *N.W. Cruiseship Ass’n*, 145 P.3d at 588-89.

¹¹⁹ *Turkington v. City of Kachemak*, 380 P.2d 593, 596 (Alaska 1963).

¹²⁰ See AS 22.10.020(g) (“In case of an actual controversy in the state, the superior court, upon the filing of an appropriate pleading, may declare the rights and legal relations of an interested party seeking the declaration, whether or not further relief is or could be sought.”).

2. Plaintiffs agree that they have the burden of proof at trial.

Where Plaintiffs and the Sponsors do agree is on the burden of proof this Court should apply if and when this case reaches the point where this Court must examine individual signatures.¹²¹ In a civil elections case litigating the validity of particular initiative signatures, Plaintiffs bear the burden of proving by a preponderance of the evidence that particular booklets or signatures are invalid.¹²² Plaintiffs intend to meet that burden, if necessary, through depositions, affidavits, expert testimony, written discovery, motion practice, and potentially a bench trial. And at this stage, there are certainly genuine issues of material fact that preclude entry of summary judgment against Plaintiffs at this juncture.¹²³

¹²¹ See Intervenors’ Amended Opposition and Cross-Motion at 22-24.

¹²² See *N.W. Cruiseship Ass’n*, 145 P.3d at 582 (“The lieutenant governor has the initial burden of proving that a sufficient number of signers supported the initiative. Once the lieutenant governor has done that, the burden shifts to the challengers to prove that a particular signature or set of signatures should not have been counted.”); see also Intervenors’ Amended Opposition and Cross-Motion at 22 (“Plaintiffs[’] . . . burden is to establish by a preponderance of the evidence on a booklet-by-booklet basis that individual booklets were improperly certified or circulated or both.”).

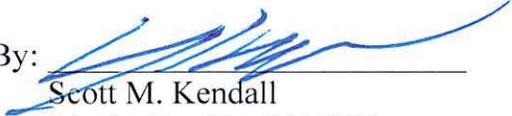
¹²³ See generally Affidavit of John “Jay” Costa, Jr. (May 22, 2024). Additionally, in one of the circulator depositions that Plaintiffs have taken thus far, that circulator repeatedly invoked the Fifth Amendment, and in doing so would not stand by circulator certificates for the two 22AKHE petition booklets that he signed. Testimony from other circulator depositions may provide a sufficient factual basis for this Court to disqualify additional 22AKHE petition booklets beyond those that have been previously identified by Plaintiffs. See Intervenors’ Amended Opposition and Cross-Motion at 24-25.

III. CONCLUSION

As to Counts III and IV, all parties have stipulated that there are no genuine issues of material fact to prevent summary judgment, and that the question of statutory interpretation related to those claims can be resolved by the court as a matter of law.¹²⁴ That is all the Plaintiffs are asking this Court to do today; enforce the applicable statutory and regulatory regime to the undisputed facts of this case. And because those undisputed facts concern uncertified petition booklets that were not corrected and filed with the Division until after all applicable statutory deadlines had expired, this Court should GRANT Plaintiffs' Motion for Summary Judgment and DENY Defendants' and the Sponsors' Cross Motions for Summary Judgment.

DATED this 22nd day of May, 2024.

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¹²⁴ See First Stipulation at 2; see also *id.* at ¶ III.2.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via email on May 22, 2024, on the following:

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CASHION GILMORE & LINDEMUTH

By: /s/ Todd Cowles

HOUSE BILL NO. 94

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/21/05

Referred: State Affairs, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to qualifications of voters, requirements and procedures regarding
2 independent candidates for President and Vice-President of the United States, voter
3 registration and voter registration records, voter registration through a power of
4 attorney, voter registration using scanned documents, voter residence, precinct
5 boundary and polling place designation and modification, recognized political parties,
6 voters unaffiliated with a political party, early voting, absentee voting, application for
7 absentee ballots through a power of attorney, or by scanned documents, ballot design,
8 ballot counting, voting by mail, voting machines, vote tally systems, initiative,
9 referendum, recall, and definitions in the Alaska Election Code; relating to
10 incorporation elections; and providing for an effective date."

11 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

12 * **Section 1.** AS 15.05.020 is amended to read:

1 **Sec. 15.05.020. Rules for determining residence of voter.** For the purpose
 2 of determining residence for voting, the place of residence is governed by the
 3 following rules:

4 (1) A person may not be considered to have gained a residence solely
 5 by reason of presence nor may a person lose it solely by reason of absence while in the
 6 civil or military service of this state or of the United States or of absence because of
 7 marriage to a person engaged in the civil or military service of this state or the United
 8 States, while a student at an institution of learning, while in an institution or asylum at
 9 public expense, while confined in public prison, while engaged in the navigation of
 10 waters of this state or the United States or of the high seas, while residing upon an
 11 Indian or military reservation, or while residing in the Alaska Pioneers' Home or the
 12 Alaska Veterans' Home.

13 (2) The residence of a person is that place in which the person's
 14 habitation is fixed, and to which, whenever absent, the person has the intention to
 15 return. If a person resides in one place, but does business in another, the former is the
 16 person's place of residence. Temporary **work sites** [CONSTRUCTION CAMPS] do
 17 not constitute a dwelling place.

18 (3) A change of residence is made only by the act of removal joined
 19 with the intent to remain in another place. There can only be one residence.

20 (4) A person does not lose residence if the person leaves home and
 21 goes to another country, state, or place in this state for temporary purposes only and
 22 with the intent of returning.

23 (5) A person does not gain residence in any place to which the person
 24 comes without the present intention to establish a permanent dwelling at that place.

25 (6) A person loses residence in this state if the person votes in another
 26 state's election, either in person or by absentee ballot, and will not be eligible to vote
 27 in this state until again qualifying under AS 15.05.010.

28 (7) The term of residence is computed by including the day on which
 29 the person's residence begins and excluding the day of election.

30 (8) The address of a voter as it appears on **the** [AN] official voter
 31 registration **record** [CARD] is presumptive evidence of the person's voting residence.

1 This presumption is negated only if the voter notifies the director in writing of a
2 change of voting residence.

3 * **Sec. 2.** AS 15.07.050 is amended to read:

4 **Sec. 15.07.050. Manner of registration.** Registration may be made

5 (1) in person before a registration official or through a voter
6 registration agency;

7 (2) **by another individual on behalf of the voter if the voter has**
8 **executed a written power of attorney specifically authorizing that other**
9 **individual to register the voter;**

10 (3) by mail; or

11 (4) [(3)] by facsimile transmission, **scanning**, or another method of
12 electronic transmission that the director approves.

13 * **Sec. 3.** AS 15.07.060(a) is amended to read:

14 (a) Each applicant who requests registration or reregistration shall supply the
15 following information:

16 (1) **the applicant's** name and sex;

17 (2) if issued, the applicant's State of Alaska driver's license number or
18 State of Alaska identification card number, or the last four digits of the applicant's
19 social security number;

20 (3) **the applicant's** date of birth;

21 (4) **the applicant's Alaska residence** address, **as specified in**
22 **regulations adopted by the director** [AND OTHER NECESSARY INFORMATION
23 ESTABLISHING RESIDENCE, INCLUDING THE TERM OF RESIDENCE IN
24 THE STATE AND IN THE DISTRICT, IF REQUESTED];

25 (5) **a statement of** whether the applicant has previously been
26 registered to vote in another jurisdiction, and, if so, the jurisdiction and the address of
27 the previous registration;

28 (6) a declaration that the **applicant** [REGISTRANT] will be 18 years
29 of age or older within 90 days **after** [OF] the date of registration;

30 (7) a declaration that the **applicant** [REGISTRANT] is a citizen of the
31 United States;

- 1 (8) **the** date of application;
- 2 (9) **the applicant's** signature or mark;
- 3 (10) any former name under which the applicant was registered to vote
- 4 in the state;
- 5 (11) an **oath** [ATTESTATION] that the information provided by the
- 6 applicant in (1) - (10) of this subsection is true; and
- 7 (12) a certification that the applicant understands that a false statement
- 8 on the application may make the applicant subject to prosecution for a misdemeanor
- 9 under this title or AS 11.

10 * **Sec. 4.** AS 15.07.070(b) is amended to read:

11 (b) To register by mail or by facsimile, **scanning**, or other electronic

12 transmission approved by the director under AS 15.07.050, the director, the area

13 election supervisor, or a voter registration agency shall furnish, at no cost to the voter,

14 forms prepared by the director on which the registration information required under

15 AS 15.07.060 shall be inserted by the voter, **by a person on behalf of the voter if**

16 **that person is designated to act on behalf of the voter in a power of attorney as**

17 **set out in AS 15.07.050**, or by a person on behalf of the voter if the voter is physically

18 incapacitated. The director may require proof of identification of the applicant as

19 required by regulations adopted by the director under AS 44.62 (Administrative

20 Procedure Act). Upon receipt and approval of the completed registration forms, the

21 director or the election supervisor shall forward to the voter an acknowledgment, and

22 the voter's name shall immediately be placed on the master register. If the registration

23 is denied, the voter shall immediately be informed in writing that registration was

24 denied and the reason for denial. When identifying information has been provided by

25 the voter as required by this chapter, the election supervisor shall forward to the voter

26 a registration card.

27 * **Sec. 5.** AS 15.07.127 is amended to read:

28 **Sec. 15.07.127. Preparation of master register.** The director shall prepare

29 both a statewide list and a list by precinct of the names and addresses of all persons

30 whose names appear on the master register and their political party affiliation.

31 **Subject to the limitations of 15.07.195, any** [ANY] person may obtain a copy of the

1 list, or a part of the list, or an electronic format containing both residence and mailing
 2 addresses of voters, by applying to the director and paying to the state treasury a fee as
 3 determined by the director.

4 * **Sec. 6.** AS 15.10.090 is amended to read:

5 **Sec. 15.10.090. Notice of precinct boundary designation and modification.**

6 The director shall give full public notice when precinct boundaries are designated and
 7 when the boundaries of a precinct are modified or when a precinct is established or
 8 abolished. Public notice **must** [SHALL] include

9 **(1)** [, BUT IS NOT LIMITED TO,] the publication **of notice** on three
 10 different days in a daily newspaper of general circulation; [,] if **possible, the**
 11 **newspaper shall be one that is available generally in the house district** [SUCH A
 12 NEWSPAPER IS PUBLISHED IN THE HOUSE DISTRICT] where the precinct is
 13 located; **however, if a daily newspaper of general circulation is not generally**
 14 **available in that house district, public notice must include** [, BY] posting written
 15 notice in **a** [THREE] conspicuous **place** [PLACES] in the designated precinct;

16 **(2) posting on the division of elections' Internet web site;** [,] and

17 **(3)** [BY] notification to appropriate municipal clerks.

18 * **Sec. 7.** AS 15.15.030(7) is amended to read:

19 (7) The general election ballot shall be designed with the names of
 20 candidates of each political party, **and of any independent candidates qualified**
 21 **under AS 15.30.026,** for the office of President and Vice-President of the United
 22 States placed in the same section on the ballot rather than the names of electors of
 23 President and Vice-President.

24 * **Sec. 8.** AS 15.15.350(a) is amended to read:

25 (a) The director may adopt regulations prescribing the manner in which the
 26 precinct ballot count is accomplished so as to **ensure** [ASSURE] accuracy in the count
 27 and to expedite the process. The election board shall account for all ballots by
 28 completing a ballot statement containing (1) the number of official ballots received;
 29 (2) the number of official ballots voted; (3) the number of official ballots spoiled; (4)
 30 the number of official ballots unused and **either** destroyed **or returned for**
 31 **destruction to the elections supervisor or the election supervisor's designee.** The

1 board shall count the number of questioned ballots and [SHALL] compare that
 2 number to the number of questioned voters in the register. Discrepancies shall be
 3 noted and the numbers included in the certificate prescribed by AS 15.15.370. The
 4 election board, in hand-count precincts, shall count the ballots in a manner that allows
 5 watchers to see the ballots when opened and read. A person handling the ballot after it
 6 has been taken from the ballot box and before it is placed in the envelope for mailing
 7 may not have a marking device in hand or remove a ballot from the immediate vicinity
 8 of the polls.

9 * **Sec. 9.** AS 15.20.064(a) is amended to read:

10 (a) For 15 days before an election and on election day, a qualified voter who
 11 meets the requirements set out in this section may vote in locations designated by the
 12 director **by January 1 of an election year.**

13 * **Sec. 10.** AS 15.20.066(b) is amended to read:

14 (b) An absentee ballot that is completed and returned by the voter by
 15 electronic transmission must

16 (1) contain the following statement: "I understand that, by using
 17 electronic transmission to return my marked ballot, I am voluntarily waiving a portion
 18 of my right to a secret ballot to the extent necessary to process my ballot, but expect
 19 that my vote will be held as confidential as possible." followed by the voter's signature
 20 and date of signature; and

21 (2) be accompanied by a statement executed under oath as to the
 22 voter's identity; the statement under oath must be witnessed by

23 (A) a commissioned or noncommissioned officer of the armed
 24 forces of the United States;

25 (B) an official authorized by federal law or the law of the state
 26 in which the absentee ballot is cast to administer an oath; or

27 (C) **a** [TWO] United States **citizen** [CITIZENS] who **is** [ARE]
 28 18 years of age or older.

29 * **Sec. 11.** AS 15.20.081(a) is amended to read:

30 (a) A qualified voter may apply by mail or by **facsimile, scanning, or other**
 31 electronic transmission to the director for an absentee ballot. **Another person may**

1 **apply for an absentee ballot on behalf of a qualified voter if that person is**
 2 **designated to act on behalf of the voter in a written power of attorney that**
 3 **specifically authorizes the other person to apply for an absentee ballot on behalf**
 4 **of the voter.** The application must include the address or, if the application requests
 5 delivery of an absentee ballot by electronic transmission, the telephone electronic
 6 transmission number, to which the absentee ballot is to be returned, the applicant's full
 7 Alaska residence address, and the applicant's signature. However, a person residing
 8 outside the United States and applying to vote absentee in federal elections in
 9 accordance with AS 15.05.011 need not include an Alaska residence address in the
 10 application.

11 * **Sec. 12.** AS 15.20.081(d) is amended to read:

12 (d) Upon receipt of an absentee ballot by mail, the voter, in the presence of a
 13 notary public, commissioned officer of the armed forces including the National Guard,
 14 district judge or magistrate, United States postal official, registration official, or other
 15 person qualified to administer oaths, may proceed to mark the ballot in secret, to place
 16 the ballot in the secrecy sleeve, to place the secrecy sleeve in the envelope provided,
 17 and to sign the voter's certificate on the envelope in the presence of an official listed in
 18 this subsection who shall sign as attesting official and shall date the signature. If none
 19 of the officials listed in this subsection is reasonably accessible, an absentee voter
 20 shall sign the voter's certificate in the presence of **one person who is a United States**
 21 **citizen and is** [TWO PERSONS OVER THE AGE OF] 18 years **of age or older**, who
 22 shall sign as **a witness** [WITNESSES] and attest to the date on which the voter signed
 23 the certificate in **the person's** [THEIR] presence, and, in addition, the voter shall
 24 provide the certification prescribed in AS 09.63.020.

25 * **Sec. 13.** AS 15.20.081(h) is amended to read:

26 (h) Except as provided in AS 15.20.480, an absentee ballot returned by mail
 27 from outside the United States or from **an overseas voter qualifying under**
 28 **AS 15.05.011** [A MILITARY APO OR FPO ADDRESS] that has been marked and
 29 mailed not later than election day may not be counted unless the ballot is received by
 30 the election supervisor not later than the close of business on the 15th day following
 31 the election.

1 * **Sec. 14.** AS 15.20.800(b) is amended to read.

2 (b) If the director conducts an election under (a) of this section by mail, the
3 director shall send a ballot for each election described in (a) of this section to each
4 person whose name appears on the official registration list prepared under
5 AS 15.07.125 for that election. **The director shall send ballots by first class,**
6 **nonforwardable mail.** The ballot shall be sent to the address stated on the official
7 registration list unless the

8 **(1)** voter has notified the director or an election supervisor of a
9 different address to which the ballot should be sent; **or**

10 **(2) address on the official registration list has been identified as**
11 **being an undeliverable address** [. THE DIRECTOR SHALL SEND BALLOTS BY
12 FIRST CLASS, NONFORWARDABLE MAIL].

13 * **Sec. 15.** AS 15.20 is amended by adding a new section to article 5 to read:

14 **Sec. 15.20.910. Standards for voting machines and vote tally systems.** The
15 director may approve a voting machine or vote tally system for use in an election in
16 the state upon consideration of factors relevant to the administration of state elections,
17 including whether the Federal Election Commission has certified the voting machine
18 or vote tally system to be in compliance with the voting system standards approved by
19 the Federal Election Commission as required by 42 U.S.C. 15481(a)(5) (Help America
20 Vote Act of 2002).

21 * **Sec. 16.** AS 15.30 is amended by adding a new section to read:

22 **Sec. 15.30.026. Qualifications for independent candidates for President of**
23 **the United States; selection of candidate for Vice-President; selection of electors.**

24 (a) A person who desires to be an independent candidate for President of the United
25 States must file with the director not earlier than January 1 of a presidential election
26 year and not later than the 90th day before a presidential general election a petition
27 signed by qualified voters of the state equal in number to at least one percent of the
28 number of voters who cast ballots in an election under this chapter for President of the
29 United States at the last presidential general election. The petition must state that the
30 signers desire the named candidate for President of the United States to appear on the
31 ballot as an independent candidate for president at the next succeeding presidential

1 general election.

2 (b) In order to appear on the ballot, a candidate who has qualified for ballot
3 status under (a) of this section shall certify the following information to the director on
4 or before September 1 of the year of the presidential general election:

5 (1) the names of the electors for the independent candidate for
6 President of the United States, equal to the number of senators and representatives to
7 which the state is entitled in Congress;

8 (2) the name of a candidate for Vice-President, selected by the
9 independent candidate; and

10 (3) the name, Alaska mailing address, and signature of the candidate's
11 state campaign chair, who must be an Alaska resident.

12 * **Sec. 17.** AS 15.30.050 is amended to read:

13 **Sec. 15.30.050. Interpretation of votes cast for candidates for President**
14 **and Vice-President [VICE PRESIDENT].** In voting for presidential electors, a vote
15 marked for the candidates for President and **Vice-President** [VICE PRESIDENT] is
16 considered and counted as a vote for the presidential electors of the party **or for the**
17 **presidential electors named under AS 15.30.026, as appropriate.**

18 * **Sec. 18.** AS 15.30.090 is amended to read:

19 **Sec. 15.30.090. Duties of electors.** After any vacancies have been filled, the
20 electors shall proceed to cast their votes for the candidates for the office of President
21 and **Vice-President** [VICE PRESIDENT] of the party **that** [WHICH] selected them as
22 candidates for electors, **or for the candidates for the office of President and Vice-**
23 **President under AS 15.30.026 if the electors were named under AS 15.30.026,** and
24 shall perform the duties of electors as required by the constitution and laws of the
25 United States. The director shall provide administrative services and the Department
26 of Law shall provide legal services necessary for the electors to perform their duties.

27 * **Sec. 19.** AS 15.45.030 is amended to read:

28 **Sec. 15.45.030. Form of application.** The application **must** [SHALL]
29 include **the**

30 (1) [THE] proposed bill; [TO BE INITIATED,]

31 (2) **printed name, signature, address, and date of birth of not less**

1 **than 100 qualified voters who will serve as sponsors; each signature page must**
 2 **include** a statement that the sponsors are qualified voters who signed the application
 3 with the proposed bill attached; **and** [,]

4 (3) [THE] designation of an initiative committee **consisting** of three **of**
 5 **the** sponsors who **subscribed to the application and** [SHALL] represent all sponsors
 6 and subscribers in matters relating to the initiative; **the designation must include the**
 7 **name, mailing address, and signature of each committee member** [, AND

8 (4) THE SIGNATURES AND ADDRESSES OF NOT LESS THAN
 9 100 QUALIFIED VOTERS].

10 * **Sec. 20.** AS 15.45.060 is amended to read:

11 **Sec. 15.45.060. Designation of sponsors.** The qualified voters who subscribe
 12 to the application **in support of the proposed bill** are designated as sponsors. The
 13 initiative committee may designate additional sponsors by giving written notice to the
 14 lieutenant governor of the names, [AND] addresses, **and dates of birth** of those so
 15 designated.

16 * **Sec. 21.** AS 15.45.090 is repealed and reenacted to read:

17 **Sec. 15.45.090. Preparation of petition.** (a) The lieutenant governor shall
 18 prepare a sufficient number of sequentially numbered petitions to allow full circulation
 19 throughout the state. Each petition shall contain

20 (1) a copy of the proposed bill if the number of words included in both
 21 the formal and substantive provisions of the bill is 500 or less;

22 (2) an impartial summary of the subject matter of the bill;

23 (3) the statement of warning prescribed in AS 15.45.100;

24 (4) sufficient space for the printed name, date of birth, signature, and
 25 address of each person signing the petition;

26 (5) sufficient space at the bottom of each signature page for the
 27 information required by AS 15.45.130(8); and

28 (6) other specifications prescribed by the lieutenant governor to ensure
 29 proper handling and control.

30 (b) Upon request of the initiative committee, the lieutenant governor shall
 31 report to the committee the number of persons who voted in the preceding general

1 election.

2 * **Sec. 22.** AS 15.45 is amended by adding a new section to read:

3 **Sec. 15.45.105. Qualifications of circulator.** To circulate a petition booklet,
4 a person shall be

5 (1) a citizen of the United States;

6 (2) 18 years of age or older; and

7 (3) a resident of the state as determined under AS 15.05.020.

8 * **Sec. 23.** AS 15.45.120 is amended to read:

9 **Sec. 15.45.120. Manner of signing and withdrawing name from petition.**

10 Any qualified voter may subscribe to the petition by **printing the voter's name, date**
11 **of birth, and address, and by** signing the voter's name [AND ADDRESS]. A person
12 who has signed the initiative petition may withdraw the person's name only by giving
13 written notice to the lieutenant governor before the date the petition is filed.

14 * **Sec. 24.** AS 15.45.130 is repealed and reenacted to read:

15 **Sec. 15.45.130. Certification of circulator.** Before being filed, each petition
16 shall be certified by an affidavit by the person who personally circulated the petition.
17 In determining the sufficiency of the petition, the lieutenant governor may not count
18 subscriptions on petitions not properly certified at the time of filing or corrected before
19 the subscriptions are counted. The affidavit must state in substance that

20 (1) the person signing the affidavit meets the residency, age, and
21 citizenship qualifications for circulating a petition under AS 15.45.105;

22 (2) the person is the only circulator of that petition;

23 (3) the signatures were made in the circulator's actual presence;

24 (4) to the best of the circulator's knowledge, the signatures are the
25 signatures of the persons whose names they purport to be;

26 (5) the signatures are of persons who were qualified voters on the date
27 of signature;

28 (6) the circulator has not entered into an agreement with a person or
29 organization in violation of AS 15.45.110(c);

30 (7) the circulator has not violated AS 15.45.110(d) with respect to that
31 petition; and

1 (8) if the circulator has received payment or agreed to receive payment
 2 for the collection of signatures on the petition, the circulator, before circulating the
 3 petition, prominently placed in the space provided under AS 15.45.090(5) the name of
 4 each person or organization that has paid or agreed to pay the circulator for collection
 5 of signatures on the petition.

6 * **Sec. 25.** AS 15.45.200 is amended to read:

7 **Sec. 15.45.200. Display of proposed law.** The director shall provide each
 8 election board with **five** [10] copies of the proposed law being initiated, and the
 9 election board shall display **at least one copy** [THREE COPIES] of the proposed law
 10 in a conspicuous place in the room where the election is held.

11 * **Sec. 26.** AS 15.45.270 is amended to read:

12 **Sec. 15.45.270. Form of application.** The application **must** [SHALL]
 13 include

14 (1) the act to be referred;

15 (2) **a statement of approval or rejection;**

16 (3) **the printed name, signature, address, and date of birth of not**
 17 **less than 100 qualified voters who will serve as sponsors; each signature page**
 18 **must include** a statement that the sponsors are qualified voters who signed the
 19 application with the **act to be referred and the statement of approval or rejection**
 20 [PROPOSED BILL] attached; **and**

21 (4) [(3)] the designation of a referendum committee **consisting** of three
 22 **of the** sponsors who **subscribed to the application and** [SHALL] represent all
 23 sponsors and subscribers in matters relating to the referendum; **the designation must**
 24 **include the name, mailing address, and signature of each committee member**
 25 [AND

26 (4) THE SIGNATURES AND ADDRESSES OF NOT FEWER
 27 THAN 100 QUALIFIED VOTERS].

28 * **Sec. 27.** AS 15.45.290 is amended to read:

29 **Sec. 15.45.290. Designation of sponsors.** The qualified voters who subscribe
 30 to the application **in support of the referendum** are designated as sponsors. The
 31 referendum committee may designate additional sponsors by giving notice to the

1 lieutenant governor of the names, [AND] addresses, **and dates of birth** of those so
2 designated.

3 * **Sec. 28.** AS 15.45.320 is repealed and reenacted to read:

4 **Sec. 15.45.320. Preparation of petition.** (a) The lieutenant governor shall
5 prepare a sufficient number of sequentially numbered petitions to allow full circulation
6 throughout the state. Each petition shall contain

7 (1) a copy of the act to be referred, if the number of words included in
8 both the formal and substantive provisions of the act is 500 or less;

9 (2) the statement of approval or rejection;

10 (3) an impartial summary of the subject matter of the act;

11 (4) the statement of warning prescribed in AS 15.45.330;

12 (5) sufficient space for the printed name, date of birth, signature, and
13 address of each person signing the petition;

14 (6) sufficient space at the bottom of each signature page for the
15 information required by AS 15.45.360(8); and

16 (7) other specifications prescribed by the lieutenant governor to ensure
17 proper handling and control.

18 (b) Upon request of the referendum committee, the lieutenant governor shall
19 report to the committee the number of persons who voted in the preceding general
20 election

21 * **Sec. 29.** AS 15.45 is amended by adding a new section to read:

22 **Sec. 15.45.335. Qualifications of circulator.** To circulate a petition booklet,
23 a person shall be

24 (1) a citizen of the United States;

25 (2) 18 years of age or older; and

26 (3) a resident of the state as determined under AS 15.05.020.

27 * **Sec. 30.** AS 15.45.340 is amended by adding new subsections to read:

28 (b) A circulator may not receive payment or agree to receive payment that is
29 greater than \$1 a signature, and a person or an organization may not pay or agree to
30 pay an amount that is greater than \$1 a signature, for the collection of signatures on a
31 petition.

1 (c) A person or organization may not knowingly pay, offer to pay, or cause to
 2 be paid money or other valuable thing to a person to sign or refrain from signing a
 3 petition.

4 (d) A person or organization that violates (b) or (c) of this section is guilty of a
 5 class B misdemeanor.

6 (e) In this section,

7 (1) "organization" has the meaning given in AS 11.81.900;

8 (2) "other valuable thing" has the meaning given in AS 15.56.030;

9 (3) "person" has the meaning given in AS 11.81.900.

10 * **Sec. 31.** AS 15.45.350 is amended to read:

11 **Sec. 15.45.350. Manner of signing and withdrawing name from petition.**

12 Any qualified voter may subscribe to the petition by **printing the voter's name, date**
 13 **of birth, and address, and by** signing the voter's name [AND ADDRESS]. A person
 14 who has signed the referendum petition may withdraw the person's name only by
 15 giving written notice to the lieutenant governor before the date the petition is filed.

16 * **Sec. 32.** AS 15.45.360 is repealed and reenacted to read:

17 **Sec. 15.45.360. Certification of circulator.** Before being filed, each petition
 18 shall be certified by an affidavit by the person who personally circulated the petition.
 19 In determining the sufficiency of the petition, the lieutenant governor may not count
 20 subscriptions on petitions not properly certified at the time of filing or corrected before
 21 the subscriptions are counted. The affidavit must state in substance that

22 (1) the person signing the affidavit meets the residency, age, and
 23 citizenship qualifications for circulating a petition under AS 15.45.335;

24 (2) the person is the only circulator of that petition;

25 (3) the signatures were made in the circulator's actual presence;

26 (4) to the best of the circulator's knowledge, the signatures are the
 27 signatures of the persons whose names they purport to be;

28 (5) the signatures are of persons who were qualified voters on the date
 29 of signature;

30 (6) the circulator has not entered into an agreement with a person or
 31 organization in violation of AS 15.45.340(b);

1 (7) the circulator has not violated AS 15.45.340(c) with respect to that
2 petition; and

3 (8) if the circulator has received payment or agreed to receive payment
4 for the collection of signatures on the petition, the circulator, before circulating of the
5 petition, prominently placed in the space provided under AS 15.45.320(6) the name of
6 each person or organization that has paid or agreed to pay the circulator for collection
7 of signatures on the petition.

8 * **Sec. 33.** AS 15.45.430 is amended to read:

9 **Sec. 15.45.430. Display of act being referred.** The director shall provide
10 each election board with **five** [10] copies of the act being referred, and the election
11 board shall display **at least one copy** [THREE COPIES] of the act in a conspicuous
12 place in the room where the election is held.

13 * **Sec. 34.** AS 15.45.500 is amended to read:

14 **Sec. 15.45.500. Form of application.** The application must include

15 (1) the name and office of the person to be recalled;

16 (2) the grounds for recall described in particular in not more than 200
17 words;

18 (3) **the printed name, signature, address, and date of birth of**
19 **qualified voters equal in number to 10 percent of those who voted in the**
20 **preceding general election in the state or in the senate or house district of the**
21 **official sought to be recalled; each signature page must include** a statement that the
22 [SPONSORS ARE] qualified voters [WHO]

23 **(A) will serve as sponsors; and**

24 **(B) signed the application with the name and office of the**
25 **person to be recalled and** the statement of grounds for recall attached; **and**

26 (4) the designation of a recall committee **consisting** of three **of the**
27 **qualified voters** [SPONSORS] who **subscribed to the application and** shall
28 represent all sponsors and subscribers in matters relating to the recall; **the designation**
29 **must include the name, mailing address, and signature of each committee**
30 **member**

31 [(5) THE SIGNATURES OF AT LEAST 100 QUALIFIED VOTERS

1 WHO SUBSCRIBE TO THE APPLICATION AS SPONSORS FOR PURPOSES OF
2 CIRCULATION; AND

3 (6) THE SIGNATURES AND ADDRESSES OF QUALIFIED
4 VOTERS EQUAL IN NUMBER TO 10 PERCENT OF THOSE WHO VOTED IN
5 THE PRECEDING GENERAL ELECTION IN THE STATE OR IN THE SENATE
6 OR HOUSE DISTRICT OF THE OFFICIAL SOUGHT TO BE RECALLED].

7 * **Sec. 35.** AS 15.45 is amended by adding a new section to read:

8 **Sec. 15.45.515. Designation of sponsors.** The qualified voters who subscribe
9 to the application in support of the recall are designated as sponsors. The recall
10 committee may designate additional sponsors by giving notice to the lieutenant
11 governor of the names, addresses, and dates of birth of those so designated.

12 * **Sec. 36.** AS 15.45.560 is repealed and reenacted to read:

13 **Sec. 15.45.560. Preparation of petition.** (a) The director shall prepare a
14 sufficient number of sequentially numbered petitions to allow full circulation
15 throughout the state. Each petition shall contain

16 (1) the name and office of the person to be recalled;

17 (2) the statement of the grounds for recall included in the application;

18 (3) the statement of warning required in AS 15.45.570;

19 (4) sufficient space for the printed name, date of birth, signature, and
20 address of each person signing the petition;

21 (5) sufficient space at the bottom of each signature page for the
22 information required by AS 15.45.600(8); and

23 (6) other specifications prescribed by the director to ensure proper
24 handling and control.

25 (b) Upon request of the recall committee, the lieutenant governor shall report
26 to the committee the number of persons who voted in the preceding general election,
27 in the state or in the district of the official sought to be recalled by the recall
28 committee.

29 * **Sec. 37.** AS 15.45.570 is amended to read:

30 **Sec. 15.45.570. Statement of warning.** Each petition **must** [AND
31 DUPLICATE COPY SHALL] include a statement of warning that a person who signs

1 a name other than the person's own to the petition, or who knowingly signs more than
 2 once for the same proposition at one election, or who signs the petition while
 3 knowingly not a qualified voter, is guilty of a class B misdemeanor.

4 * **Sec. 38.** AS 15.45 is amended by adding a new section to read:

5 **Sec. 15.45.575. Qualifications of circulator.** To circulate a petition booklet,
 6 a person shall be

7 (1) a citizen of the United States;

8 (2) 18 years of age or older; and

9 (3) a resident of the state as determined under AS 15.05.020.

10 * **Sec. 39.** AS 15.45.580 is amended by adding new subsections to read:

11 (b) A circulator may not receive payment or agree to receive payment that is
 12 greater than \$1 a signature, and a person or an organization may not pay or agree to
 13 pay an amount that is greater than \$1 a signature, for the collection of signatures on a
 14 petition.

15 (c) A person or organization may not knowingly pay, offer to pay, or cause to
 16 be paid money or other valuable thing to a person to sign or refrain from signing a
 17 petition.

18 (d) A person or organization that violates (b) or (c) of this section is guilty of a
 19 class B misdemeanor.

20 (e) In this section,

21 (1) "organization" has the meaning given in AS 11.81.900;

22 (2) "other valuable thing" has the meaning given in AS 15.56.030;

23 (3) "person" has the meaning given in AS 11.81.900.

24 * **Sec. 40.** AS 15.45.590 is amended to read:

25 **Sec. 15.45.590. Manner of signing and withdrawing name from petition.**

26 Any qualified voter may subscribe to the petition by **printing the voter's name, date**
 27 **of birth, and address, and by** signing the voter's name [AND ADDRESS]. A person
 28 who has signed the petition may withdraw the person's name only by giving written
 29 notice to the director before the date the petition is filed.

30 * **Sec. 41.** AS 15.45.600 is repealed and reenacted to read:

31 **Sec. 15.45.600. Certification of circulator.** Before being filed, each petition

1 shall be certified by an affidavit by the person who personally circulated the petition.
 2 In determining the sufficiency of the petition, the lieutenant governor may not count
 3 subscriptions on petitions not properly certified at the time of filing or corrected before
 4 the subscriptions are counted. The affidavit must state in substance that

5 (1) the person signing the affidavit meets the residency, age, and
 6 citizenship qualifications for circulating a petition under AS 15.45.575;

7 (2) the person is the only circulator of that petition;

8 (3) the signatures were made in the circulator's actual presence;

9 (4) to the best of the circulator's knowledge, the signatures are the
 10 signatures of the persons whose names they purport to be;

11 (5) the signatures are of persons who were qualified voters on the date
 12 of signature;

13 (6) the circulator has not entered into an agreement with a person or
 14 organization in violation of AS 15.45.580(b);

15 (7) the circulator has not violated AS 15.45.580(c) with respect to that
 16 petition; and

17 (8) if the circulator has received payment or agreed to receive payment
 18 for the collection of signatures on the petition, the circulator, before circulating of the
 19 petition, prominently placed in the space provided under AS 15.45.560(5) the name of
 20 each person or organization that has paid or agreed to pay the circulator for collection
 21 of signatures on the petition.

22 * **Sec. 42.** AS 15.45.680 is amended to read:

23 **Sec. 15.45.680. Display of grounds [BASES] for and against recall.** The
 24 director shall provide each election board in the state or in the senate or house district
 25 of the person subject to recall with **five** [10] copies of the statement of the grounds for
 26 recall included in the application and **five** [10] copies of the statement of not more
 27 than 200 words made by the official subject to recall in justification of the official's
 28 conduct in office. The person subject to recall may provide the director with the
 29 statement within 10 days after the date the director gave notification that the petition
 30 was properly filed. The election board shall post **at least one copy** [THREE COPIES]
 31 of the statements for and against recall in **a** [THREE] conspicuous **place** [PLACES] in

1 the polling place.

2 * **Sec. 43.** AS 15.60 is amended by adding a new section to read:

3 **Sec. 15.60.003. Voters unaffiliated with a political party.** The director shall
4 consider a voter to be a voter registered as

5 (1) "nonpartisan" and without a preference for a political party if the
6 voter registers as nonpartisan on a voter registration form;

7 (2) "undeclared" if the voter

8 (A) registers as undeclared on a voter registration form;

9 (B) fails to declare an affiliation with a political group or
10 political party on a voter registration form; or

11 (C) declares an affiliation with an entity other than a political
12 party or political group on a voter registration form; or

13 (3) "other" if the voter declares on a voter registration form an
14 affiliation with a political group.

15 * **Sec. 44.** AS 15.60 is amended by adding a new section to read:

16 **Sec. 15.60.008. Recognized political party status.** (a) A political group that
17 the director has not recognized as a political party may obtain recognized political
18 party status if, on or before May 31 of the first election year for which the political
19 group seeks recognition, the political group

20 (1) files an application with the director;

21 (2) submits bylaws to the director and the United States Department of
22 Justice as required of political parties in AS 15.25.014; and

23 (3) meets the definition of a political party in AS 15.60.010.

24 (b) The director shall verify that each political group seeking recognized
25 political party status under (a) of this section and each recognized political party meets
26 the definition of a political party in AS 15.60.010.

27 (c) The director shall perform a verification described in (b) of this section at
28 least once a month after the date of certification of the preceding general election. For
29 purposes of (b) of this section, the director shall verify that the voters who have
30 submitted registration to the division of elections are qualified under AS 15.05.010
31 and have declared affiliation with the political group or recognized political party for

1 which the verification is performed.

2 (d) Within 10 days after a verification under (c) of this section, the director
3 shall provide to a political group seeking recognized political party status under (a) of
4 this section written notification when the political group has obtained recognized
5 political party status.

6 (e) The director may not withdraw recognized political party status from a
7 political group that no longer meets the definition of political party except following
8 the verification immediately after a general election at which a governor was elected.
9 The director shall provide written notification to the political party of the withdrawal
10 of recognized political party status.

11 * **Sec. 45.** AS 15.60.010 is amended by adding a new paragraph to read:

12 (40) "reregistration" means the submission of a registration form by a
13 voter whose registration was inactivated on the master register maintained under
14 AS 15.07 and the director's reactivation of that registration in accordance with that
15 chapter; in this paragraph, "a voter whose registration was inactivated" does not
16 include a voter whose registration was inactivated under AS 15.07.130 and whose
17 ballot may be counted under AS 15.15.198.

18 * **Sec. 46.** AS 29.05.110(b) is amended to read:

19 (b) A **qualified** voter who **is registered to vote** [HAS BEEN A RESIDENT
20 OF THE AREA] within the proposed municipality **at least** [FOR] 30 days before the
21 date of the election order may vote.

22 * **Sec. 47.** AS 29.05.110(c) is amended to read:

23 (c) Areawide borough powers included in an incorporation petition are
24 considered to be part of the incorporation question. In an election for the
25 incorporation of a second class borough, each nonareawide power to be exercised is
26 placed separately on the ballot. Adoption of a nonareawide power requires a majority
27 of the votes cast on the question, and the vote is limited to the **qualified** voters **who**
28 **are registered to vote** [RESIDING] in the proposed borough but outside all cities in
29 the proposed borough.

30 * **Sec. 48.** AS 29.05.110 is amended by adding a new subsection to read:

31 (f) In this section, "qualified voter" has the meaning given in AS 15.60.010.

1 * **Sec. 49.** AS 15.10.020(b) and AS 15.20.048 are repealed.

2 * **Sec. 50.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 **APPLICABILITY.** The changes made by secs. 19 - 42 of this Act apply to an
5 application for an initiative, referendum, or recall filed with the lieutenant governor on or
6 after the effective date of this Act.

7 * **Sec. 51.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 **TRANSITION.** An initiative, referendum, or recall for which an application was filed
10 with the lieutenant governor before the effective date of this Act is subject to the provisions of
11 AS 15.45 as they existed on the day before the effective date of this Act.

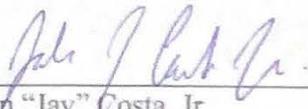
12 * **Sec. 52.** This Act takes effect immediately under AS 01.10.070(c).

3. I have reviewed Intervenors/Sponsors' Amended Opposition to Plaintiffs' Motion for Summary Judgment and Cross-Motion for Summary Judgment.

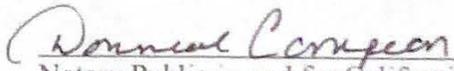
4. Although I have not completed my expert report for this matter, based on my preliminary review of the over 40,000 signatures that were filed by the Sponsors of 22AKHE, there are a sufficient number of irregularities, and sufficient indicia of fraudulent activity, that could disqualify 22AKHE from the ballot.

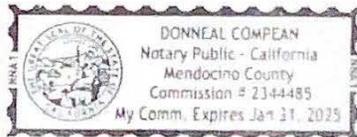
5. I reserve the right to amend or supplement my preliminary expert opinion subject to the final issuance of my expert report.

FURTHER YOUR AFFIANT SAYETH NAUGHT.


John "Jay" Costa, Jr.

SUBSCRIBED AND SWORN to before me on this 22 day of MAY, 2024, at Willits, California.


Notary Public in and for California
My Commission Expires: 1-31-25



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