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JUDICIAL TRIAL COURTS
BY: AD DEPUTY

Attorneys for Plaintiff

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

PETER METCALFE, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

STATE OF ALASKA,

Defendant.

Case No. 1JU-13-733 CI
Judge: Hon. Kevin Miller
Trial: December 4, 2017

**AFFIDAVIT OF MARK CHOATE IN SUPPORT OF
THE ALASKA DEMOCRATIC PARTY'S OPPOSITION TO
STATE OF ALASKA'S MOTION FOR LEAVE TO FILE A REPLY**

STATE OF ALASKA)
FIRST JUDICIAL DISTRICT AT JUNEAU) ss.
)

MARK CHOATE, being duly sworn upon oath, deposes and states:

1. I am an attorney-of-record for the Alaska Democratic Party in this matter and make this affidavit in support of the ADP's Opposition to State of Alaska's Motion for Leave to File Reply.

AFFIDAVIT OF MARK CHOATE IN SUPPORT OF PLAINTIFF'S RULE 56(f)
MOTION

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2. On May 19, 2017, AAG Margaret Paton-Walsh contacted me via telephone and proposed that the State and the ADP agree to briefing schedule with simultaneous filing of cross-motions for summary judgment. I told Ms. Paton-Walsh that I was open to the proposal, but that our firm would be closed for the month of August so that my son and law partner, Jon Choate, myself, and the rest of our family, could travel to South Korea to introduce Jon's infant daughter to my wife's family there. Therefore, any briefing schedule would need to wrap up prior to our departure to Korea on August 1, 2017.

3. Ms. Paton-Walsh and I agreed on a briefing schedule of June 19, 2017 for the cross-motions for summary judgment, and July 17, 2017 for the oppositions. I asked Ms. Paton-Walsh about replies, but she told me they were not necessary, and we did not speak further on the subject. I assumed, as a plaintiff's attorney who usually only opposes motions for summary judgment, that the oral argument would serve as each party's reply.

4. We did not discuss the issues to be addressed in the motions, the State's defenses, our respective theories of the case, or details as to the potential contents of the motions. My understanding when we finished the conversation was only that we would both be filing cross-motions for summary judgment so that the Court could resolve the matter. Ms. Paton-Walsh did not mention that the State's motion for summary judgment would raise standing and ripeness.

5. Following the call, I discussed the briefing schedule with Jon. We agreed that it seemed that the State was willing to have the case resolved on its merits, unlike the litigation in 2016 on this issue where the State avoided responding to our motion for a preliminary injunction by filing a motion to dismiss on standing and ripeness grounds.

Although the State had listed standing in ripeness under affirmative defenses in its answer in the 2017 litigation, they appeared to be boilerplate defenses, without any explanation or detail as to the theory behind them. Further, given that the ADP had provided notice to the Division of Elections as the State had argued it was required to do, and had the rule change allowing independent candidates adopted at the state convention, based on our understanding of Alaska law, there was no reasonable argument to be made by the State that the ADP's challenge was defective on standing or ripeness grounds. We concluded, and were happy, that it appeared the State was willing to have the case resolved solely on the merits.

6. As the State's proposed simultaneous cross-motions for summary judgment were agreed to prior to a pretrial scheduling conference, no initial disclosures were exchanged between us and the State, and no other discovery took place. The State did not provide us any additional information regarding its defenses on the merits of the ADP's claim, or any other potential defenses.

7. Expecting straightforward motions for summary judgment under the standard set by the *Green Party of Alaska* case, Jon began drafting our motion for summary judgment. We agreed that our burden on summary judgment under *Green Party* was to show that there was a constitutionally protected right and that it was being burdened by the challenged statute. The Supreme Court's test in that case seemed straightforward in requiring that the State identify the interests that justified the burden from the statute.

8. The State never briefed this issue on the merits in the prior litigation. We didn't know what interests the State would identify or what arguments the State would make with respect to the ADP's interest or the burden on that interest.

9. When I reviewed the State's motion for summary judgment on June 19, 2017, I was very surprised to see that the State had raised standing and ripeness as grounds for summary judgment. It flew in the face of my understanding of Alaska law, and was not what we had expected from the State's proposal for cross-motions for summary judgment.

10. In July, Jon began to draft the opposition to the State's motion for summary judgment. At no point did anyone from the AG's office contact me to raise any concerns with the content of our motion for summary judgment, or to discuss the possibility of reply briefs.

11. On July 17, 2017, we filed and served our opposition, and the State filed and served its own.

12. During this period, we booked travel and lodging in Korea, and scheduled depositions, hearings, and other case-related appointments around our travel schedule, the oral argument in this matter, and a trial we have scheduled on September 25 that I believe is likely to proceed.

13. On July 25, 2017, AAG Janell Hafner called my office. We spoke and she asked if I would consent to reply briefing. I told her I would discuss it with Jon and get back to her. I spoke with Jon that evening and we agreed that it would be too difficult to fit the brief in to our fall schedule, as we had made our plans and set deposition and other

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dates with the expectation that there would be no further briefing in this matter between July 17, 2017 and the oral argument on September 21, 2017.

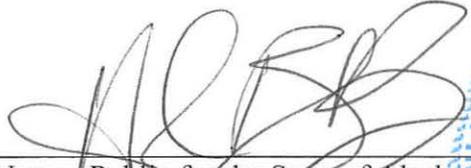
14. On June 26, 2017, I emailed Ms. Hafner to tell her that we would not consent to reply briefs due to our planned vacation and the closing of our firm for the month of August. I also mentioned that I had shared this information with Ms. Paton-Walsh when setting the briefing schedule.

FURTHER, AFFIANT SAYETH NAUGHT

DATED: July 28, 2017, at Juneau, Alaska.


By: _____
Mark Choate
AKID # 5454160
ex: 07/25/2018

SUBSCRIBED AND SWORN TO before me this 28th day of July, 2017 at Juneau, Alaska.



Notary Public for the State of Alaska.
My Commission Expires: w/office

