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Attorneys for Intervenors/Cross-Appellants

IN THE SUPREME COURT OF THE STATE OF ALASKA

KATHRYN DODGE,

Appellant/Cross-Appellee,

v.

LT. GOVERNOR KEVIN MEYER, in his official capacity as Lt. Governor for the State of Alaska, and JOSEPHINE BAHNKE, in her official capacity as Director of the Division of Elections,

Appellees,

v.

BARTON LEBON and the ALASKA REPUBLICAN PARTY,

Intervenors/Cross-Appellants.

Supreme Court No.: S-17301/17311

Trial Court Case No.: 3AN-18-00001RA

#### NOTICE OF FILING SUPPLEMENTAL AUTHORITY

Intervenors Barton LeBon and the Alaska Republican Party, by and through their attorneys, Holmes Weddle & Barcott, P.C., hereby submit the attached supplemental authority:

NOTICE OF FILING SUPPLEMENTAL AUTHORITY Dodge v. Meyer, et. al.

Page 1 of 3 Supreme Ct No.: S-17301

- 1. Initiative to Allow Qualified Individuals to Register to Vote When Submitting a Permanent Fund Dividend Application; and
- 2. Letter from Josie Bahnke in her capacity as Director of the State of Alaska Division of Elections regarding implementation of the Permanent Fund Division automatic Voter Registration law.

DATED this 20th day of December, 2018, at Anchorage, Alaska.

HOLMES WEDDLE & BARCOTT, P.C. Attorneys for Intervenors/Cross-Appellants

By:

Stacey C. Stone

Alaska Bar No. 1005030

Molly A. Magestro

Alaska Bar No. 1605030

#### **CERTIFICATE OF SERVICE**

I hereby certify that on this <u>20th</u> day of December, 2018, a true and correct copy of the foregoing was sent via hand delivery and via E-mail to:

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By:

Legal Assistant

Holmes Weddle & Barcott, P.C.

# AN INITIATIVE TO ALLOW QUALIFIED INDIVIDUALS TO REGISTER TO VOTE WHEN SUBMITTING A PERMANENT FUND DIVIDEND APPLICATION TER

#### A Bill By Initiative For An Act Entitled

"An Act relating to the permanent fund dividend application and the registration of voters; and providing for an effective date."

#### BE IT ENACTED BY THE PEOPLE OF THE STATE OF ALASKA:

\*Section 1. The uncodified law of the State of Alaska is amended by adding a section to read:

FINDINGS AND INTENT. (a) The People of the State of Alaska find:

- (1) the cornerstone of American democracy is the right to vote;
- (2) the state should not introduce needless bureaucratic requirements that make it more difficult for qualified citizens to exercise their right to vote;
- (3) the State of Alaska currently requires individuals who wish to receive a permanent fund dividend to submit an annual application to the State;
- (4) PFD applicants who also wish to register to vote, or to update their voter registration, must submit information to the State a second time, using a different form;
- (5) the State can relieve qualified voters who apply for a PFD from the burden of having to complete additional paperwork; and
- (6) the State can use PFD-application data to ensure voter-registration data are current.

### \*Section 2. AS 15.07.050(a) is amended to read:

- (a) Registration may be made
- (1) in person before a registration official or through a voter registration agency;
- (2) by another individual on behalf of the voter if the voter has executed a written general power of attorney or a written special power of attorney authorizing that other individual to register the voter;
  - (3) by mail; [OR]
- (4) by facsimile transmission, scanning, or another method of electronic transmission that the director approves; or
- (5) by completing a permanent fund dividend application under AS 43.23.015.

#### \*Sec. 3. AS 15.07.060(e) is amended to read:

(e) For an applicant requesting initial registration by mail, [OR] by facsimile or other electronic transmission approved by the director under AS 15.07.050, or completing a permanent fund dividend application, the director shall verify the information provided in compliance with (a)(2) and (3) of this section through state agency records described in AS 15.07.055(e). If the applicant cannot comply with the requirement of (a)(2) of this section because the applicant has not been issued any of the listed numbers, the applicant may instead submit a copy of one of the following forms of identification: a driver's license, state identification card, current and valid photo identification, birth certificate, passport, or hunting or fishing license.

#### \* Sec. 4. AS 15.07.070(f) is amended to read:

(f) Incomplete or inaccurate registration forms may not be accepted. A person who submitted an incomplete or inaccurate registration form may register by reexecuting and resubmitting a registration form in person, by mail, or by facsimile or other electronic transmission approved by the director under AS 15.07.050. The requirements of (c) or (d) of this section apply to a registration form resubmitted under this subsection. Notwithstanding the foregoing, an application made under AS 43.23.015 that contains the information required by AS 15.07.060(a)(1)-(4) and (7)-(9), and an attestation that such information is true, shall not be deemed an incomplete registration form, and shall be accepted in accordance with AS 15.07.070(i).

#### \* Sec. 5. AS 15.07.070 is amended by adding a new subsection to read:

- (i) The division shall register voters who submit an application to receive a permanent fund dividend in accordance with this subsection.
- (1) The division shall cooperate with the Department of Revenue under AS 43.23.016 to ensure that the permanent fund dividend application form furnished by the Department of Revenue under AS 43.23.015 allows an applicant, a person who is designated in a power of attorney to act on behalf of an applicant, or a person acting on behalf of a physically disabled applicant to submit voter registration information required under AS 15.07.060(a)(1)–(4) and (7)–(9), and an attestation that such information is true. The director may require proof of identification of the applicant, if not already in the Department of Revenue's possession, as required by regulations adopted by the director under AS 44.62 (Administrative Procedure Act).
- (2) Upon receipt of the registration information, the director shall, as soon as practicable and in accordance with a schedule established by the director by rule, notify by U.S. mail, and any other means authorized by the director, each applicant not already registered to vote at the address provided in the applicant's application
  - (A) of the processes to

- (i) decline to be registered as a voter,
- (ii) maintain an existing voter registration, or be newly registered, at a valid place of residence not the provided in the applicant's application, and
- (iii) adopt a political party affiliation;

and

- (B) that failure to respond to the notification shall constitute the applicant's consent to cancel any registration to vote in another jurisdiction.
- (3) If an applicant does not decline to be registered as a voter within 30 calendar days after the director issues the notification, the application under AS 43.23.015 will constitute a completed registration form. The name of the applicant shall be placed on the master register if the director determines that the person is qualified to vote under AS 15.05.010, and the director shall forward to the applicant a registration card. If registration is denied, the applicant shall immediately be informed in writing that registration was denied and the reason for denial.
- (4) Any person who is not eligible to vote and who becomes registered under this provision through human or mechanical error shall not be found on that basis to have had the intent to unlawfully register to vote.

#### \*Sec. 6. AS 43.23.015(b) is amended to read:

- (b) The department shall prescribe and furnish an application form for claiming a permanent fund dividend. The application must include
  - (1) notice of the penalties provided for under AS 43.23.035;
  - (2) [AND CONTAIN] a statement of eligibility and a certification of residency;
- (3) the means for an applicant eligible to vote under AS 15.05, or a person authorized to act on behalf of the applicant, to furnish information required by AS 15.07.060(a)(1)-(4) and (7)-(9), and an attestation that such information is true.

## \*Sec. 7. AS 43.23.016 is repealed and reenacted to read:

- **Sec. 43.23.016. Voter registration.** The commissioner shall establish by rule a schedule by which the commissioner will provide, and shall provide as soon as is practicable the director of elections with
- (a) electronic records from the permanent fund dividend applications of the information required by AS 15.07.060(a)(1)–(4) and (7)–(9), and the attestation that such information is true, for each permanent fund dividend applicant who
  - (1) is a citizen of the United States, and
  - (2) is at least 18 years of age or will be within 90 days of the date of the application, and
  - (b) the mailing addresses for all permanent fund dividend applicants.

#### \* Sec. 8. AS 43.23.017(a) is amended to read:

- (a) Except as provided in (c) of this section, information [INFORMATION] on each permanent fund dividend application, except the applicant's name, is confidential. The department may only release information that is confidential under this section
  - (1) to a local, state, or federal government agency;
  - (2) in compliance with a court order;
- (3) to the individual who or agency that files an application on behalf of another;
- (4) to a banking institution to verify the direct deposit of a permanent fund dividend or correct an error in that deposit;
  - (5) as directed to do so by the applicant; [AND]
- (6) to a contractor who has a contract with a person entitled to obtain the information under (1) (5) of this section to receive, store, or manage the information on that person's behalf; a contractor receiving data under this paragraph may only use the data as directed by and for the purposes of the person entitled to obtain the information[.];
  - (7) to the division of elections, as required by AS 43.23.016.
- \*Sec. 9. AS 43.23.017 is amended by adding a new subsection to read:
- (c) Information submitted on a permanent fund dividend application that is used for the purpose of registering an applicant to vote under AS 43.23.016 shall be kept confidential by the division of elections as provided in AS 15.07.195.
- \*Sec. 10. The uncodified law of the State of Alaska is amended by adding a new section to read:

It is the intention of the people of Alaska that, if any provision of this Act shall be held to be invalid by a court of competent jurisdiction, the remainder shall not be affected and shall be given effect to the fullest extent possible.

\*Sec. 11. The uncodified law of the State of Alaska is amended by adding a new section to read:

This Act shall take effect 90 days after enactment.

Director's Office 240 Main Street Suite 400 P.O. Box 110017 Juneau, Alaska 99811-0017 彎 907-465-4611 魯 907-465-3203 elections@alaska.gov



Anchorage 907-522-8683 Fairbanks 907-451-2835 Juneau 907-465-3021 Nome 907-443-5285 Mat-Su 907-373-8952

Elections Offices 22

Absentee-Petition 907-270-2700

# STATE OF ALASKA Division of Elections Office of the Lieutenant Governor

August 10, 2018

Ms. Stacey Stone, Attorney Holmes Weddle & Barcott 701 W. 8<sup>th</sup> Avenue, Suite 700 Anchorage, AK 99501

SENT VIA EMAIL: SStone@hwb-law.com

RE: PFD Voter (Change of Registered Voters)

Dear Stacey,

Thank you for your email inquiry regarding the Permanent Fund Dividend Automatic Voter Registration (PFD AVR) law.

As you know, Alaska voters approved the PFD AVR ballot initiative in November 2016, which amended sections of Alaska Statute Title 15 and Title 43. The ballot measure's uncodified findings intended the State to "use PFD application data to ensure voter-registration data are current," and the law requires automatic registration of eligible individuals to vote when they apply for a Permanent Fund Dividend (PFD), unless they opt-out.

The Division of Elections ("Division") is simply implementing this law.

The Division is aware that voters' registration information was updated if they made changes to their residence address through the PFD application process. As required by the law, the Division sent out opt-out notices in the mail to voters whose address on their PFD application was different from their voter record address, or to applicants who were not currently registered to vote. The mailer notified Alaskans that the information on their PFD application would be used to update their voter registration or register them to vote unless they opted out by declining the registration opportunity within 30 days. Voters who did not respond to the opt-out notice, were registered or had their voter registration record updated based on information they provided on their Permanent Fund Dividend application, as required by the law.

Although your letter referenced the ballot measure summary as it appeared on the ballot in 2016, the full text of the law the Division is implementing, AS 15.07.070(i)-(m) is here:

#### Sec. 15.07.070. Procedure for registration.

- (i) The division shall register voters who submit an application to receive a permanent fund dividend in accordance with (j) (m) of this section.
- (j) The division shall cooperate with the Department of Revenue under AS 43.23.016 to ensure that the permanent fund dividend application form furnished by the Department of Revenue under AS 43.23.015

allows an applicant, a person who is designated in a power of attorney to act on behalf of an applicant, or a person acting on behalf of a physically disabled applicant to submit voter registration information required under AS 15.07.060(a)(1) - (4) and (7) - (9), and an attestation that such information is true. The director may require proof of identification of the applicant, if not already in the Department of Revenue's possession, as required by regulations adopted by the director under AS 44.62 (Administrative Procedure Act).

- (k) Upon receipt of the registration information, the director shall, as soon as practicable and in accordance with a schedule established by the director by rule, notify by United States mail and any other means authorized by the director, each applicant not already registered to vote at the address provided in the applicant's application
  - (1) of the processes to
  - (A) decline to be registered as a voter;
- (B) maintain an existing voter registration or be newly registered at a valid place of residence not provided in the applicant's application; and
  - (C) adopt a political party affiliation; and
- (2) that failure to respond to the notification shall constitute the applicant's consent to cancel any registration to vote in another jurisdiction.
- (I) If an applicant does not decline to be registered as a voter within 30 calendar days after the director issues the notification, the application under AS 43.23.015 will constitute a completed registration form. The name of the applicant shall be placed on the master register if the director determines that the person is qualified to vote under AS 15.05.010, and the director shall forward to the applicant a registration card. If registration is denied, the applicant shall immediately be informed in writing that registration was denied and the reason for denial.
- (m) Any person who is not eligible to vote and who becomes registered under this provision through human or mechanical error shall not be found on that basis to have had the intent to unlawfully register to vote.

Additionally, the deadline for voters to register or update their registration for the August 21, 2018 Primary Election was on July 22, 2018. The Division is instructing voters who did not intend their registration to be updated for the 2018 Primary Election to vote a questioned ballot at their polling place based on their residence address, and their ballot will be reviewed by a Regional Review Board following Primary Election Day. Voters wishing to register or update their registration information for the November 6, 2018 General Election may do so before October 7, 2018.

Please do not hesitate to contact me if you have any questions.

Sincerely

Josie Babhke, Director Division of Elections