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Subject: 3AN-20-05901CI - Motion for Expedited Consideration and Motion to Characterize Case

Date: 4/17/2020 1:01:32 PM

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

RESOURCE DEVELOPMENT COUNCIL)
FOR ALASKA, INC.; ALASKA TRUCKING)
ASSOCIATION, INC.; ALASKA MINERS)
ASSOCIATION, INC.; ASSOCIATED)
GENERAL CONTRACTORS OF ALASKA;)
ALASKA CHAMBER; ALASKA SUPPORT)
INDUSTRY ALLIANCE,)

Plaintiffs,)

v.)

KEVIN MEYER, in his official capacity,)
as Lt. Governor of the State of Alaska;)
GAIL FENUMIAI, in her capacity as Director)
of the Alaska Division of Elections; the)
STATE OF ALASKA, DIVISION OF)
ELECTIONS; and VOTE YES FOR)
ALASKA'S FAIR SHARE)

Defendants.)

Case No. 3AN-20-05901CI

FILED in the TRIAL COURTS
STATE OF ALASKA, THIRD DISTRICT

APR 17 2020

By _____ Clerk of the Trial Courts
Deputy

**MOTION FOR EXPEDITED CONSIDERATION OF
MOTION TO CHARACTERIZE CASE AS NON-ROUTINE AND
SET EXPEDITED DISCOVERY AND AUGUST 2020 TRIAL DATE**

Plaintiffs Resource Development Council for Alaska, Inc.; Alaska Trucking Association Inc.; Alaska Miners Association, Inc.; Associated General Contractors of Alaska; Alaska Chamber; and Alaska Support Industry Alliance (collectively "Plaintiffs") hereby move the Court, in accordance with Rule 77(g) of the Alaska Rules of Civil Procedure, for expedited consideration of Plaintiffs' Motion to Characterize Case as Non-

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#73622141_v1

Routine and Set Expedited Discovery and August 2020 Trial Date dated April 17, 2020. No defense counsel has yet entered its appearance, so efforts to meet and confer regarding this motion were not possible. Plaintiffs are serving Defendants with this motion via certified U.S. First Class Mail. By April 13, 2020, all defendants had received service of Plaintiffs' Complaint via certified U.S. First Class Mail.¹ Additionally, Plaintiffs are sending the same via email to Assistant Attorney General Corri Mills, who has represented the lieutenant governor and the Division of Elections in prior litigation, and to Robin Brena, who is an Alaska barred attorney and chair of the Vote Yes For Alaska's Fair Share ballot group the following filings:

- Plaintiffs' Complaint dated April 10, 2020.
- Plaintiffs' Motion to Characterize Case as Non-Routine, and Set Expedited Discovery and August 2020 Trial Date dated April 17, 2020.
 - Declaration of Matt Singer dated April 17, 2020.
 - [Proposed] Order Granting Motion to Characterize Case as Non-Routine, and Set Expedited Discovery and August 2020 Trial Date dated April 17, 2020.
- Plaintiffs' Motion for Expedited Consideration of Motion to Characterize Case as Non-Routine, and Set Expedited Discovery and August 2020 Trial Date dated April 17, 2020.
 - Declaration of Lee C. Baxter dated April 17, 2020.

¹ See Declaration of Counsel Matt Singer, ¶ 5 (April 17, 2020), attached to Plaintiffs' Motion to Characterize Case as Non-Routine, and Set Expedited Discovery and August 2020 Trial Date (April 17, 2020).

- [Proposed] Order Granting Plaintiffs' Motion for Expedited Consideration of Motion to Characterize Case as Non-Routine, and Set Expedited Discovery and August 2020 Trial Date dated April 17, 2020.²

Plaintiffs respectfully request this Court issue its decision on this motion by **12:00 p.m. on Friday, April 24, 2020**. Plaintiffs respectfully request the Court issue a decision on the underlying Motion to Characterize Case as Non-Routine and Set Expedited Discovery and August 2020 Trial Date by **close of business on Tuesday, April 28, 2020**. Plaintiffs balanced the need for a ruling soon to expedite this case to trial in August 2020 with Defendants' right to a reasonable opportunity to respond to both motions.

Expedited consideration is needed on Plaintiffs' Motion to Characterize Case as Non-Routine and Set Expedited Discovery and August 2020 Trial Date because there is not a sufficient window of time between the lieutenant governor's decision on March 17, 2020 to accept the signatures submitted by those circulators of the 19OGTX ballot initiative paid by Advanced Micro Targeting, Inc. to collect signatures to place the initiative on the ballot, and the State's printing of statewide ballots in early September 2020. While this is an issue of first impression in Alaska, many other courts have held that petition circulators' false affidavits invalidate all the signatures in that petition.³ These

² See Declaration of Lee C. Baxter, ¶ 3 (April 17, 2020).

³ See e.g. *Zaiser v. Jaeger*, 822 N.W.2d 472, 480 (N.D. 2012); *Brousseau v. Fitzgerald*, 675 P.2d 713, 715–16 (Ariz. 1984); *Sturdy v. Hall*, 143 S.W.2d 547, 550–52 (Ark. 1940); *Citizens Comm. v. District of Columbia Bd. of Elections and Ethics*, 860 A.2d 813, 816–17 (D.C. 2004); *Montanans for Justice v. State ex rel. McGrath*, 146 P.3d 759, 777 (Mont. 2006); *Maine Taxpayers Action Network v. Secretary of State*, 795 A.2d 75, 82 (Maine 2002); *McCaskey v. Kirchoff*, 152

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cases emphasize that a circulator's false affidavit undermines the integrity of the signatures that circulator has gathered, and that invalidation of all signatures is the appropriate remedy to ensure compliance in the future and the legality of the petition at issue.

As discussed in the principal motion, the State of Alaska has historically printed statewide ballots in early September of the election year. Therefore, there is a little more than four months from the date of this filing for the parties to litigate the merits of this matter, and, if Plaintiffs prove that circulators submitted false affidavits, to invalidate the signatures contained in those circulators' petition booklets and to keep 19OGTX on the ballot for lacking sufficient signatures under AS 15.45.140.

Plaintiffs are mindful of the current public health crisis. This motion does not seek any immediate hearings or otherwise to interfere with current stay-at-home orders. However, some immediate action is required by this Court in order to be able to resolve this case by late-August, prior to printing of ballots that is likely to occur in September.

DATED at Anchorage, Alaska this 17th day of April, 2020.

HOLLAND & KNIGHT LLP
Attorneys for Plaintiffs

By: /s/Matthew Singer
Matthew Singer
Alaska Bar No. 9911072

By: /s/Lee C. Baxter

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A.2d 140, 142-43 (N.J. Super. Ct. App. Div. 1959); *In re Glazier*, 378 A.2d 314, 315-16 (Pa. 1977); *State ex rel. Gongwer v. Graves*, 107 N.E. 1018, 1022 (Ohio 1913).

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Lee C. Baxter
Alaska Bar No. 1510085

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STATE OF ALASKA, DIVISION OF)
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Defendants.)

Case No. 3AN-20-05901CI

NOT USED

**[PROPOSED] ORDER GRANTING MOTION FOR EXPEDITED
CONSIDERATION OF MOTION TO CHARACTERIZE CASE
AS NON-ROUTINE AND SET EXPEDITED DISCOVERY
AND AUGUST 2020 TRIAL DATE**

The Court, upon careful consideration of Plaintiffs' Motion for Expedited Consideration of Motion to Characterize Case as Non-Routine and Set Expedited Discovery and August 2020 Trial Date dated April 17, 2020 ("Plaintiffs' Motion"), Defendants' opposition to Plaintiffs' Motion, and any reply thereto, hereby **GRANTS** Plaintiffs' Motion.

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IT IS ORDERED that this Court will issue a decision on the underlying Motion to Characterize Case as Non-Routine and Set Expedited Discovery and August 2020 Trial Date by **close of business Tuesday, April 28, 2020.**

DATED at Anchorage, Alaska this _____ day of April, 2020.

NOT USED

Thomas A. Matthews
Superior Court Judge

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ORDER GRANTING MOTION FOR EXPEDITED CONSIDERATION OF
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