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To: ANC_civil@akcourts.us
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

Clerk of the Trial Courts
By _____ Deputy

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

I. INTRODUCTION

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")

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hereby move the Court, in accordance with the Third Judicial District's Uniform Pretrial Order,¹ to characterize this case as “non-routine,” and to set an expedited timeline for discovery and an August 2020 trial date. Expedited discovery and an August 2020 trial date are necessary in this matter to ensure that Plaintiffs' challenges to the ballot initiative 19OGTX are decided before ballots are printed for statewide elections set for November 3, 2020.

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.

II. DISCUSSION

This case is about whether many of the petition circulators who collected signatures in support of the 19OGTX initiative submitted false affidavits that they did not enter into agreements to receive more than \$1 per signature for the collection of signatures. The evidence will show that the majority of signature gatherers for the Fair Share effort were offered payment far in excess of the statutory limit on circulator payment in AS 15.45.110(c). Because signatures must be “properly certified,” and a false certification is not a “proper” one, many of the signatures must be invalidated.

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¹ Administrative Order 3A0-03-04 (Amended), *In re Uniform Pretrial Order* (Feb. 2003).

A. Plaintiffs Have Filed this Motion Before Defendants Have Answered the Complaint because Waiting for Them to Answer the Complaint Will Leave the Court with Even Less Time to Consider the Merits of this Matter.

Plaintiffs filed this case on April 10, 2020, and have served the Defendants by certified mail.² Under Civil Rule 12(a), the government defendants (Kevin Meyer, Gail Fenumiai, and State of Alaska Division of Elections) have 40 days from service to answer the complaint and the ballot group defendant (Vote Yes for Alaska's Fair Share) has 20 days to answer. While Plaintiffs would typically wait for these defendants to answer before filing this motion, there is simply not enough time to await those answers.

On March 17, 2020, Lieutenant Governor Kevin Meyer issued his determination that the petition was “properly filed” and met all requirements to be placed on the ballot.³ Part of the lieutenant governor's determination was that the circulators who collected the signatures (subscriptions) to the petitions had submitted truthful affidavits required by Alaska statute. Under AS 15.45.130, “the lieutenant governor may not count subscriptions on petitions not properly certified at the time of the filing or corrected before the subscriptions are counted.” Certification requires each circulator to submit a truthful affidavit that states, among other things, that he or she had not received or agreed to receive “payment that is greater than \$1 a signature[.]”⁴ Plaintiffs had 30 days from March 17 to

² See Rule 4(d)(7) and 4(h); Declaration of Counsel Matt Singer, ¶ 4 (April 17, 2020).

³ See Letter from Lt. Governor Meyer to R. Brena (March 17, 2020), attached as **Exhibit A**.

⁴ AS 15.45.110(c). AS 15.45.130(6) requires a circulator to swear under oath that he or she “has not entered into an agreement with a person or organization in violation of AS 15.45.110(c). AS 15.45.110(c), in turn, states “A circulator may not receive payment or agree to receive payment

file an action in superior court to challenge the lieutenant governor's determination that many of the circulator affidavits stating circulators had not received or agreed to receive payment greater than \$1 a signature to challenge in superior court.⁵ Plaintiffs met this tight statute of limitations and filed this lawsuit on April 10, 2020.

Plaintiffs have only three and half months remaining to conduct discovery and to submit evidence to this Court that many of the circulator affidavits submitted in support of 19OGTX were false. The Court will then have to decide prior to the printing of ballots whether this intentional evasion of Alaska law requires invalidating signatures. Plaintiffs' counsel understands from extensive prior experience on ballot initiative work that the State of Alaska has historically printed statewide ballots in early September to ensure the ballots are completed and distributed by election day on the first Tuesday following the first Monday in November (this election year, November 3, 2020).⁶ This three and a half month timeline necessitates that this Court treat this case as non-routine, to permit early discovery, and to set a trial in August 2020.

B. A Circulator's Submission of a False Affidavit Renders the Signatures Contained in that Circulator's Petition Booklet Invalid. Over Two-Thirds of the Petition Booklets at Issue in this Lawsuit are Potentially Invalid because of False Circulator Affidavits.

The allegations in Plaintiffs' complaint show why expedited proceedings in this

that is greater than \$1 a signature, and a person or an organization may not pay or agree to pay an amount that is greater than \$1 a signature, for the collection of signatures on a petition.”

⁵ AS 15,45.240.

⁶ See Singer Decl., ¶ 5.

matter are necessary. The Division of Elections received 786 signed petition booklets for signatures gathered in support of putting 19OGTX on the ballot.⁷ Of those booklets, 69%, or 544 booklets, were submitted by circulators stating they were paid by Advanced Micro Targeting, Inc. (“Advanced Micro Targeting”), a professional signature gathering company based in Las Vegas Nevada.⁸ There is strong evidence that those circulators were offered pay and indeed were paid in excess of \$1 per signature for the gathering of signatures for petition booklets.⁹ These circulators submitted false affidavits swearing that they had not been paid in excess of \$1 per signature as prohibited by AS 15.45.110(c) and AS 15.45.130(6).

The legal remedy for a circulator's submission of a false affidavit in support of the signatures he or she gathered is the invalidation of those collected signatures. While this is an issue of first impression in Alaska, other courts have held that petition circulators' false affidavits invalidate all the signatures in that petition.¹⁰ These cases emphasize that a circulator's false affidavit undermines the integrity of the signatures that circulator has

⁷ Plaintiffs Complaint, ¶ 15 (Apr. 10, 2020).

⁸ *Id.*, ¶¶ 14, 17.

⁹ *Id.*, ¶ 22.

¹⁰ 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 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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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 the Arizona Supreme Court explained:

Defects either in circulation or signatures deal with matters of form and procedure, but the filing of a false affidavit by a circulator is a much more serious matter involving more than a technicality. The legislature has sought to protect the process by providing for some safeguards in the way nomination signatures are obtained and verified. Fraud in the certification destroys the safeguards unless there are strong sanctions for such conduct such as voiding of petitions with false certifications.¹¹

That is the precise issue in this lawsuit: whether the circulators who stated they were paid by Advanced Micro Targeting falsely swore that they had not agreed to receive or actually received payment in excess of the statutory limit.¹²

If Plaintiffs show that 69% percent of petition booklets (544 booklets) were supported by false circulator affidavits, all of the signatures in those booklets are invalid and 19OGTX will lack the requisite number of signatures under AS 15.45.140 to be on the

¹¹ *Brousseau*, 675 P.2d at 715.

¹² As noted above, the proper remedy for a false circulator affidavit is an issue of first impression in Alaska. The closest the Alaska Supreme Court has come to analyzing the proper remedy for false circulator affidavits is its decision in *North West Cruiseship Association of Alaska, Inc. v. State of Alaska et al.*, 145 P.3d 573 (Alaska 2006). But, that case **did not** involve false circulator affidavits. Rather, that case involved whether individual signatures within a petition booklet should be invalidated because they did not include all of the necessary information (such as the date the person was signing the petition and subscriber addresses) and whether the circulator's failure to provide information in the petition booklets for subscribers to review (such as who was paying the circulator listed on each page of the petition booklet) should invalidate the specific signatures that did not include the necessary information or were on pages without the proper circulator information. *North West Cruiseship Assn*, 145 P.3d at 582-589. This case, on the other hand, involves what is the appropriate remedy when a circulator submits a false affidavit in support of a petition booklet.

November 3, 2020 statewide ballot. An expedited discovery process and an August 2020 trial is necessary to ensure that this dispute is resolved on the merits and an invalid initiative supported by false circulator affidavits is not on this fall's statewide ballot.

C. To Facilitate Resolution of Plaintiffs' Claims on the Merits, this Court Should Characterize this Case as "Non-Routine" and Set Early Discovery and Trial for August 2020.

The Third Judicial District's Uniform Pretrial Order requires that this Court characterize this civil case as either "Routine" or "Non-Routine."¹³ If this matter is designated as "routine," then standard pretrial deadlines are set for motions practice and discovery to bring the case to trial approximately 12-14 months from when the case was filed. For instance, if the case is designated routine, "[e]ach party must file and serve a preliminary witness list **22 weeks** prior to trial."¹⁴ Given there is only three and a half months until the State prints ballots for the general election, this case should be designated "Non-Routine" so that truncated pretrial deadlines and an August 2020 trial can be set.

Paragraph E. of the Third Judicial District Uniform Pretrial Order states:

The requirements and deadlines for Non-Routine cases may vary from the Routine Pretrial Order as the needs of the case may require in the discretion of the court. A Non-Routine Pretrial Order shall be issued and state, with specificity, the particular variations from the Routine Pretrial Order authorized. Except as specified in the Non-Routine Pretrial Order, the requirements and deadlines for Routine cases, as set out in the original Routine Pretrial Order, shall apply.

¹³ Paragraph B of the Uniform Pretrial Order (Feb. 2003).

¹⁴ Paragraph D.3. of the Uniform Pretrial Order.

Plaintiffs ask the Court to characterize this case as Non-Routine and set the following pretrial deadlines:

Pretrial Task	Deadline
Amendment of Pleadings and Addition of Parties	15 days from distribution of Court's Non-Routine Pretrial Order
Preliminary Witness List	30 days from distribution of Court's Non-Routine Pretrial Order
Final Witness List	14 days before start of trial
Expert Witnesses	<ul style="list-style-type: none"> • Retained Expert Identification – 10 weeks prior to trial • Retained Expert Witness Reports – 5 weeks prior to trial • Other Expert Opinion Testimony Summary – 6 weeks prior to trial
Discovery	<ul style="list-style-type: none"> • Written Discovery and Depositions — may immediately begin but depositions and propounding of written discovery may not occur after 60 days prior to trial • Expert Witness Depositions – must be completed 2 weeks prior to trial
Dispositive Motions	Summary judgment motions, motions to dismiss, and motions for rulings of law must be filed and served no later than 1 week prior to trial
Expert Testimony Motions	4 weeks prior to trial
Discovery Motions	4 weeks prior to trial
Jury Instructions	Exchanged 1 week prior to trial
Exhibits	Exchanged 4 days prior to trial
Trial Briefs	1 week prior to trial
Pretrial Conference	1 week prior to trial

These truncated deadlines are necessary for this matter to be resolved on the merits with fairness to all parties.

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III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court, in accordance with the Third Judicial District's Uniform Pretrial Order, characterize this lawsuit as “non-routine,” to set the above-listed pretrial deadlines and trial for August 2020.

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
Lee C. Baxter
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MOTION TO CHARACTERIZE CASE AS NON-ROUTINE AND TO SET EXPEDITED DISCOVERY
AND AUGUST 2020 TRIAL DATE
RESOURCE DEVELOPMENT COUNCIL, INC. ET AL. V. FENUMIAI AND DIVISION OF ELECTIONS
CASE No. 3AN-20-05901 CI

PAGE 9 OF 9



Lieutenant Governor Kevin Meyer
STATE OF ALASKA

March 17, 2020

Robin O. Brena
810 N Street, Suite 100
Anchorage, AK 99501

Re: 19OCTX – Fair Share Initiative

Mr. Brena:

I have reviewed your petition for the initiative entitled "An Act changing the oil and gas production tax for certain fields, units, and nonunitized reservoirs on the North Slope" and have determined that the petition was properly filed. My notice of proper filing is enclosed. Specifically, the petition was signed by qualified voters from all 40 house districts equal in number to at least 10 percent of those who voted in the preceding general election; with signatures from at least 30 house districts matching or exceeding seven percent of those who voted in the preceding general election in the house district. The Division of Elections verified 39,174 voter signatures, which exceeds the 28,501 signature requirement based on the 2018 general election. A copy of the Petition Statistics Report prepared by the Division of Elections is enclosed.

With the assistance of the attorney general, I have prepared the following ballot title and proposition that meets the requirements of AS 15.45.180:

An Act changing the oil and gas production tax for certain fields, units, and nonunitized reservoirs on the North Slope

This act would change the oil and gas production tax for areas of the North Slope where a company produced more than 40,000 barrels of oil per day in the prior year and more than 400 million barrels total. The new areas would be divided up based on "fields, units, and nonunitized reservoirs" that meet the production threshold. The act does not define these terms. For any areas that meet the production threshold, the tax would be the greater of one of two new taxes.

(1) One tax would be a tax on the gross value at the point of production of the oil at a rate of 10% when oil is less than \$50 per-barrel. This tax would increase to a maximum of 15% when oil is \$70 per-barrel or higher. No deductions could take the tax below the 10% to 15% floor.

(2) The other tax, termed an "additional tax," would be based on a calculation of a production tax value for the oil that would allow lease expenditure and transportation cost deductions. This tax on production tax value would be calculated based on the difference between the production tax value of the oil and \$50. The difference between the two would be multiplied by the volume of oil, and then that amount would be multiplied by 15%. The existing per-taxable-barrel credit would not apply. The act uses the term "additional tax" but it does not specify what the new tax is in addition to.

Robin O. Brena
March 17, 2020
Page 2

The tax would be calculated for each field, unit, or nonunitized reservoir on a monthly basis. Taxes are currently calculated on an annual basis, with monthly estimated payments. Since these new taxes would only apply to certain areas, a taxpayer would still have to submit annual taxes for the areas where the new taxes do not apply.

The act would also make all filings and supporting information relating to the calculation and payment of the new taxes "a matter of public record." This would mean the normal Public Records Act process would apply.

Should this initiative become law?

This ballot proposition will appear on the election ballot of the first statewide general, special, or primary election that is held after (1) the petition has been filed; (2) a legislative session has convened and adjourned; and (3) a period of 120 days has expired since the adjournment of the legislative session. Barring an unforeseen special election or adjournment of the current legislative session occurring on or before April 19, 2020, this proposition will be scheduled to appear on the general election ballot on the November 3, 2020 general election. If a majority of the votes cast on the initiative proposition favor its adoption, I shall so certify and the proposed law will be enacted. The act becomes effective 90 days after certification.

Please be advised that under AS 15.45.210, this petition will be void if I, with the formal concurrence of the attorney general, determine that an act of the legislature that is substantially the same as the proposed law was enacted after the petition has been filed and before the date of the election. I will advise you in writing of my determination in this matter.

Please be advised that under AS 15.45.240, any person aggrieved by my determination set out in this letter may bring an action in the superior court to have the determination reversed within 30 days of the date on which notice of the determination was given.

If you have questions or comments about the ongoing initiative process, please contact my staff, April Simpson, at (907) 465-4081.

Sincerely,



Kevin Meyer
Lieutenant Governor

Enclosures

cc: Kevin G. Clarkson, Attorney General
Gail Fenumiai, Director of Elections



Lieutenant Governor Kevin Meyer
STATE OF ALASKA

NOTICE OF PROPER FILING

I, KEVIN MEYER, LIEUTENANT GOVERNOR FOR THE STATE OF ALASKA, under the provisions of Article XI of the Constitution of the State of Alaska and under the provisions of AS 15.45, hereby provide notice that the initiative petition for "An Act changing the oil and gas production tax for certain fields, units, and nonunitized reservoirs on the North Slope" which was received on August 16, 2019, and known as 19OGTX, was properly filed.

I have determined that the initiative sponsors have timely filed the petition and that the petition is signed by qualified voters (1) equal in number to 10 percent of those who voted in the preceding general election; (2) resident in at least three-fourths of the house districts in the state; and (3) who, in each of the house districts, are equal in number to at least seven percent of those who voted in the preceding general election in the house district.

In accordance with AS 15.45.190, the Director of the Division of Elections shall place the ballot title and proposition on the election ballot of the first statewide general, special, or primary election that is held after a period of 120 days has expired since the adjournment of the legislative session. Barring any unforeseen special election or adjournment of the current legislative session on or before April 19, 2020, this proposition is scheduled to appear on the general election ballot on the November 3, 2020 general election.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed hereto the Seal of the State of Alaska, at Juneau, Alaska,

This 17th day of March, 2020.


.....
KEVIN MEYER, LIEUTENANT GOVERNOR

From: Jeanine.Huston@hklaw.com

To: ANC_civil@akcourts.us

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

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

Attachments: Motion to Characterize Case as Non-Routine, Declaration, Exhibit A.pdf, Proposed Order

Attached are Plaintiffs' Motion to Characterize Case and Motion for Expedited Consideration

* Name: Jeanine Huston jeanine.huston@hklaw.com<mailto:jeanine.huston@hklaw.com> (907) 263-6335

* Case No. 3AN-20-05901 CI

* Attached 4 documents

* Documents attached are:

o Motion to Characterize Case as Non-Routine and to Set Expedited Discovery and August 2020 Trial Date with Declaration and Exhibit A attached (15 pp.)

o Proposed Order Granting Motion to Characterize Case as Non-Routine (3 pp.)

o Motion for Expedited Consideration of Motion to Characterize Case as Non-Routine and to Set Expedited Discovery and August 2020 Trial Date with Declaration (8 pp.)

o Proposed Order Granting Motion for Expedited Consideration of Motion to Characterize Case as Non-Routine (2 pp.).

* Total of 28 pages

Jeanine Huston | Holland & Knight

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