IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKANS FOR BETTER ELECTIONS, Plaintiff,	)	
vs.	)	
KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA and STATE OF ALASKA, DIVISION OF ELECTIONS, Defendants.	)	Case No. 3AN-19-09704 CI

ORDER GRANTING PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Plaintiff and Defendants both filed motions for summary judgment, agreeing that there are no disputed facts and that the sole legal issue is whether the Alaska's Better Elections Initiative ("19AKBE") violates the single-subject rule articulated in Article II, section 13 of the Alaska Constitution and AS 15.45.040. Oral argument on the motions was held on October 21, 2019. Having considered the cross-motions, oppositions, and oral argument, the Court grants Plaintiff's cross-motion for summary judgment and denies Defendants' motion for summary judgment.

I. Background

Plaintiff Alaskans for Better Elections ("ABE") is a ballot initiative committee challenging the Lieutenant Governor's refusal to certify the initiative for the ballot. The

Lieutenant Governor denied certification because he determined that the initiative violated the single-subject requirement of AS 15.45.040. Plaintiff filed a Complaint for Declaratory and Injunctive Relief against Lieutenant Governor Keven Meyer and the State of Alaska, Division of Elections (collectively, "Lieutenant Governor") seeking a declaration that the Lieutenant Governor's determination that 19AKBE addresses more than one subject in violation of the Alaska Constitution is incorrect as a matter of law and that 19AKBE is in the proper form. ABE further seeks an order that 19AKBE be certified and that the Lieutenant Governor must distribute petition signature booklets immediately.

ABE filed the initiative petition with the Division of Elections on July 3, 2019. 19AKBE is an initiative to:

> PROHIBIT THE USE OF DARK MONEY BY INDEPENDENT EXPENDITURE GROUPS WORKING TO INFLUENCE CANDIDATE ELECTIONS IN ALASKA AND REQUIRE ADDITIONAL DISCLOSURES BY THESE GROUPS; ESTABLISH A NONPARTISAN AND OPEN TOP FOUR PRIMARY ELECTION SYSTEM; CHANGE APPOINTMENT PROCEDURES FOR CERTAIN ELECTION BOARDS AND WATCHERS AND THE ALASKA PUBLIC OFFICES COMMISSION; ESTABLISH A RANKED-CHOICE GENERAL ELECTION SYSTEM; SUPPORT AN AMENDMENT TO THE UNITED STATES CONSTITUTION TO ALLOW CITIZENS TO REGULATE MONEY IN ELECTIONS; REPEAL SPECIAL RUNOFF ELECTIONS; REQUIRE CERTAIN NOTICES IN ELECTION PAMPHLETS AND POLLING PLACES; AND AMEND THE DEFINITION OF POLITICAL PARTY.

There are 74 sections to the initiative.[1] All but one amends Title 15, the Alaska Election Code. One section, section 71, seeks to amend AS 39.50.020(b) to delete a cross-reference to Title 15.

On August 29, 2019, the Attorney General issued an opinion that 19AKBE violates the single-subject rule because it covers "at least two, if not three, discrete and important subjects," namely "(1) the elimination of the party primary system and the establishment of an entirely new nonpartisan primary; (2) a new ranked-choice voting process that amends how candidates in the general election are elected and how votes are counted; and (3) additional campaign finance disclosure and disclaimer requirements."[2] On August 30, 2019, the Lieutenant Governor denied certification of the initiative application under AS 15.45.080, based on the August 29, 2019 Attorney General opinion recommending denial of certification.[3] On September 5, 2019, ABE filed this action.

II. Summary Judgment Standard

Summary judgment is warranted where "there is no genuine issue as to any material fact" and "the moving party is entitled to judgment as a matter of law."[4] Under Alaska Civil Rule 56, the non-moving party is only required to show "that a genuine issue of material fact exists to be litigated"[5] and that "the party could produce admissible

[1] Pl.'s Mot. for Summ. J., Ex. A.
[2] Pl.'s Mot. for Summ. J., Ex. B.
[3] Pl.'s Mot. for Summ. J., Ex. C.
[4] Alaska R. Civ. P. 56(c).
[5] *Christensen v. Alaska Sales & Service, Inc.*, 335 P.3d 514, 519 (Alaska 2014) (internal quotations omitted).

evidence that reasonably would demonstrate to the court that a triable issue of fact exists."[6] All reasonable inferences must be drawn in favor of the non-moving party,[7] and facts must be viewed in the light most favorable to the non-prevailing party.[8] Here, both parties agree that there is no dispute of material fact.

III. Discussion

ABE argues that the Lieutenant Governor's decision, based on the Attorney General's opinion recommending rejection of 19AKBE, misapplied the single-subject rule as established by Article II, section 13 of the Alaska Constitution. ABE argues that it is entitled to summary judgment and an order directing certification of the ballot initiative and release of petition signature booklets. The Lieutenant Governor argues that 19AKBE makes three separate changes to Alaska law in violation of the single-subject rule and asks for summary judgment to uphold the Lieutenant Governor's denial of certification.

Article II, section 13 of the Alaska Constitution provides that "[e]very bill shall be confined to one subject."[9] This single-subject rule also applies to bills proposed for adoption by the people via the ballot initiative process.[10] Over 50 years ago, the Alaska Supreme Court first addressed the purpose of the single-subject rule: "to prevent the

[6] *Burnett v. Covell*, 191 P.3d 985, 991 (Alaska 2008).
[7] *Charles v. Interior Reg'l Hous. Auth.*, 55 P.3d 57, 59 (Alaska 2002).
[8] *Lewis v. State, Dep't of Corr.*, 139 P.3d 1266, 1268-69 (Alaska 2006).
[9] AK Const. Art. II, § 13. *See also* AS 15.45.040 (proposed bills "shall be confined to one subject").
[10] AK Const. Art. XI, § 1; AS 15.45.080 (requiring lieutenant governor to deny certification where "proposed bill to be initiated is not confined to one subject").

inclusion of incongruous and unrelated matters in the same bill in order to get support for it which the several subjects might not separately command, and to guard against inadvertence, stealth and fraud in legislation."[11] In the context of the ballot initiative process, the single-subject rule is intended to protect "the voters' ability to effectively exercise their right to vote by requiring that different proposals be voted on separately."[12]

There is longstanding precedent that courts should construe the single-subject provision "with considerable breadth."[13] The rationale for a broad construction of the single-subject provision is that "[o]therwise statutes might be restricted unduly in scope and permissible subject matter, thereby multiplying and complicating the number of necessary enactment and their interrelationships."[14]

The Alaska Supreme Court consistently has applied the same test when considering whether a bill violates the Alaska Constitution's single-subject rule:

> "All that is necessary is that [the] act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject."[15]

[11] *Suber v. Alaska State Bond Comm.*, 414 P.2d 546, 557 (Alaska 1966).
[12] *Croft v. Parnell*, 236 P.3d 369, 372 (Alaska 2010).
[13] *Gellert v. State*, 522 P.2d 1120, 1122 (Alaska 1974).
[14] *Id.*
[15] *Croft*, 236 P.3d at 373 (quoting *Gellert*, 522 P.2d at 1123).

In applying this test, the court "'disregard[s] mere verbal inaccuracies, resolve[s] doubts in favor of validity,' and strike[s] down challenged proposals only when the violation is 'substantial and plain.'"[16]

Most recently, in *Croft v. Parnell*, the Alaska Supreme Court applied the single-subject test to an initiative which proposed a new oil production tax and a new "clean elections" program.[17] The court concluded that the initiative violated the single-subject rule because there was an insufficient connection between the two provisions of the initiative.[18] The court did not announce a new test to be applied when reviewing challenges to initiatives based on the single-subject rule. Instead, for the first time, the court concluded that there was a violation of the single-subject rule. But the court applied the same test that has been applied in seven prior cases addressing the single-subject rule. In other words, the outcome was different from the past cases, but the analysis remained the same.

The Alaska Supreme Court, in every case prior to *Croft*, when faced with a challenge to a bill or initiative for violating the single-subject rule, ruled that each bill or initiative "related to a broader, single subject" and thus did not violate the single-subject rule.[19] For example, in *Evans ex rel. Kutch v. State*, the Alaska

[16] *Id.* (quoting *Gellert*, 522 P.2d at 1122).
[17] *Id.* at 371.
[18] *Id.* at 374.
[19] *Id.* at 372 (footnote 8 collecting cases).

Supreme Court addressed a challenge to the 1997 tort reform legislation.[20] The legislation included the following different provisions:

> caps on noneconomic and punitive damages, a requirement that half of all punitive damages awards be paid into the state treasury, a ten-year 'statute of repose,' a modified tolling procedure for the statute of limitations as applied to minors, comparative allocation of fault between parties and non-parties, a revised offer of judgment procedure, and partial immunity for hospitals from vicarious liability for some physicians' actions.[21]

The Alaska Supreme Court applied the same test to determine whether the legislation embraced a "single general subject," and concluded that "[e]ven though the provisions of [the legislation] concern different matters, they are all within the single subject of 'civil actions.'"[22] The court pointed to prior decisions where the court concluded that broad legislation fit within one general subject "such as 'land' or 'the criminal law.'"[23]

In addition, the Alaska Supreme Court, relying on the explicit language in the Alaska Constitution that "'the law-making powers assigned to the legislature may be exercised by the people through the initiative,'" has made clear that the same test applies to both legislation and initiatives.[24] When faced with the question of whether to overrule its prior line of cases analyzing the single-subject

[20] *Evans ex rel. Kutch v. State*, 56 P.3d 1046 (Alaska 2002).
[21] *Id.* at 1048.
[22] *Id.* at 1069-70.
[23] *Id.* at 1069.
[24] *Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173, 1181 (Alaska 1985) (quoting AK Const. Art. XII, § 11).

rule, the Alaska Supreme Court concluded that "[a] one subject rule for initiatives which is more restrictive than the rule for legislative action is not permitted."[25]

In *Croft*, the Alaska Supreme Court concluded not only that the two provisions did not relate to a single subject matter, but also that the proposed initiative "directly implicates one of the main purposes of the single-subject rule – the prevention of log-rolling."[26] The court characterized log-rolling as "appealing to different constituencies by including distinct provisions calculated to obtain sufficient votes to pass a measure."[27] Again, the court did not announce a new definition of log-rolling. Instead, it pointed to the definition provided by the Alaska Supreme Court in *Gellert v. State* in 1974: "deliberately inserting in one bill several dissimilar or incongruous subjects in order to secure the necessary support for passage of the measure."[28] The court concluded that the initiative implicated log-rolling for two reasons: (1) "coupling the approval of a new oil production tax with approval of a program to publicly fund elections deprives the voters of an opportunity to send a clear message on each subject encompassed by the Sponsors' initiative," and (2) the directive that the legislature transfer funds left over from public elections to the Permanent Fund Dividend (PFD), when the PFD was "entirely unrelated to the purpose of the clean elections programs," "runs

[25] *Id.*
[26] *Croft*, 236 P.3d at 374.
[27] *Id.*
[28] *Gellert*, 522 P.2d at 1122.

the risk of garnering support for the clean elections program from voters who are otherwise indifferent – or even unsupportive – of publicly funded campaigns."[29]

Here, the provisions of 19AKBE satisfy the test of relating to a single subject matter: election reform. Whether the provisions could have been written or offered as three separate initiatives is not the question before the Court or the standard to be applied in this case. Similarly, whether it is wise or unwise to adopt the proposed initiative is not a question before the Court. The sole legal question is whether the proposed initiative embraces one general subject. The answer is yes.

All of the substantive provisions of the proposed initiative seek to revise Title 15, the Alaska Election Code. All of the sections of the proposed initiative relate to each other and are germane to election reform. The proposed initiative includes revisions to both primary and general elections. Those provisions clearly relate to how Alaskans vote and select candidates for office. In addition, the proposed initiative includes revisions regarding campaign finance disclosure requirements. Those provisions seek to amend portions of the statutes which are already contained within the Alaska Election Code. The fact that the law in place now already links the topics in the same title (Title 15) reflects that there is a logical connection between campaign finance disclosures and voting. That

[29] *Croft*, 236 P.3d at 374.

connection is not diminished by the fact that different departments administer those laws. The legislature has determined previously that voters are entitled to some level of information regarding campaign contributions. ABE asserts that the proposed initiative would provide voters with additional information regarding campaign contributions and that such information is of even more importance when viewed with the other provisions of the proposed initiative such as nonpartisan elections. To the extent that provisions of the proposed initiative address additional campaign finance disclosure and disclaimer requirements, those provisions relate to the general subject matter of election reform. Because the primary election, general election, campaign finance, and all other provisions of the proposed initiative clearly relate to the general subject of election reform, there is no violation of the single-subject rule.

The longstanding precedent applying the single-subject rule does not support reading the *Croft* decision as narrowing the single-subject rule. In *Croft*, the provisions of the proposed initiative lacked a connection to each other.[30] The facts of this case are distinguishable from those in *Croft*. Here, there is a connection between the provisions addressing election reform. In *Evans*, the legislation at issue was much broader in scope and included many more provisions on different topics than the provisions at issue in 19AKBE. Yet in *Evans*, the

[30] *Croft*, 236 P.3d at 374.

Alaska Supreme Court concluded that the different matters fell within the single subject of "civil actions."[31] Similarly, here, the provisions of the proposed initiative relate to each other sufficiently to satisfy the single-subject rule.

The implication regarding log-rolling that was at issue in the *Croft* decision does not exist here. In *Croft*, the Alaska Supreme Court pointed out the different constituencies that may be appealed to with the proposed initiative together with the unrelated provision of offering the chance of increased PFD payments.[32] There is no similar unrelated provision in the proposed initiative here. Nor do any of the provisions appear to appeal to different constituencies. 19AKBE does not include dissimilar, incongruous, or unrelated matters in its provisions. The Court can discern no practical challenge to the proposed initiative on this ground. For example, the fact that one constituency may support modifications to campaign finance disclosure requirements but not support modifications to the primary election process does not warrant a conclusion that the single-subject rule is violated based on log-rolling. Looking at the language of 19AKBE, there is no indication that the provisions are targeted to different constituencies or that any of the provisions were calculated to obtain sufficient votes to pass the proposed

[31] *Evans*, 56 P.3d at 1070.
[32] *Croft*, 236 P.3d at 374.

initiative by attaching something of popularity "likely to carry along the enactment of whatever state law is attached for the ride."[33]

IV. Conclusion

For the foregoing reasons, Plaintiff's cross-motion for summary judgment is granted and Defendant's motion for summary judgment is denied. The Court orders that 19AKBE does not violate the single-subject rule in the Alaska Constitution and should accordingly be certified, and the Defendants must distribute petition signature booklets immediately by order of this Court.

A proposed judgment together with any motion for attorney's fees must be filed within 10 days.

DATED at Anchorage, Alaska this 28th day of October 2019.

Yvonne Lamoureux
Superior Court Judge

I certify that on 10-28-19 the above was emailed to the parties of record:

J. Lindemuth
S. Kendall
C. Mills
M. Paton-Walsh

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[33] *Yute Air*, 698 P.2d at 1189 (Moore, J., dissenting).