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FILED
STATE OF ALASKA
APPELLATE COURTS

2018 AUG 20 PM 2: 27

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Attorney for Stand for Salmon

IN THE SUPREME COURT FOR THE STATE OF ALASKA

BYRON MALLOTT, LIEUTENANT
GOVERNOR OF THE STATE OF
ALASKA, and the STATE OF ALASKA,
DIVISION OF ELECTIONS,

Appellants,

v.

STAND FOR SALMON,

Appellee.

Supreme Court No. S-16862

**APPELLEE STAND FOR
SALMON'S PETITION FOR
REHEARING**

Superior Court No. 3AN-17-09183 CI

Stand for Salmon petitions for rehearing under Appellate Rule 506(a)(1) and (2) on two points.¹ First, the Court failed to consider the two-part decision of the superior court in ordering a complete reversal. The disposition should be a partial affirmance, partial reversal. Second, the Court's discussion of *McAlpine v. University of Alaska*² misconceived a previous opinion in imprecisely describing the case and should be clarified.

¹ Stand for Salmon is also filing a Motion for Reconsideration of the Clerk's Order on Costs and Fees at the same time as this petition.

² 762 P.2d 81 (Alaska 1998).

I. The Disposition Should be a Partial Affirmance, Partial Reversal.

Stand for Salmon filed this case because Defendant Lieutenant Governor Byron Mallott refused to certify a proposed ballot initiative, 17FSH2. The Lieutenant Governor, through the Department of Law, objected to the entire initiative, forcing Stand for Salmon to defend its right to access the ballot through initiative. The superior court determined that the initiative was not an appropriation and ordered it certified.³ On appeal, the Lieutenant Governor continued to argue that no portion of the initiative should be allowed to move forward.⁴ This Court issued a decision ordering the superior court to strike two provisions and place the rest of the initiative on the ballot. The scope of that order was written as a complete reversal of the superior court.⁵

The superior court ordered that (1) “17FSH2 does not violate the subject matter restrictions of the Alaska Constitution, art. XI, section 7”; and (2) “the Lt. Governor is directed to certify the initiative.”⁶ On appeal, this Court reversed and remanded the initiative to the superior court, directing that the superior court order the Lieutenant Governor to remove the two unconstitutional provisions and certify the remainder of the initiative.⁷ The wording of this Court’s disposition would be more accurately phrased as a

³ Ex. A at 1.

⁴ Reply Brief of State Appellants 28, Mar. 12, 2018 (“Severance alone cannot save 17FSH2.”).

⁵ Op. 2, Aug. 8, 2018 (“Accordingly, we reverse the judgment of the superior court, and remand for the superior court to direct the Lieutenant Governor to sever the offending provisions but place the remainder of the initiative on the ballot.”); *id.* at 40 (“We therefore REVERSE the judgment of the superior court and REMAND for the superior court to immediately direct the Lieutenant Governor to sever proposed AS 16.05.885(e)(3) and the third sentence of proposed AS 16.05.887(a) and to place the remainder of the initiative on the ballot.”).

⁶ Ex. A at 1.

⁷ *Id.*

partial affirmance and a partial reversal of the superior court's judgement.⁸

Presumably this Court did not mean to reverse the part of the superior court's order that required the Lieutenant Governor to certify the initiative. Likewise, it would appear this Court did not intend to reverse the superior court's order with respect to the non-severed portions of the initiative, which were held by both courts to be constitutional over the Lieutenant Governor's objections. If the order is not cured it could call into question the validity of the now completed process of collecting, submitting, and verifying the signatures of over 41,000 registered voters who signed the petition booklets required for certification.⁹

II. The Court's Discussion of *McAlpine* Should be Clarified.

The Court imprecisely describes the holding of *McAlpine*. In the opinion, the Court states:

On that basis, we concluded that an initiative that would establish a separate community college system and require the University of Alaska to transfer a particular amount of property to the new system was an impermissible appropriation.¹⁰

The decision in *McAlpine* did not strike the part of the initiative that established a separate community college system. The Court only struck the sentence that required the university to transfer a particular amount of property to the new system. In that case, the initiative at issue stated:

There shall be established a separate independent Community College System in the State of Alaska. The University of Alaska shall transfer to the Community College System of Alaska such real and personal property as is necessary to the independent operation and maintenance of the Community College System. The

⁸ See Alaska R. App. P. 520(c).

⁹ Ex. B.

¹⁰ Op. 11 (citing *McAlpine*, 762 P.2d at 89-91).

amount of property transferred shall be commensurate with that occupied and operated by the Community Colleges on November 1, 1986. Properties created for the purpose of joint use by the University and Community College System shall continue to be jointly used.¹¹

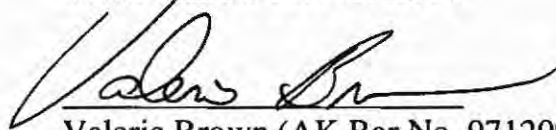
The first sentence was not challenged. The court upheld the second sentence, and struck only the third sentence.¹² The statement cited above that the Court invalidated “an initiative that would establish a separate community college system” is incorrect. The Court’s discussion of the facts of the case should be clarified to avoid future confusion in the application of *McAlpine*.

III. Conclusion

The Petition should be granted so that the Court may make two modifications to its August 8, 2018 opinion. The opinion should be modified to: (1) reflect the correct disposition of the Court’s decision; and (2) correct the description of *McAlpine*. Neither of these modification should impact the ability of the State to meet its printing deadline for the 2018 General Election ballot, since they do not effect the Court’s decision on severance.

Respectfully submitted on August 20, 2018,

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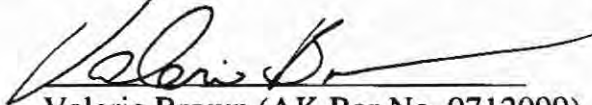
Attorney for Stand for Salmon

¹¹ *Id.* at 83.

¹² *Id.* at 91.

CERTIFICATE OF TYPEFACE

I hereby certify that this document is in 13-point (proportionately spaced) Times
New Roman font.
Dated: August 20, 2018


Valerie Brown (AK Bar No. 9712099)

CERTIFICATE OF SERVICE

I certify that on August 20, 2018, I served a true and correct copy of this Petition for Rehearing and this Certificate of Service by hand-delivery to Elizabeth Bakalar, Katherine Demarest, and Joanne M. Grace at Alaska Department of Law – Civil Division, 1031 W. 4th Avenue, Suite 200, Anchorage, AK 99501–1994.

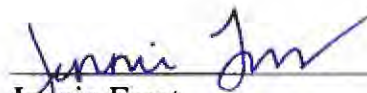
On August 20, 2018, I served a true and correct copy of this Petition for Rehearing and this Certificate of Service by U.S. Mail upon the following:

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