

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE**

LA QUEN NAAY ELIZABETH)
MEDICINE CROW, AMBER LEE,)
KEVIN MCGEE,)

Plaintiffs,)

v.)

DIRECTOR CAROL BEECHER, in her)
official capacity, LT. GOVERNOR)
NANCY DAHLSTROM, in her official)
Capacity, and the STATE OF ALASKA,)
DIVISION OF ELECTIONS,)

Defendants.)

FILED in the Trial Courts
State of Alaska Third District

APR 08 2024

Clerk of the Trial Courts
By _____ Deputy

Case No. 3AN-24-05615 CI

**MOTION TO INTERVENE AS OF RIGHT BY
THE SPONSORS OF INITIATIVE 22AKHE**

Dr. Arthur Matthias, Phillip Izon, and Jamie R. Donley, sponsors of the initiative known as 22AKHE (hereafter collectively referred to as "the Sponsors"), move the court for an order under Alaska R. Civ. Pro. 24 permitting their intervention into this case. The Sponsors have an interest in the subject of this action, 22AKHE, and they are so situated that the disposition of the action may as a practical matter impair or impede their ability to protect that interest. Because of the nature of a substantial portion of the plaintiffs' claims, the Sponsors' interests are not adequately protected by the existing parties.

ARGUMENT

I. THE SPONSORS ARE ENTITLED TO INTERVENE INTO THIS CASE AS OF RIGHT UNDER ALASKA R. CIV. PRO. 24(a)

Alaska R. Civ. Pro. 24(a) sets the standard for intervention as of right. The Rule provides:

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.¹

The Sponsors meet the standard for intervention as of right. The complaint in this case was only just filed on April 2, 2024, and the defendants' answer as state actors will not be due for close to forty days.² The Sponsors' motion is, therefore, timely.

The Sponsors have a substantial interest in the subject matter of this action. The Sponsors worked for approximately a year to prepare and present the initiative to the State of Alaska, Division of Elections ("the Division") and Lieutenant Governor, so that it could be presented on the general election ballot for Alaskans to vote on in November 2024. Plaintiffs' claims seek to remove 22AKHE from the general election ballot and, therefore, to deny the Sponsors their right under Art. 11, § 1 of the Alaska Constitution to propose and enact laws by initiative.

¹ Alaska R. Civ. Pro. 24(a).

² Alaska R. Civ. Pro. 12(a).

The Sponsors' interest in this action is not adequately protected by the existing parties. A portion of the plaintiffs' claims challenge the Division's and Lieutenant Governor's official actions, which the State through the Attorney General and the Department of Law, is fully capable of defending.³ However, a substantial portion of the plaintiffs' claims seek to go behind the petition booklets that were submitted to, reviewed, and approved by the Division and to challenge the conduct of:

(a) some of the Sponsors,

(b) many of the seven hundred volunteer Alaskans who circulated and certified the submitted petition booklets containing over 37,000 qualified signatures of Alaskan voters,

(c) a service provider, Top Fundraising Solutions, LLC ("TFS"), that contracted with the ballot group, Alaskans for Honest Elections ("AHE"), to hire and disperse paid circulators to collect signatures,

(d) some of the paid circulators hired by TFS who collected signatures, and

(e) some of the notaries who notarized petition booklets.⁴

These claims seek to delve into factual issues that the Division and Lieutenant Governor are not well positioned to rebut. The Division did not investigate, and had no

³ These claims are found in Counts III, IV and V of the complaint (¶¶ 15-29, 132-147, 148-166, 167-168). Count III claims the Division broke the law by allowing the Sponsors to cure petition booklets that had an expired notary. Count IV claims the Division broke the law by accepting booklets that were timely submitted but cured after the statutory deadline. Count V claims that the Division must release unredacted petition booklets in the Division's possession to the plaintiffs.

⁴ These claims are found in Counts I and II of the complaint (¶¶ 4-14, 36-131).

ability or duty to investigate, the false factual claims the plaintiffs' raise regarding the circulation process prior to approving 22AKHE for the ballot.⁵ Therefore, the Sponsors' interests with respect to these claims are not adequately represented by the existing parties.

By contrast, the Sponsors are uniquely positioned and interested to respond to the plaintiffs' false factual allegations regarding the circulation process that brought the over 37,000 qualified signatures to the Division. The Sponsors have access to the volunteer circulators and pertinent notaries who can testify to refute plaintiffs' allegations. Moreover, in direct rebuttal to plaintiffs' salacious allegations that the Sponsors or TFS intentionally instructed circulators to improperly handle petition booklets, and then deliberately submitted improperly handled petition booklets to the Division, plaintiffs still possess:

(a) the training videos they used to instruct volunteer circulators on how to handle petition booklets and collect signatures in compliance with Alaska law, and

(b) at least twenty-four petition booklets, containing 814 voter signatures, that they culled from their filing before delivering booklets to the Division—taking great care to comply with Alaska law the Sponsors culled these twenty-four petition booklets from their filing because they did not have confidence that they could certify that they had been handled properly.

⁵ Plaintiffs acknowledge the Divisions standard practice to not look behind otherwise valid petition booklets and investigate factual challenges to individual petition booklets. *See* Complaint, p. 13 ¶ 65.

The Alaska Supreme Court has ruled that initiative sponsors generally have the right to intervene into court challenges brought against their initiatives, and that only “in exceptional cases” should initiative sponsors’ intervention requests be denied.⁶

II. THE SPONSORS SHOULD BE GRANTED PERMISSIVE INTERVENTION UNDER ALASKA RULE CIV. PRO. 24(b).

Alaska R. Civ. Pro. 24(b) establishes the grounds upon which permissive intervention may be granted:

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a question of law or fact in common.... In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.⁷

The Sponsors satisfy the standard for permissive intervention. The Sponsor’s defense of 22AKHE and the signature gathering process that collected the over 37,000 signatures submitted to the Division, relates to the very factual scenario and controlling law that plaintiffs raise in the complaint. The Sponsors intervention will not delay or prejudice the adjudication of the rights of the original parties. Thus, even if intervention as of right were denied, which it should not be, the Sponsors should be granted permissive intervention.

⁶ See *Alaskans for a Common Language, Inc. v. Kritz*, 3 P.3d 906, 914 (Alaska 2000) (“because of the nature of direct legislation through the initiative process, the possible appearance of adversity of interest is sufficient to overcome the presumption of adequate representation. Indeed, we believe that a sponsor's direct interest in legislation enacted through the initiative process and the concomitant need to avoid the appearance of adversity will ordinarily preclude courts from denying intervention as of right to a sponsoring group”).

⁷ Alaska R. Civ. Pro. 24(b).

III. BOTH THE PLAINTIFFS AND THE STATE HAVE INDICATED THAT THEY DO NOT OPPOSE THE SPONSORS' INTERVENTION

Both the plaintiffs and the State have informed the Sponsors that they do not oppose the Sponsors' intervention into this case.

CONCLUSION

For all the above reasons, the court should grant the Sponsors intervention into this case either as of right or permissively under Alaska R. Civ. Pro. 24. The Sponsors submit herewith their Answer in Intervention to the plaintiffs' claims.

Dated this 8th day of April 2024.

Law Offices of Kevin G. Clarkson

Kevin Clarkson

By

Kevin G. Clarkson
ABA No. 8511149

I certify that on April 8, 2024,
a copy of this Motion to Intervene
was emailed to:

Thomas S. Flynn
Lael Harrison
Assistant Attorneys General
Department of Law
Office of the Attorney General, Anchorage Branch
1031 W. Fourth Avenue, Suite 200
Anchorage, AK 99501
thomas.flynn@alaska.gov
lael.harrison@alaska.gov

Scott Kendall, ABA No. 0405019
Samuel Gottstein, ABA No. 1511099
Cashion, Gilmore & Lindemuth
510 L Street, Ste. 601
Anchorage, AK 99501
scott@cashiongilmore.com
sam@cashiongilmore.com

Kevin Clarkson
Kevin G. Clarkson