

MAY 10 2024

anc.law.ecf@alaska.gov

Clerk of the Trial Courts
Deputy

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

La Quen Náay Elizabeth Medicine)
Crow, Amber Lee and Kevin McGee,)
Plaintiffs,)

v.)

Case No. 3AN-24-05615CI

Director Carol Beecher, in her official)
capacity, Lt. Governor Nancy)
Dahlstrom, in her official capacity, and)
the State of Alaska, Division of)
Elections,)

Defendants,)

v.)

Arthur Mathias, Phillip Izon, and Jamie)
Donley,)

Intervenors.)

**DEFENDANTS' OPPOSITION AND CROSS-MOTION FOR
PARTIAL SUMMARY JUDGMENT**

#5
x
#1

When counting the number of signatures in a petition for a ballot initiative, the Lieutenant Governor, Division of Elections, and its Director (collectively, "the Division") may not count signatures in petition booklets "not properly certified at the time of filing."¹ But the same statute allows the Division to count signatures in petition booklets if the improper certificates are "corrected before the subscriptions are

¹ AS 15.45.130.

counted.”² Here, the Division allowed the intervenors, the sponsors of the Alaskans for Honest Elections initiative (collectively, “the Sponsors”), to correct 62 petition booklets that were not properly certified when they were filed. The plaintiffs argue that the Division should not have allowed these corrections and, even if they were allowed, they occurred too late.

But the Division’s actions complied with its statutory authority to allow initiative sponsors to correct improper certificates during the time allotted to count signatures. Alaska courts must liberally construe the statutes governing initiatives and resolve doubts as to technical deficiencies in favor of placing initiatives before the voters.³ Therefore, the Court should deny the plaintiffs’ motion for summary judgment and grant summary judgment to the Division on the claims against it.

I. Background

A. The ballot initiative process in Alaska

The Alaska Constitution allows voters to “propose and enact laws by initiative” by filing an application and then a petition.⁴ The petition must be signed by a certain number of voters statewide and in three-quarters of house districts.⁵ If it is, the

² *Id.*

³ *N. W. Cruiseship Ass’n of Alaska, Inc. v. State, Off. of Lieutenant Governor, Div. of Elections*, 145 P.3d 573, 577-78 (Alaska 2006).

⁴ Alaska Const. art. XI, §§ 1–3.

⁵ Alaska Const. art. XI, § 3.

initiative appears on a statewide ballot for approval by a majority of voters before becoming law.⁶

The Division prints and numbers petition booklets for voters to sign.⁷ Each signer (or subscriber) must provide a name, address, numerical identifier, signature, and date.⁸ Examples of numerical identifiers include a date of birth or a driver's license number.⁹ Each petition booklet must also "be certified by an affidavit by the person who personally circulated the petition," so the last page of each booklet is a certification affidavit for the circulator who gathered the signatures.¹⁰ Circulators must answer and certify as true a list of statements establishing their qualifications, whether or not they were paid to gather signatures, and their compliance with the other signature-gathering requirements.¹¹ Circulators must have their certificates notarized or they must certify to the truth of their statements themselves.¹²

⁶ Alaska Const. art. XI, §§ 4, 6.

⁷ Alaska Const. art. XI, § 3; AS 15.45.090(a); 6 AAC 25.240(a).

⁸ AS 15.45.090(a)(6); AS 15.45.120; 6 AAC 25.240(b); *see* Stipulation and Proposed Order for Expedited Deadlines and Resolution Ex. 6, p. 20–29 (April 23, 2024).

⁹ 6 AAC 25.990(10).

¹⁰ AS 15.45.130; *see* Stipulation Ex. 6, p. 30.

¹¹ AS 15.45.130(1)–(8); *see* Stipulation Ex. 6, p. 30. Due to court orders, the Division does not enforce the statutes requiring that circulators be Alaska residents and prohibiting payment greater than \$1 per signature. *See* AS 15.45.105(3); AS 15.45.110(b); Complaint, Exhibit A, p. 5, 8. *See also Res. Dev. Council for Alaska, Inc. v. Vote Yes for Alaska's Fair Share*, 494 P.3d 541, 543 (Alaska 2021).

¹² AS 15.45.130; *see* Stipulation Ex. 6, p. 30.

Sponsors of an initiative have one year to gather enough voter signatures and file the petition with the Division.¹³ The sponsors must collect completed petition booklets from circulators and file them all “together as a single instrument.”¹⁴ In other words, “Circulators turn in completed booklets to the [sponsors]. If a circulator delivers a booklet to the division, the circulator will be instructed to turn in the booklet to the [sponsors].”¹⁵

When the sponsors file the booklets, the Division immediately conducts an initial review of the petition.¹⁶ If the petition does not have enough signatures “on its face,” the Division will notify the sponsors of this “patent defect.”¹⁷ If a petition with a “patent defect” is filed on the one-year deadline, the Division considers it insufficient.¹⁸ If there is still time to gather more signatures before the one-year deadline, the Division will return all of the petition booklets to the sponsors, who may re-file the entire petition before the deadline.¹⁹

After the initial review, AS 15.45.150 gives the Division 60 days to determine if the petition was properly filed, with a sufficient number of subscribers.²⁰ The

¹³ Alaska Const. art. XI, § 4; AS 15.45.140; 6 AAC 25.240(d).

¹⁴ 6 AAC 25.240(c).

¹⁵ Complaint Ex. A, p. 8.

¹⁶ 6 AAC 25.240(f); Complaint Ex. A, pp. 9–10.

¹⁷ 6 AAC 25.240(f).

¹⁸ 6 AAC 25.240(f)(1).

¹⁹ 6 AAC 25.240(f)(2).

²⁰ AS 15.45.140(a); AS 15.45.150; AS 15.45.160.

Division uses the information provided by the subscribers to determine if they are registered voters and the house district in which they are registered.²¹ The Division will not count the signature of any subscriber who did not provide an address, signature, numerical identifier, and date.²² If a subscriber signed the petition twice, the Division will count only one signature.²³

Additionally, the Division does not count any of the signatures in a petition booklet “if the person who circulated the petition did not complete the certification affidavit for the booklet as required by AS 15.45.130.”²⁴ Under this statute, the Division “may not count subscriptions on petitions not properly certified at the time of filing or corrected before the subscriptions are counted.”²⁵ Accordingly, after a petition is filed, the Division will return booklets with incomplete certificates to the sponsors of the initiative so that they can have the circulators correct their certificates and return the corrected booklets to the Division within the 60-day deadline for the Division’s signature review.²⁶ The sponsors may only correct certificates on booklets filed in the initial “single instrument”; the sponsors may not submit additional booklets or gather additional signatures.

²¹ *See id.*

²² 6 AAC 25.240(h).

²³ *Id.*

²⁴ 6 AAC 25.240(g).

²⁵ AS 15.45.130.

²⁶ Complaint, Ex. A, p. 8.

If the Division determines that a petition has enough properly-certified signatures of qualified voters, the Division will notify the sponsors that the petition was properly filed.²⁷ The Division will then place the initiative on the ballot during the next statewide election that takes place after the legislature has convened and at least 120 days have passed since the legislature adjourned.²⁸

B. The petition for the Alaskans for Honest Elections initiative

Here, the Division issued the petition booklets for the Alaskans for Honest Elections initiative, also known as 22AKHE, on February 3, 2023.²⁹ The Sponsors filed the petition on January 12, 2024, before the Legislature convened on January 16 and before the one-year deadline to file on February 7.³⁰ The Division conducted its initial review on January 12 and accepted 641 of the 655 booklets filed by the Sponsors, which appeared in the initial review to include a sufficient number of signatures.³¹

²⁷ See AS 15.45.180.

²⁸ Alaska Const. art. XI, § 4; AS 15.45.190.

²⁹ Stipulation ¶ II.2, 4.

³⁰ *Id.* ¶ II.19, 49, 50.

³¹ *Id.* Ex. 5. The Division did not accept these 14 booklets because they were not properly certified. The Division returned these booklets to the Sponsors, who did not re-file them. See Plaintiffs' Motion for Summary Judgment 11, n.57 (April 24, 2024). These details were not included in the parties' Stipulation, but the Division does not believe there is a basis to dispute these facts. Given that the Sponsors never returned these booklets, they did not affect the Division's determination that the petition was sufficient.

During its detailed review, the Division identified incomplete certificates on 65 petition booklets.³² On one certificate, the notary wrote a date in the future.³³ On another, the circulator did not fill in the location of the self-certification.³⁴ Two other certificates were missing the date on which they were notarized.³⁵ And 61 certificates were signed by a person whose notary commission had expired.³⁶

The Division began informing the Sponsors of these improper certificates and allowing the Sponsors to retrieve the affected petition booklets on January 18, 2024.³⁷ The Division photocopied 60 of these booklets before returning them to the Sponsors.³⁸ The Sponsors began returning booklets with corrected certificates to the Division on February 12.³⁹ The Sponsors returned a total of 62 corrected booklets to the Division by March 1 at the latest, before the Division completed its count on March 8 and before the 60-day deadline for the Division's review on March 12.⁴⁰ The Division accepted all 62 corrected booklets, confirmed that the Sponsors had not

³² *Id.* ¶ II.43, 47.

³³ *Id.* ¶ II.22.

³⁴ *Id.* ¶ II.25.

³⁵ *Id.* ¶ II.27, 28.

³⁶ *Id.* ¶ II.30, 47.

³⁷ *Id.* ¶ II.22. The Division identified the 61st improperly notarized booklet too late to return it to the Sponsors. *Id.* ¶ II.47.

³⁸ *Id.* ¶ II.35.

³⁹ *Id.* ¶ II.26.

⁴⁰ *Id.*, ¶ II.51, 53.

gathered additional signatures since filing the petition, and counted the qualifying subscribers.⁴¹

The Division determined that the petition was properly filed and scheduled the initiative to appear on the 2024 general election ballot.⁴²

C. This lawsuit

The plaintiffs allege that the Division should not have allowed the Sponsors to correct any of the incomplete or improperly notarized certificates.⁴³ Instead, they maintain that the Division should have returned the entire petition, at which point it would have been too late for the Sponsors to re-file it.⁴⁴ Specifically, in Count III, the plaintiffs allege that the Division violated AS 15.45.130 and 6 AAC 25.240 by returning individual petition booklets to the Sponsors for corrections to the certificates, rather than returning all of the booklets.⁴⁵ In Count IV, they allege that even if the Division had the authority to allow corrections during the review period, the Division violated other statutory deadlines by allowing the corrections after the one-year deadline to file the petition and by scheduling 22AKHE for the 2024 general election, even though the corrections occurred after the Legislature convened.⁴⁶

⁴¹ *Id.* ¶ II.40, 41, 46.

⁴² *Id.* ¶ II.51, 52. The Legislature did not adjourn before April 22, 2024. *See id.* ¶ II.52.

⁴³ Complaint ¶ 20–27.

⁴⁴ *Id.*

⁴⁵ *Id.* ¶ 132–47.

⁴⁶ *Id.* ¶ 148–66.

If the plaintiffs prevail on these claims, the petition would not have enough signatures to qualify for the ballot.⁴⁷ Without the 62 booklets with corrected certificates, the petition has sufficient signatures in only 27 of the 40 house districts.⁴⁸

II. Legal Standard

Summary judgment must be granted when there are no disputes of material fact and the moving party is entitled to judgment as a matter of law.⁴⁹ There are no disputed material facts here because the parties have stipulated to the facts of the Division's conduct, leaving the Court to decide only whether that conduct complies with AS 15.45.130.

In reviewing an agency's interpretation of a statute, courts use "one of two standards: reasonable basis or independent judgment."⁵⁰ "If the interpretation requires resolution of policy questions within the agency's area of expertise,"⁵¹ courts will "give deference to the agency's interpretation so long as it is reasonable."⁵² "If the agency's specialized knowledge and experience are not particularly relevant to the issue at hand," courts will substitute their independent judgment.⁵³ Under either

⁴⁷ Stipulation ¶ II.54, 55.

⁴⁸ *Id.*

⁴⁹ Alaska R. Civ. P. 56; *Christensen v. Alaska Sales & Servs., Inc.*, 335 P.3d 514, 516 (Alaska 2014).

⁵⁰ *Guerin v. State*, 537 P.3d 770, 777 (Alaska 2023), reh'g granted in part (Nov. 6, 2023).

⁵¹ *Id.* (quotation omitted).

⁵² *PLC, LLC v. State*, 484 P.3d 572, 577 (Alaska 2021) (cleaned up).

⁵³ *Guerin*, 537 P.3d at 777 (quotation omitted).

standard, courts should “should give weight to what the agency has done, especially where the agency interpretation is longstanding.”⁵⁴

In interpreting a statute, courts consider its language, purpose, and legislative history,⁵⁵ and “adopt the rule of law that is most persuasive in light of precedent, reason, and policy.”⁵⁶ Courts “begin with the text and its plain meaning” and then use a “sliding-scale approach,” where “the plainer the statutory language is, the more convincing the evidence of contrary legislative purpose or intent must be.”⁵⁷ “In ascertaining the plain meaning of the statute, [courts should] refrain from adding terms.”⁵⁸ Court should also avoid subtracting terms, assuming instead “that words added to a statute are not mere surplusage.”⁵⁹

In the context of ballot initiatives, courts “liberally construe the requirements pertaining to the people’s right to use the initiative process so that the people are

⁵⁴ *Chugach Elec. Ass’n, Inc. v. Regul. Comm’n of Alaska*, 49 P.3d 246, 250 (Alaska 2002); e.g. *Marathon Oil Co. v. State, Dep’t of Nat. Res.*, 254 P.3d 1078, 1082 (Alaska 2011) (“We give more deference to agency interpretations that are longstanding and continuous.” (quotation omitted)); *Alaska Jud. Council v. Kruse*, 331 P.3d 375, 381 (Alaska 2014) (“A longstanding agency interpretation may also be viewed as legislative acquiescence to that interpretation.”); *State v. Jeffery*, 170 P.3d 226, 230 (Alaska 2007) (“A statutory construction adopted by those responsible for administering a statute should not be overruled in the absence of weighty reasons.” (cleaned up)).

⁵⁵ *State v. Planned Parenthood of the Great Nw.*, 436 P.3d 984, 992 (Alaska 2019).

⁵⁶ *Guerin*, 537 P.3d at 777 (cleaned up).

⁵⁷ *Planned Parenthood of the Great Nw.*, 436 P.3d at 992 (cleaned up).

⁵⁸ *Municipality of Anchorage v. Suzuki*, 41 P.3d 147, 151 (Alaska 2002).

⁵⁹ *Kodiak Island Borough v. Roe*, 63 P.3d 1009, 1014 n.16 (Alaska 2003).

permitted to vote and express their will on the proposed legislation.”⁶⁰ Accordingly, “all doubts as to all technical deficiencies or failure to comply with the exact letter of procedure will be resolved in favor of the accomplishment of that purpose.”⁶¹ “In other words [courts] should preserve initiatives whenever possible.”⁶²

III. Argument

Alaska Statute 15.45.130 expressly allows initiative sponsors to correct certificates on individual petition booklets, provided they complete these corrections before the Division completes its review of the signatures. In their motion for summary judgment, the plaintiffs discount this statutory authority, focusing instead on regulations and repealed statutes intended to prevent sponsors from submitting *additional signatures* after the deadlines for filing a petition, rather than *corrected certificates*.⁶³ But the clear terms of AS 15.45.130 allow for corrections to certificates during the 60-day signature review period and do not require that these corrections occur before the filing deadlines for petitions.

To the extent this statute is not clear, its legislative history does not point to a different interpretation. And allowing corrections to certificates—particularly corrections to improper notarization, which cannot be attributed to the subscribers—

⁶⁰ *N. W. Cruiseship Ass’n of Alaska, Inc.*, 145 P.3d at 577 (cleaned up).

⁶¹ *Planned Parenthood of Alaska v. Campbell*, 232 P.3d 725, 729 (Alaska 2010) (quotation and alterations omitted).

⁶² *Id.* (quotation and alterations omitted).

⁶³ Plaintiffs’ Motion for Summary Judgment 13–18.

further the voters' constitutional right to enact laws by initiative. The Court should hold that AS 15.45.130 permits the corrections that the Division allowed here, deny the plaintiffs' motion for summary judgment, and grant the Division's cross-motion for summary judgment on the claims against it.

A. Initiative sponsors may correct the certificates on petition booklets after filing the petition but before the Division completes its review.

Alaska Statute 15.45.130 provides both the authority for sponsors to correct certificates and the timeline during which this may occur.⁶⁴ The statute first requires that "each petition"—meaning each petition *booklet*—include a certification by the booklet's circulator when it is filed by the sponsors.⁶⁵ The statute then refers to the Division's process of "determining the sufficiency of the petition," meaning the Division's review of all the petition booklets, as explained in the statutes that follow.⁶⁶ The Division has "60 days [from] the date the petition was filed" to determine if it "was properly or improperly filed."⁶⁷ The petition is "improperly filed" if "there is an

⁶⁴ The relevant portion of the statute reads:

Before being filed, each petition shall be certified by an affidavit by the person who personally circulated the petition. In determining the sufficiency of the petition, the lieutenant governor may not count subscriptions on petitions not properly certified at the time of filing or corrected before the subscriptions are counted.

⁶⁵ AS 15.45.130 ("Before being filed, each petition shall be certified by an affidavit by the person who personally circulated the petition.").

⁶⁶ *Id.*

⁶⁷ AS 15.45.150.

insufficient number of qualified subscribers” either statewide or in three-quarters of house districts.⁶⁸

Alaska Statute 15.45.130 provides that during this review, the Division “may not count subscriptions on petitions not properly certified at the time of filing or corrected before the subscriptions are counted.” Thus, the signatures in petition booklets with incomplete or otherwise improper certificates do not count. But the Division *may* “count subscriptions on petitions not properly certified at the time of filing” if these improperly certified petitions are “corrected before the subscriptions are counted.”⁶⁹ The things that can be “corrected” are the “*petitions* not properly certified at the time of filing.”⁷⁰ Though the statute uses the term “petition” multiple times, it is clear in context that there is a singular petition, made up of multiple *petitions*, meaning petition booklets. The statute does not require that the Division return or that the sponsors re-file the entire petition; it recognizes that after a petition is filed, petition booklets may be corrected.

The final phrase, “are counted,” refers to the Division’s review of the subscriptions—i.e., signatures—in the booklets with improper certificates. The Division returns these booklets and does not count the signatures they contain, unless the certificates are corrected. The Division has 60 days to complete its review, so it

⁶⁸ AS 15.45.160.

⁶⁹ See AS 15.45.130.

⁷⁰ *Id.* (emphasis added).

can count these booklets if they are returned by then.⁷¹ Thus, under the plain meaning of AS 15.45.130, sponsors may correct booklets with improper certificates and the Division may count the signatures they contain by the end of its 60-day review.

The Division has consistently interpreted AS 15.45.130 this way. In the Division's Initiative Petition Training Handbook, which the Division provides to all initiative sponsors during a training session,⁷² the Division explains that after sponsors file a petition, the Division will notify them about booklets with incomplete certificates and allow them to correct these certificates before it counts the signatures in those booklets.⁷³ The Division has also previously allowed initiative sponsors to correct certificates during its review.⁷⁴

The Division followed its established practice in this case. The Sponsors received the Initiative Petition Training Handbook when they all attended the Division's training session.⁷⁵ Once they filed the petition for 22AKHE, the Division initially reviewed it and returned some booklets, but found the petition appeared to

⁷¹ See 6 AAC 25.240(h)(4); Stipulation ¶ II.46.

⁷² Stipulation ¶ II.5, 6.

⁷³ Complaint, Ex. A, p. 8:

After the booklets have been filed with the division, if it is discovered during the division's review that a certification affidavit is incomplete, the division will notify the committee or designee. The committee or designee can then have the booklet corrected and returned to the division so long as it is received before the division completes its review of signatures.

⁷⁴ Stipulation ¶ II.48.

⁷⁵ *Id.* ¶ II.7.

have enough signatures with the remaining booklets.⁷⁶ The Division then conducted its detailed review of the petition booklets and their certificates. As it discovered improper certificates, the Division alerted the Sponsors and returned individual booklets to them.⁷⁷ The Division counted the signatures in the booklets that the Sponsors corrected and returned during the Division's 60-day review.⁷⁸ None of these included signatures the Sponsors gathered after they filed the petition.⁷⁹

Given the Division's expertise in the petition review process, the Court should uphold the Division's reasonable interpretation of AS 15.45.130.⁸⁰ Even if the Court applies its independent judgment, it should give weight to the Division's established interpretation and find that this statute plainly authorizes the corrections that the Division allowed here.⁸¹

B. The Division's interpretation is consistent with its regulation and the legislature's intent.

The plaintiffs offer no alternative interpretation of AS 15.45.130 that gives meaning to the phrase "corrected before the subscriptions are counted."⁸² Instead, they rely on a regulation and the repeal of a different statute to argue that the Division

⁷⁶ *Id.* Ex. 5.

⁷⁷ *Id.* ¶ II.22–45; *see id.* Ex. 5 (indicating the Division immediately returned 14 booklets with incomplete certificates).

⁷⁸ *Id.* ¶ II.46.

⁷⁹ *See id.* ¶ II.40–41.

⁸⁰ *See PLC, LLC*, 484 P.3d at 577.

⁸¹ *See Chugach Elec. Ass'n, Inc.*, 49 P.3d at 250.

⁸² Plaintiffs' Motion for Summary Judgment 14.

should have returned all 641 petition booklets to the Sponsors to correct the incomplete certificates on 64 of them.⁸³ But this is wrong for three reasons.

First, the repeal of AS 15.45.170 in 1998 does not affect the Division's authority to allow corrections to the certificates in particular petition booklets, which was granted nearly seven years later in 2005. Before it was repealed, AS 15.45.170 allowed sponsors to circulate and file a supplementary petition.⁸⁴ As the plaintiffs correctly observe, the purpose of these supplementary petitions was to allow sponsors to gather additional signatures when the petition they initially filed did not have enough.⁸⁵ But AS 15.45.130, as enacted in 2005, has an entirely different purpose. It does not allow sponsors to gather additional signatures; it only allows them to correct incomplete certificates. Whatever the legislature intended in 1998, it had a different intent in 2005, when it repealed and reenacted AS 15.45.130 and added the phrase "corrected before the subscriptions are counted."⁸⁶ The legislature intended to give

⁸³ *Id.* 14–18.

⁸⁴ AS 15.45.170 (1997).

⁸⁵ Plaintiffs' Motion for Summary Judgment 15. The sponsor statements for the bill provided by the plaintiffs reflect only the intent that sponsors should not be permitted additional time to *gather more signatures* after the filing deadline. *Id.* at Appx. 2 and 3.

⁸⁶ Compare 1st. Sp. Sess. 2005, ch. 2, § 36 with AS 15.45.130 (2004):

Before being filed, each petition shall be certified by an affidavit by the person who personally circulated the petition. The affidavit must state in substance . . . In determining the sufficiency of the petition, the lieutenant governor may not count subscriptions on petitions not properly certified.

effect to this new statutory language, which creates a different process than the repealed supplementary petition process.

By adding this language to AS 15.45.130, the legislature implicitly recognized the distinction between gathering more signatures and correcting certificates. The purpose of gathering signatures is to show “significant public support”⁸⁷ such that the legislature can consider its own version of the bill proposed by the initiative.⁸⁸ If sponsors are allowed more time during the legislative session to gather additional signatures, the legislature cannot gauge the level of public support for the measure at the start of the session.⁸⁹ But if sponsors can only correct certificates during the Division’s review, without gathering additional signatures, the legislature’s consideration is unaffected. The legislature recognized this difference and preserved its role in the initiative process by eliminating supplemental petitions in AS 15.45.170 and then adding corrected certificates in AS 15.45.130.

Second, the Division’s interpretation of AS 15.45.130 is not inconsistent with its regulation, 6 AAC 25.240. This requires that sponsors *file* “[a]ll petition booklets . . . together as a single instrument.”⁹⁰ The intent of this requirement is to prevent circulators from returning their booklets to the Division one at a time, rather

⁸⁷ See *Campbell*, 232 P.3d at 729.

⁸⁸ See *Yute Air*, 698 P.2d at 1177–80.

⁸⁹ See Plaintiffs’ Motion for Summary Judgment at Appx. 2 & 3.

⁹⁰ 6 AAC 25.240(c).

than returning them to the sponsors, who then file them altogether with the Division.⁹¹ This regulation does not require that the Division *return* or that the sponsors *re-file* all petition booklets just to correct incomplete certificates on some of the booklets.

The only situation where the Division does return all booklets for the sponsors to resubmit is when the Division identifies a “patent defect” in its initial review and the one-year deadline has not passed.⁹² A petition with a “patent defect” is a “petition that at the time of submission contains on its face an insufficient number of booklets or signed subscriber pages.”⁹³ Thus, a “patent defect” can happen only when a petition has insufficient signatures *in the initial review*. The purpose of returning all of the booklets in this situation is to save the Division from reviewing an obviously insufficient petition and, if the deadline for filing the petition has not passed, give the sponsors time to gather more signatures. A patent defect does not happen when the Division identifies incomplete certificates later during its detailed review and allows sponsors to correct the certificates before that review is complete.

Moreover, if submitting another petition were the only option available to sponsors, the phrase “corrected before the subscriptions are counted” would be rendered meaningless. Alaska Statute 15.45.130 could just provide—as it did before 2005—that the Division “may not count subscriptions on petitions not properly

⁹¹ See 6 AAC 25.240(d) (“The initiative committee or the committee’s designee may file the petition . . .”); Complaint Ex. A, p. 8–10.

⁹² 6 AAC 25.240(f).

⁹³ *Id.*

certified at the time of filing.” In that case the Division would have to reject all improperly certified booklets and, if the petition were insufficient and the one-year deadline had not passed, the sponsors would have to file another petition. But the legislature added the phrase “corrected before the subscriptions are counted” and it must have intended to give effect to this language.

Lastly, the plaintiffs’ preferred practice would cause needless delays and inefficiencies. The plaintiffs apparently concede that sponsors can correct petition booklets, provided the Division returns all the booklets at once.⁹⁴ But this is not required by either AS 15.45.130 or 6 AAC 25.240 and there is no sense in requiring the Division to return all 641 booklets just so the Sponsors could correct 64 of them and return 579 of them unchanged. The plaintiffs also apparently concede that sponsors can correct petition booklets, provided the Division has not started counting the signatures.⁹⁵ But the signatures in booklets that are returned to sponsors are not counted until these booklets are returned to the Division. Also, the Division reviews more than one booklet at a time and checks for duplicates at the end of the review, so it must review the signatures in all of the booklets before definitively counting any one signature.⁹⁶ The Division does not have time during the short 60-day review to return all of the booklets and wait for the sponsors to return them all before it starts counting

⁹⁴ Plaintiffs’ Motion for Summary Judgment 14 (“[A]n *entire* initiative petition may be returned to the sponsors for correction”);

⁹⁵ *Id.* at 16, n.75 (arguing that corrections would be possible if the Division had not already started counting signatures).

⁹⁶ See 6 AAC 25.240(h)(4); Stipulation ¶ II.46.

any of the signatures. This would be particularly absurd if only one or two booklets needed to be corrected. The Division's interpretation of AS 15.45.130 is not only consistent with current statutes and regulations, it also avoids absurd results and inefficiencies for both the Division and for sponsors and facilitates the people's right to use the initiative process.⁹⁷

The Court should reject the plaintiffs' argument that the Division could only return the entire petition to the Sponsors.

C. Sponsors may correct certificates within 60 days, even after the one-year deadline and the start of the legislature.

The plaintiffs' insistence that the Division may return only an entire petition really serves their alternative argument: that Sponsors *can* correct petition booklets, but only before the one-year deadline to file the petition and, to appear on an upcoming ballot, before the start of the legislative session.⁹⁸ Although this argument concedes that corrections are possible under AS 15.45.130, it still ignores the timeline that statute provides and relies on legislative history that is not relevant.

Alaska Statute 15.45.130 permits corrections "before the subscriptions are counted." As detailed above, this happens within 60 days of the filing of a petition. Thus, the deadline for the Division's review and for corrections is different than the deadlines for filing. Petitions must be filed one year after the booklets are printed and

⁹⁷ See *Northwest Cruiseship Ass'n of Alaska, Inc.*, 145 P.3d at 577.

⁹⁸ Plaintiffs' Motion for Summary Judgment 18.

before the legislature convenes to appear on an upcoming statewide ballot.⁹⁹ Alaska Statute 15.45.130 does not reference either of these deadlines. Instead, it authorizes corrections any time after a petition is filed and before the Division's review is complete, even if these corrections occur after the one-year deadline and start of the legislature. In other words, the deadline for filing is one year from when the Division issued the petition booklets, and the deadline for signature review and certificate corrections is 60 days after filing.

This interpretation is consistent with the Alaska Supreme Court's decision in *Yute Air Alaska v. McAlpine*.¹⁰⁰ In that case, the Court considered a petition "filed" before the legislature convened, even though the Division completed its review and certified the initiative afterwards.¹⁰¹ The Court reasoned that the unmodified term "filed" should not be interpreted as though it read "*reviewed and determined to have been properly filed*."¹⁰² Instead, the two deadlines—one for filing and one for review—were distinct.¹⁰³ Further, "[b]oth logically and as a matter of practical experience, the legislature does not need an initiative petition to be verified before it considers the same subject."¹⁰⁴

⁹⁹ AS 15.45.140(a); AS 15.45.190.

¹⁰⁰ 698 P.2d 1173, 1177–80 (Alaska 1985) (mem.).

¹⁰¹ *Id.* at 1179.

¹⁰² *Id.* at 1178.

¹⁰³ *Id.* at 1179 ("[V]erification of an initiative petition before the legislature convenes is not a prerequisite.").

¹⁰⁴ *Id.*

The same reasoning applies to AS 15.45.130. The phrase “corrected before the subscriptions are counted” should not be interpreted as though it read “corrected *before the time to file a petition has expired*” or “corrected *before the legislature convenes*.”¹⁰⁵ The deadline to correct certificates—like the deadline for the Division’s review to which it is tied—is distinct from the deadlines to file a petition. And just as the legislature need not know whether a petition will ultimately be found sufficient when it convenes, the legislature need not know whether any certificates will need to be corrected during the Division’s review. As in *Yute Air*, the petition in this case was filed on time, and the Division’s review and the corrections authorized to occur during that review have their own, separate deadline.¹⁰⁶

This is the Division’s established interpretation of the filing and corrections deadlines and the practice it followed in this case. The Division’s handbook does not require that corrections occur before the one-year deadline or the start of the legislature.¹⁰⁷ And the Division’s regulation separately addresses the signature counting process after the petition filing deadlines and process.¹⁰⁸ It is not unusual for the Division’s review to conclude after the legislature convenes, yet the Division has previously allowed corrections.¹⁰⁹ Here, the Division accepted the corrected booklets

¹⁰⁵ See *Suzuki*, 41 P.3d 147 at 151.

¹⁰⁶ See *Yute Air Alaska*, 698 P.2d at 1178.

¹⁰⁷ See Complaint Ex. A p. 5, 8.

¹⁰⁸ 6 AAC 25.240(a), (c), (d), (e), and (g).

¹⁰⁹ Plaintiffs’ Motion for Summary Judgment 20 n.80 (recognizing that the last four sufficient prior petitions were filed between January 9 and 17); Stipulation ¶ II.48.

from the Sponsors because they were returned within 60 days of filing, even though they were all returned after the deadlines to file the petition as a whole.¹¹⁰

The plaintiffs attempt to counter this interpretation with a statement by a former Director of the Division of Elections during a hearing on the bill that amended AS 15.45.130.¹¹¹ They claim that she “explained the limits of the proposed ‘or corrected’ language.”¹¹² This is misleading. The former Director actually made this statement during a discussion about a failed amendment to eliminate the pay cap for circulators.¹¹³ She interjected to say that when circulators fail to indicate whether they have been paid, as required for initiative and other petition circulators, that is a basis to invalidate petition booklets.¹¹⁴ She explained that the Division of Elections can notify the sponsors of these problems, who can resolve them “at the beginning of the process” but not “at the last minute.”¹¹⁵

The former Director’s statement had no bearing on the “or corrected” language that the legislature proposed to add to AS 15.45.130, because neither the former Director nor the legislators were discussing that language. Indeed, the process that the former Director described cannot have been the process that would be created by the

¹¹⁰ Stipulation ¶ II.26, 51, 53.

¹¹¹ Plaintiffs’ Motion for Summary Judgment 22.

¹¹² *Id.*

¹¹³ House State Affairs hearing, March 15, 2005, beginning at 9:17.35: <https://www.akleg.gov/basis/Meeting/Detail?Meeting=HSTA%202005-03-15%2008:00:00>.

¹¹⁴ *Id.* beginning at 9:22.11.

¹¹⁵ *Id.* beginning at 9.22.53.

“or corrected” language—when she made this statement, the current version of AS 15.45.130 *did not include* the “or corrected” language, so she could not have been explaining it. Her statement is not, by any stretch, a “contemporaneous interpretation” of AS 15.45.130.¹¹⁶

Neither the legislature nor the former Director specifically addressed the intent of the “or corrected” language. Nevertheless, during the same hearing that the plaintiffs’ reference, one of the legislators went on to say that the intent of the bill was to make the initiative process “easier” and “friendlier.”¹¹⁷ The Division’s interpretation of the “or corrected” does that, by allowing sponsors to correct individual certificates without having to submit or resubmit entire petitions.

Because allowing corrections even after the deadlines for filing petitions is not contrary to any legislative history and consistent with AS 15.45.130, Alaska Supreme Court precedent, and the Division’s reasonable and established interpretation, the Court should decline to find the corrections in this case untimely and grant summary judgment to the Division on this issue as well.

D. Allowing corrections to certificates furthers the will of the voters.

Finally, the Division’s interpretation of AS 15.45.130 allows voters to exercise their constitutional right to enact laws by initiative without penalizing them for correctable, technical violations that are not their fault.

¹¹⁶ Plaintiffs’ Motion for Summary Judgment 23.

¹¹⁷ House State Affairs hearing, March 15, 2005, beginning at 9:25.

The Alaska Supreme Court has emphasized that courts must “liberally construe the requirements pertaining to the people’s right to use the initiative process so that the people are permitted to vote and express their will on the proposed legislation.”¹¹⁸ Accordingly, courts should “seek ‘a construction . . . which avoids the wholesale dis[en]franchisement of qualified electors,’”¹¹⁹ particularly “through no fault of their own, and ‘[where] any reasonable construction of the statute can be found which will avoid such a result, the courts should and will favor it.’”¹²⁰ The Court went so far as to count booklets where the circulators had not indicated the location of their self-certifications, as required by statute, deeming this a “technical deficiency that does not impede the purpose of the certification requirement.”¹²¹

Consistent with the Supreme Court’s directives, the Division has construed AS 15.45.130 in a way that favors the voters and their right to use the initiative process. Allowing corrections to incomplete certificates during the Division’s review prevents otherwise valid signatures from being disqualified. The Division’s interpretation of this statute thus avoids the wholesale disenfranchisement that would

¹¹⁸ *N. W. Cruiseship Ass’n of Alaska, Inc.*, 145 P.3d at 577 (cleaned up).

¹¹⁹ *Id.* at 578 (quoting *Fischer v. Stout*, 741 P.2d 217, 225 (Alaska 1987)).

¹²⁰ *Fischer*, 741 P.2d at 225, n.12 (quoting *Carr v. Thomas*, 586 P.2d 622, 626 (Alaska 1978)).

¹²¹ *N. W. Cruiseship Ass’n of Alaska, Inc.*, 145 P.3d at 577. Under this precedent, booklet 579, which lacked the location of the circulator’s self-certification, could have been valid without any correction. *See* Stipulation ¶ II.25. If the Court determines that this booklet is valid, but the other corrected petitions are not, the petition would still not have sufficient signatures in the house districts to appear on the ballot.

result if the Division did not allow corrections to certificates, returned entire petitions to fix one or two certificates, or allowed corrections only before the deadlines to file petitions. The circulators of the 22AKHE petition booklets—not the subscribers—are responsible for the improper certificates, and they should have the chance to correct their certificates under AS 15.45.130. Denying the Sponsors the ability to correct these mistakes would be to disqualify signatories for no fault of their own, despite the Division's reasonable interpretation, which avoids this result.

The plaintiffs ignore the Court's directive to liberally construe the initiative statutes and rely instead on the Court's strict enforcement of deadlines in other elections contexts, arguing that the petition filing deadlines should similarly be enforced strictly.¹²² But these are just two of the relevant deadlines: there is also the 60-day deadline for the Division's review and the corresponding deadline for corrections to improper certificates. The Division did not deviate from either of those deadlines here. The out-of-state cases that the plaintiffs cite address deadlines to gather more signatures, not deadlines to correct certificates,¹²³ or they involve legal provisions that have no Alaska analogue.¹²⁴ None of these authorities require the Court

¹²² Plaintiffs' Motion for Summary Judgment 25–26.

¹²³ See *Idahoans for Open Primaries v. Labrador*, 533 P.3d 1262, 12877 (Idaho 2023) (declining to extend deadlines to allow petition sponsors to *collect additional signatures*); *Meyer v. Knudsen*, 510 P.3d 1246, 1251 (Mont. 2022) (same).

¹²⁴ See *Ohio Renal Ass'n v. Kidney Dialysis Patient Protection Amendment Committee*, 111 N.E.3d 1139, 1145 (Ohio 2018) (requiring strict compliance with Ohio law requiring paid petition circulators to file a form before gathering any signatures); *Finkel v. Tp. Committee of Tp. of Hopewell*, 84 A.3d 263, 276 (N.J. Super. 2013) (requiring strict compliance with New Jersey law setting deadline to submit

to interpret AS 15.45.130 in a way that negates the corrections the Division allowed and requires the rejection of the entire 22KAHE petition.

IV. Conclusion

For these reasons, the Court should grant summary judgment to the Division and dismiss counts III and IV of the plaintiffs' complaint.

DATED May 10, 2024.

TREG TAYLOR
ATTORNEY GENERAL

By: /s/ Thomas S. Flynn
Thomas S. Flynn
Assistant Attorney General
Alaska Bar No. 1910085

By: /s/ Lael A. Harrison
Lael A. Harrison
Assistant Attorney General
Alaska Bar No. 0811093

CERTIFICATE OF SERVICE

I certify that on May 10, 2024, the foregoing **Defendants' Opposition and Cross-Motion for Partial Summary Judgment** was served on the following via email:

Kevin G. Clarkson - kclarkson@gci.net	Scott M. Kendall - scott@cashiongilmore.com
Law Offices of Kevin G. Clarkson	Jahna Lindemuth - jahna@cashiongilmore.com
	Samuel G. Gottstein - sam@cashiongilmore.com
	Cashion Gilmore & Lindemuth

/s/ Angela Hobbs
Angela Hobbs
Law Office Assistant III

non-binding referendum); *In re Guzzardi*, 99 A.3d 381, 386 (Pa. 2014) (requiring strict compliance with Pennsylvania law setting deadline for candidate to file ethics disclosure); *Barnes v. Wong*, 39 Cal.Rptr.2d 417, 421 (Cal. App. 1995) (requiring strict compliance with California law setting deadline for submitting statements in opposition to ballot measures).

Medicine Crow, et al. v. Carol Beecher, et al.

Opposition and Cross-Motion for Partial Summary Judgment

Case No. 3AN-24-05615CI

Page 27 of 27