

**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' TRIAL BRIEF**

Generally speaking, the Division does not intend to participate in trial. The parties previously stipulated to the facts of the Division's actions with regard to 22AKHE, eliminating the need for the Division to present that evidence at trial.<sup>1</sup>

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<sup>1</sup> Stipulation for Expedited Deadlines and Resolution (April 18, 2024). For example, the plaintiffs and the sponsors disagree about the admissibility of plaintiffs' trial exhibit 1027, which was created by the Division and was Exhibit 4 to the parties' stipulation. *See* Sponsors' Sixth Motion in Limine (June 14, 2024). However, all parties agree that there is no need to call any witness from the Division to testify to the information in the Stipulation to authenticate that exhibit. *See* Sponsors' Opposition to Plaintiffs' Motion in Limine re: Ex. 2008 (June 17, 2024) at p. 9.

However, the Division may present rebuttal evidence at trial on one very limited issue. To the extent that the plaintiffs' proffered expert witness Mr. John Costa testifies that the Division incorrectly counted specific signatures in 22AKHE petition booklets that he claims were facially invalid, the Division intends to present rebuttal evidence that those signatures were properly counted. And to the extent that any other witness or party takes the position that the Division made a specific error in its review, the Division may present rebuttal evidence on that point.

The plaintiffs have offered Mr. Costa as an expert witness and disclosed his report to the parties. In that report, Mr. Costa identifies 120 signatures that he claims were facially deficient and the Division should not have counted. Mr. Costa's report includes a table of those signatures with the reasons he claims they should not have been counted. Appended to this Trial Brief is that same table with two columns added.

The first new column is a table for the signer's house district. The Division determined this information by cross-referencing each signature with the Public Petition Signer's Report (plaintiffs' Trial Exhibit 1014). In its native excel spreadsheet format, this Report can sort signatures by booklet, page, and line, as Mr. Costa has done in his table, and then it may be cross-referenced by house district, duplicate signatures, and other factors. It is possible, but unlikely, that these 120 signatures could make the difference between 22AKHE qualifying or not qualifying for the ballot based on the total number of signatures. It is also possible but unlikely that these 120 signatures could make the difference between a certain house district qualifying and not qualifying

towards the required three-fourths of all Alaska's house districts. Thus, the house district has been added to Mr. Costa's table to facilitate that aspect of the Court's analysis.

The second added column contains a brief summary of the Division's response to each signature, including the ones on which it intends present rebuttal testimony at trial. Rebuttal testimony would be presented through the booklet in question, the Public Petition Signer's Report, and through the testimony of rebuttal witness Michaela Thompson, the Division Operations Manager. Normally, as a rebuttal witness, Ms. Thompson would only be called after Mr. Costa had testified. However, Mr. Costa is scheduled to testify on July 2, late in the trial, and Ms. Thompson is only available to testify during the first week of trial (June 24, 25 or 26). Therefore, the Division will work with the plaintiffs and sponsors on a schedule to call her out-of-order if Mr. Costa intends to testify regarding those 10 signatures.

Of the 120 signatures identified by Mr. Costa, the Division concedes that 35 of them were counted in error. In the appendix, these are *italicized in red*.

Of the remaining 85 signatures identified by Mr. Costa, he opined that the Division should not have counted 71 of them because the circulator certificate on one booklet failed to include the location where it was notarized. Whether or not the Division properly counted the signatures in that booklet is a question of law, on which

the Sponsors and the Division have moved for summary judgment.<sup>2</sup> The Division does not intend to present evidence regarding those signatures.

Of the remaining 14 signatures identified by Mr. Costa, he opined that the Division should not have counted 4 of them because they were crossed out. Whether or not the Division properly counted those signatures is a question of law, on which the Sponsors and the Division have moved for summary judgment.<sup>3</sup> The Division does not intend to present evidence regarding those signatures.

The remaining 10 signatures identified by Mr. Costa involve questions of fact, and to the extent Mr. Costa continues to place them in issue, the Division intends to present rebuttal evidence on them at trial. In the appendix, these are **bolded in green**. The Division's response regarding why the signature was properly counted is briefly summarized in the final column.

Other than the evidence regarding these ten signatures, the Division may present additional rebuttal evidence if any witness or party alleges at trial that the Division made any other specific errors in its review. Otherwise, the Division does not intend to present evidence or take a position at trial.

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<sup>2</sup> See Sponsor's Renewed Motion for Summary Judgment (June 10, 2024); Defendant's Response to Sponsor's Renewed Motion for Summary Judgment (June 17, 2024).

<sup>3</sup> *Id.*

DATED June 17, 2024

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