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, vs. DIRECTOR CAROL BEECHER, in her official capacity, LT. GOVERNOR NANCY DAHLSTROM, in her official capacity, and the STATE OF ALASKA, DIVISION OF ELECTIONS, Defendants, vs. DR. ARTHUR MATHIAS, PHILLIP IZON, and JAMIE R. DONLEY, Intervenors.	**PLAINTIFFS' OPPOSITION TO INTERVENORS' RENEWED MOTION FOR SUMMARY JUDGMENT** Case No.: 3AN-24-05615CI

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I. INTRODUCTION

At stake in this case is an innovative system of electoral democracy that Alaskan voters enacted and implemented for the first time just two years ago. Plaintiffs credibly allege that the Sponsors of 22AKHE conducted their petition signature campaign in a manner that invalidates thousands of signatures — imperiling their ability to meet the

statutorily and constitutionally-required thresholds.[1] The Sponsors' 50-page, fact-intensive Renewed Motion for Summary Judgment and its five accompanying exhibits are, in and of themselves, proof of why that motion should be denied and this case should proceed to trial: there are clear, genuine issues of material fact for this Court to resolve.[2] The summary judgment standard that favors the non-moving party, coupled with the many post-discovery factual and credibility issues that require resolution at trial, entitle Plaintiffs to mount evidence contradicting many of the assertions the Sponsors make in their Renewed Motion.

Indeed, the Sponsors' Motion — which reads more like a trial brief — itself demonstrates the scope and breadth of evidence that this Court must weigh to determine whether the Sponsors have, in fact, *validly* collected sufficient signatures to qualify 22AKHE for the ballot. Trial is always effortful and costly, both for the parties and the Court. But the judicial system exists for a reason: to resolve important factual disputes, whether they relate to a car accident that impacts just a few people, or election matters like this that impact an entire state. Plaintiffs deserve the opportunity to make their case. This Court should DENY the Sponsors' Renewed Motion for Summary Judgment.

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1 AS 15.45.140(a)(1)-(3); Alaska Const. Art. XI, Section 3.

2 *See generally* Intervenors/Sponsors' Renewal of motion for Summary Judgment, and Supplemental Brief Regarding Remeries [sic] and Response to Plaintiffs' Notice Regarding Categories of Defects and Legal Basis for Rejection of 22AKHE Signatures and Petition Booklets and Reply to Plaintiffs' Expert Witness Report (June 10, 2024) [hereinafter Sponsors' Renewed Motion].

Because of the level of factual reliance in the Sponsors' Renewed Motion, and for the sake of minimizing repetition, this Opposition incorporates Plaintiffs' Trial Brief, and the evidentiary discussion therein, as though repeated here in full.[3]

II. ARGUMENT

A. Voluminous Evidence Raises Genuine Issues Of Material Fact That Preclude Summary Judgment.

This Court should evaluate individual signatures and petition booklets whose disputed validity could reverse the certification of 22AKHE. The Alaska Supreme Court has repeatedly explained when summary judgment is appropriate and what constitutes a "genuine issue of material fact" for trial. "A party is entitled to summary judgment only if there is no genuine issue of material fact and if the party is entitled to judgment as a matter of law."[4] "Summary judgment is appropriate only when no reasonable person could discern a genuine factual dispute on a material issue" when "reading the record in the light most favorable to the non-moving party and making all reasonable inferences in its favor."[5]

A court is not permitted "on the limited evidence presented at the summary judgment stage to make trial-like credibility determinations, [or] conduct trial-like

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3 *See generally* Plaintiffs' Trial Brief (June 17, 2024).

4 *Societe Financial, LLC v MJ Corporation*, 542 P.3d 1159, 1165 (Alaska 2024) (internal citations and quotations omitted).

5 *Id*.

evidence weighing."[6] Courts "may assess whether the evidence is reasonable," but cannot "apply substantive evidentiary standards."[7] The summary judgment standard is "lenient" and strongly favors the non-moving party.[8] A "genuine issue of material fact" is a single piece of evidence that is not "too conclusory, to speculative, or too incredible to be believed" and must "directly contradict the moving party's evidence,"[9] and "[a] single genuine issue of material fact bars summary judgment."[10] "A party opposing summary judgment need not establish that he [or she] will ultimately prevail at trial."[11]

The Alaska Supreme Court has reversed and remanded trial court summary judgment rulings in countless cases based on seemingly minor or insignificant pieces of evidence. For example, a single "alleged self-serving affidavit" was sufficient to create a genuine issue of material fact precluding summary judgment on a breach of contract claim.[12] A putative father's sworn denial of intercourse with a child's mother created a factual issue sufficient to preclude summary judgment.[13] Whether a manager had

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6 *Id*. at 1166.

7 *Id*.

8 *Id*.

9 *Id*. at 1168.

10 *Id*. at 1169.

11 *Totem Marine Tug & Barge, Inc. v. Alyeska Pipeline Service Co*., 584 P.2d 15, 24 (Alaska 1978).

12 *Id*. at 1168.

13 *Meyer v. State, Dep't of Revenue, Child Support Enforcement Division, ex rel. N.G.T*., 994 P.2d 365 (Alaska 1999).

apparent authority — as a matter of law — to execute a contract was a genuine issue of material fact precluding summary judgment.[14] These examples support the Supreme Court's directive that "[a]ny evidence sufficient to raise a genuine issue of material fact, so long as it amounts to more than a scintilla of contrary evidence, is sufficient to oppose summary judgment."[15]

Here, Plaintiffs have presented much more than a "scintilla" of evidence that 22AKHE lacks validly-collected signatures to meet its threshold signature requirement through a combination of incompetence, neglect, and actual fraud.[16] Certainly, none of this evidence is "too conclusory, speculative, or incredible" such that "no reasonable person" could believe it.

The Sponsors focus heavily on the contents of Plaintiffs' expert report and his qualifications as reasons to grant Sponsors' summary judgment.[17] Yet that very discussion proves Plaintiffs' point: an expert's credibility is an issue for trial, one that the Sponsors ask this court — improperly on this motion and at this stage of the litigation — to resolve by doing the very thing our Supreme Court cautions against: make "trial-like credibility determinations," conduct "trial-like evidence weighing," and "apply substantive evidentiary standards." Plaintiffs' expert has not even testified before the

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14 *Airline Support, Inc. v. ASM Capital II, L.*P., 270 P.3d 599, 607 (Alaska 2012).

15 *Kalenka v. Infinity Ins. Companies,* 262 P.3d 602, 607 (Alaska 2011).

16 *See generally* Plaintiffs' Trial Brief.

17 Sponsors' Renewed Motion at 6.

Court. Further, the Sponsors ignore, utterly, the fact that the expert report and the direct evidence cannot be considered in separate, isolated vacuums; they mutually reinforce and expand each other.[18]

The Sponsors' core (and seemingly only) argument in their Renewed Motion is that Plaintiffs' expert "qualifications do not meet the task at hand." The Sponsors then launch into an exhaustive, 30-page, fact-intensive "takedown" of why Plaintiffs' expert is unqualified to opine about some of the issues in the case.

But the Sponsors assume (wrongly) that Plaintiffs' expert report is somehow the only evidence in the case, or that Plaintiffs' entire case rests solely on that report. To the contrary, Plaintiffs' June 3 "Notice Regarding Categories of Defects and Legal Basis for Rejection of 22AKHE Signatures and Petition Booklets" explicitly states that Plaintiffs' expert was not provided with and did not review any of the direct or testimonial evidence related to Plaintiffs' claims prior to finalizing his report.[19] And now that Plaintiffs' expert has seen some of the evidence and deposition testimony, his opinions have only been strengthened.[20]

In other words, Plaintiffs' expert report supports their case in chief, but of course it is not the entirety of Plaintiffs' case. As in many cases, expert testimony is just one star in the constellation of evidence that Plaintiffs will proffer at trial to inform the Court's

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18 *See generally* Plaintiffs' Trial Brief.

19 Plaintiffs' Notice at 2 (Emphasis added).

20 *See generally* Plaintiffs' Trial Brief.

own independent and duly-considered factual conclusions regarding the validity of 22AKHE signatures. Whether a particular signature or booklet is valid does not rise and fall on an expert report or even expert testimony at trial. The validity of an individual signature or booklet is this Court's decision to make, after hearing and weighing *all* the evidence in the case.[21]

Again, Plaintiffs agree with the Sponsors that it is "Plaintiffs' burden to prove that actual irregularities or fraud did in fact occur."[22] That is precisely what Plaintiffs intend, by a preponderance of the evidence, to do. As discussed further below, this Court can make that determination after hearing evidence, including expert testimony, with or without the help of that testimony. Plaintiffs' tiresome dissection of the expert report is a fair way to impeach that report and attack the expert's credibility, but the Sponsors must do that at trial — not at the summary judgment stage when the Alaska Supreme Court explicitly condemns making "trial-like credibility determinations" or weighing substantive evidence. This is especially true where Plaintiffs have explicitly averred the existence of voluminous testimony (primarily testimony by the Sponsors' *own*

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[21] The expert's deposition transcript, which the Sponsors attempted to file as a Supplement to their Motion on June 14, 2024, does not change this. If, after hearing the evidence at trial, this Court were to accept all of Plaintiffs' challenges to booklets, circulators, and signatures — both those implicated by direct evidence *and* those implicated by Plaintiffs' expert — there would be twice as many signatures invalidated as are needed to disqualify 22AKHE.

[22] Sponsors' Renewed Motion at 5.

circulators) and other direct evidence that their expert did not have the opportunity to consider in crafting his report.

In short, the qualifications and credibility of an expert witness are evidence for trial; i.e., the opposite of a valid basis for summary judgment. Plaintiffs are entitled to present their full case at trial, a case which includes — but does not rest solely upon — their expert's report. Plaintiffs have clearly presented "more than a scintilla" of non-conclusory, credible evidence of improper signature gathering, all of which a reasonable person could believe and all of which, together, could be dispositive on the issue of whether 22AKHE was validly certified for the ballot. In other words, Plaintiffs have asserted genuine issues of material fact regarding the validity of 22AKHE signatures.

Accordingly, this Court should construe all facts and assertions in Plaintiffs' favor, deny the Sponsors' Renewed Motion for Summary Judgment, and hold a trial to weigh the evidence presented.

B. This Court Has The Authority To Invalidate Individual Signatures And Petition Booklets On An Evidentiary Basis, And Its Factual Findings Could Disqualify 22AKHE.

The Sponsors' Renewed Motion for Summary Judgment repeatedly asserts that their petition circulators' conduct was "perfectly legal." Where the Sponsors concede that their conduct was not "perfectly legal," they suggest instead that the statutory framework governing the custody and control of petition booklets is a mere series of technicalities that should be bent to the breaking point of their very meaning. The Sponsors burnish themselves and their circulators as naïve and innocent citizens: "sweet,

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elderly" commonfolk simply trying to help Alaskans access the franchise in the face of Plaintiffs' "lawfare" and unwarranted "attack" on their constitutional rights.[23] Unfortunately, there is a vast gulf between the Sponsors' portrayal of victimhood and virtue, and the evidentiary reality of lawbreaking, both intentional and not, in this case.[24] That gulf will be bridged at trial, not on motion practice.[25] For the purposes of this motion, it suffices to reiterate that this Court has both the power and the duty to evaluate the evidence of law-breaking that culminated in the improper certification of 22AKHE.

This is a rare and unusual case. Indeed, it appears that only once before has a case involving any level of evidentiary scrutiny of ballot measure signatures reached the Alaska Supreme Court. This belies the Sponsors' prediction that a trial in this case sends Alaska down a slippery slope to onerous lawsuits nitpicking every signature on every ballot measure through a lengthy trial proceeding.[26] That one case, *Northwest Cruiseship Association of Alaska Inc. et al. v. State*,[27] offers Alaska's only guidance on how the Supreme Court might approach factual findings regarding ballot measure petitions. Even that case was decided on summary judgment motions, because — unlike here — "all

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23 Sponsors' Renewed Motion at 32, 49.

24 *See generally* Plaintiffs' Trial Brief.

25 For example, as to the petition booklets notarized by Mr. Ransum, this Court can evaluate Mr. Ransum's credibility at trial to determine whether he did, in fact, notarize all of the booklets that he claims to have notarized.

26 Sponsors' Renewed Motion at 50.

27 145 P.3d 573 (Alaska 2006).

parties agree[d] that there [were] no genuine issues of material fact," just disagreement on the legal significance of undisputed facts.[28]

Because of Alaska's relative youth in statehood, our courts frequently confront issues of first impression and look to other jurisdictions for guidance. In the initiative and other contexts, the Alaska Supreme Court will "look to provisions from other jurisdictions that are similar to the Alaska statutory or constitutional provision at issue."[29] Where "[c]ourts in other jurisdictions have considered problems similar to those which [the Court] confront[s]" in a given case, "[i]t is instructive, though not determinative, to look to the case law of other jurisdictions as an aid to interpretation."[30] *Northwest Cruiseship*, read together with case law from around the country, demonstrates that an evidentiary review and rulings on individual signatures, whole petition booklets, and the total behavior of specific circulators, is an appropriate exercise of this Court's jurisdiction.

1. This Court may invalidate individual signatures.

Numerous statutes in the Alaska Election Code govern the preparation and circulation of initiative petition booklets, all of which the Court is familiar with at this point. Relevant here is the "statement of warning" in AS 15.45.100 that each petition

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28 *Id*. at 580.

29 *Thomas v. Bailey*, 595 P.2d 1 (Alaska 1979) at n. 6.

30 *Kenai Peninsula Borough School Dist. V. Kenai Peninsula Ed. Ass'n,* 572 P.2d 416, 421 (Alaska 1977).

must state that "a person who signs a name other than the person's own on the petition, or who knowingly signs more than once for the same proposition at one election, or who signs the petition when knowingly not a qualified voter, is guilty of a class B misdemeanor." Per AS 15.45.090, there must be on each booklet "sufficient space for the printed name, a numerical identifier, the signature, the date of signature, and the address of each person signing the petition" as well as "other specifications prescribed by the lieutenant governor to ensure proper handling and control." There is the requirement in AS 15.45.110 that petitions may be circulated throughout the state only in "person," meaning "a natural person."[31] And there is the requirement in AS 15.45.120 that "any qualified voter may subscribe to the petition by printing the voter's name, a numerical identifier, and an address and by dating the signature," along with the accompanying provision that "a person who has signed the initiative petition may withdraw the person's name only by giving written notice to the lieutenant governor before the date the petition is filed."

Critically, here, there is also the requirement in AS 15.45.130 that "each petition shall be certified by an affidavit by the person who personally circulated the petition." In relevant part, "[t]he affidavit must state in substance (1) that the person signing the affidavit meets the residency, age, and citizenship qualifications for circulating a petition; (2) that the person is the only circulator of that petition; (3) that the signatures were made

[31] *See* AS 15.45.110(f)(3).

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in the circulator's actual presence; (4) that, to the best of the circulator's knowledge, the signatures are the signatures of the persons whose names they purport to be; and (5) that, to the best of the circulator's knowledge, the signatures are of persons who were qualified voters on the date of signature."

Unlike other statutory requirements invalidated by the Alaska Supreme Court (such as the $1 per signature limit or the circulator residency requirement), the requirements at issue here are: (1) still valid and on the books; and (2) the type of requirements that serve the important state interest of ensuring the authenticity of signatures and integrity of the petition process. If these statutory requirements carry any meaning at all, they must be enforceable as something beyond mere technicalities. Otherwise, anyone could circulate a petition booklet under any circumstances, and simply submit those signatures to the Division without worrying at all about whether the circulator was qualified, whether the booklet was under statutory custody and control, or whether the voters were qualified to sign it. Taken to its logical conclusion, the Sponsors argue that they could essentially take a random spool of paper, collect numerous signatures from passersby, plunk them down at the Division's reception area, and demand that legislation be printed on an election ballot "because of the Constitution."[32] That is

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[32] The First Amendment cannot be used to shield fraud. Voters have a First Amendment right to sign a ballot measure petition; they do not have a First Amendment right to do so fraudulently, and the Sponsors do not have a First Amendment right to commit fraud in the circulation, notarization, and handling of petition booklets. *See, e.g., League of Women Voters of Kansas v. Schwab*, 539 P.3d 1022, 1030) ("fraud is one category of speech that is well-established as being beyond the scope of First Amendment

essentially what the Sponsors are advocating for in their Renewed Motion, and it cannot be what the legislature intended in enacting these very detailed requirements.

Northwest Cruiseship offers a very different view than the Sponsors do. In accepting undated signatures of qualified voters, the Court noted that "there was no statutory requirement" that each signature be dated, but emphasized that the Court's "*analysis would be different had the legislature affirmatively required the signatures to be individually dated*." [33] This suggests, of course, that the Alaska Supreme Court does not view this universe of statutes as a meaningless set of technicalities; rather the Supreme Court sees the requirements in AS 15.45.130 as affirmative directives from the legislature to be effectuated through judicial enforcement.

As noted above, the legislature has "affirmatively required" certain things of voter signatures — things that Plaintiffs allege are absent or defective to the point that 22AKHE does not qualify for the ballot. Specifically, Plaintiffs have alleged that there are signatures with facial deficiencies in violation of AS 15.45.090 and withdrawals of signatures. Alleged defects include but are not limited to signatures: (1) dated after the notarization/self-certification of the booklet; (2) with a missing or incorrect voter identifier; (3) lacking the required date; and (4) that were visibly crossed out (which could

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protection"); *State v. Francis*, 882 N.W.2d 270, 277 (ND 2016). (the State has a "compelling interest in protecting the sanctity of voting process and curb[ing] election fraud," which when narrowly tailored to that purpose does not violate the First Amendment).

33 *Northwest Cruiseship*, 145 P.3d at 577 (Emphasis added).

indicate a voter's intent to remove). Under *Northwest Cruiseship*, it is entirely appropriate for this Court to determine whether the Division "fully complied with what the statutes and its own regulations" governing the counting of these individual signatures.[34] In this case, with sufficient signatures, booklets, and circulators in dispute to reverse certification,[35] that determination must happen after hearing evidence.

2. This Court may invalidate entire petition booklets based on improper handling, circulation, or certification.

If this Court has the power to enforce individual statutory signature requirements, there is nothing to suggest that it lacks the power to do the same for entire booklets based on improper handling in violation of state law. Of course, this Court will need evidence to support that enforcement, but it is a power that this Court does have. And although it may seem like a draconian remedy to disqualify booklets based on circulator malfeasance or nonfeasance, it is the only logical civil remedy where the petition circulation statutes are broken or disregarded. Many states — including those that share Alaska's same constitutional reverence for citizen access to the ballot initiative — have done the same.

The Alaska Supreme Court has held that the State has a compelling interest in ensuring the integrity of the election process and preventing fraud in ballot measure petition drives.[36] To be clear, this case does not involve the sort of "trivial rule violations"

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34 *Id*.

35 *See generally* Plaintiffs' Trial Brief.

36 *See e.g.*, *RDC v. Vote Yes For Alaska's Fair Share*, 494 P.3d 541, 553-54 (Alaska 2021) (The Court didn't have the opportunity to address the issue of whether false

examined in *Northwest Cruiseship*. As stated in Plaintiffs' previously filed Notice, and in Plaintiffs' trial brief, Plaintiffs have direct evidence that dozens of petition booklets were materially and unlawfully mishandled by being left unmonitored or shared by multiple circulators.[37] Although the Sponsors baselessly suggest that this conduct was "perfectly legal," that is a determination for this Court to make after hearing the specific facts of the handling of specific booklets by the Sponsors' circulators.

Plaintiffs have alleged that individual circulators: (1) left their booklets unmonitored during signature gathering; (2) certified petition booklets which they did not actually personally circulate; (3) shared booklets with other circulators before certifying them; (4) failed to witness signatures or be in the actual presence of subscribers; and/or (5) persisted in engaging in such practices after multiple direct warnings from the Division following numerous complaints.

As noted above, AS 15.45.130 affirmatively requires the opposite of this conduct, and *Northwest Cruiseship* directs courts to enforce affirmative legislative directives. Indeed, the Supreme Court in that case indicated that signatures not made in the actual presence of the circulator should be discarded. Although the number of

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statements by circulators that they followed the law would disqualify petitions, because the underlying law was held to be *sui generis* unconstitutional).

37 *See generally* Plaintiffs' Trial Brief.

signatures at issue there was not dispositive, the Court cited with approval the superior court's order on this factual issue.[38]

Again, the evidence in *Northwest Cruiseship* did not begin to approach the scale of misconduct alleged here.[39] The only issue regarding petition booklets in that case was the "self-certifications" of petition booklets by their circulators, and a missing detail on a notary line. The plaintiffs in *Northwest Cruiseship* were trying to invalidate booklets on true technicalities, which did not actually appear in statute: a lack of city stated for the notary, and self-certification despite the ample availability of notaries in Anchorage.[40] Plaintiffs here are not, as Sponsors suggest, asking this court to undermine democracy because of minor technical issues or to "resolve doubts as to technical deficiencies or failure to comply with the exact procedural requirements" against the Alaskan voters' right to ballot access. Rather, Plaintiffs have identified a sprawling pattern of lawbreaking amounting to fraud at worst and neglect at best, which was endemic to the entire 22AKHE signature collection campaign.[41] These violations collectively "impede the purpose of the certification requirement,"[42] which is something that Plaintiffs intend to prove at trial.

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38 145 P.3d 573, 588-89 (Alaska 2006); Superior Court Order on Summary Judgment, Feb. 9, 2006, 3AN-05-04406CI, J. Morse, included in the opinion as Appendix A.

39 *See generally* Plaintiffs' Trial Brief.

40 *Northwest Cruiseship*, 145 P.3d at 577.

41 *See generally* Plaintiffs' Trial Brief.

42 *Northwest Cruiseship*, 145 P.3d at 577.

In the meantime, it is helpful for this Court to look to other jurisdictions to see how they have dealt with issues of pervasive mistakes and/or malfeasance in initiative signature collection campaigns. Although the Alaska Supreme Court has not yet had the opportunity to address this specific issue, it is clear that a trial court has the power to invalidate entire petition booklets or signature gathering campaigns.

For example, in *Zaiser v. Jaeger*, the North Dakota Supreme Court specifically held that any presumption that signatures are valid is overcome once circulators admitted to false affidavits, invalidating all signatures within a booklet.[43] Critically, North Dakota has a nearly identical constitutional approach to the ballot initiative, which the North Dakota Supreme Court stated in *Zaiser* as follows: "The people's power to initiate legislation is a fundamental right, and we construe constitutional and statutory provisions liberally in favor of the people's exercise of their power."[44]

Despite this constitutional language, the *Zaiser* Court nonetheless upheld the State's decision to reject petitions, which lead to the measure not qualifying for ballot placement, because it was proven that circulators had forged some signatures and falsely certified booklets. The sponsors in *Zaiser* argued that the booklets contained enough valid signatures to qualify, and that the State should not disqualify entire booklets as invalid when they contain both some valid signatures and some invalid ones. But North

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43 822 N.W.2d 472 (N.D. 2012)

44 *Id*. at 476 (Emphasis added).

Dakota adopted the Arizona Supreme Court's reasoning in *Brousseau v. Fitzgerald*,[45] holding that "statutory circulation procedures are designed to reduce the number of erroneous signatures, guard against misrepresentations, and confirm that signatures were obtained according to law."[46] The *Zaiser* Court noted that "there is a real difference between mere omissions or irregularities and fraud . . . [therefore], petitions containing false certifications by circulators are void, and the signatures on such petitions may not be considered in determining the sufficiency of the number of signatures to qualify for placement on the ballot."[47]

Like North Dakota, Maine and Montana also view access to the initiative the same way Alaska does: as a fundamental right. In Maine, "circulation of direct initiative petitions is core political speech, and any state regulation of the initiative process must be narrowly tailored to carry out a compelling state purpose."[48] And yet, in Maine, "it is

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45 65 P.2d 713 (Ariz. 1984).

46 *Zaiser*, 822 N.W.2d at 480-81.

47 *Id*. *See also* additional cases in which courts concluded that a false certification invalidates all signatures within a petition booklet; *Sturdy v. Hall*, 201 Ark. 38, 143 S.W.2d 547, 550-52 (Ark. 1940); *Citizens Comm. v. District of Columbia Bd. of Elections and Ethics*, 860 A.2d 813, 816-17 (D.C. 2004); *Montanans for Justice v. State ex rel. McGrath*, 2006 MT 277, 83-84, 334 Mont. 237, 146 P.3d 759; *Taxpayers Action Network v. Secretary of State*, 2002 ME 64, 18-19, 795 A.2d 75; *McCaskey v. Kirchoff*, 56 N.J. Super. 178, 152 A.2d 140, 142-43 (N.J. Super. Ct. App. Div. 1959); *In re Glazier*, 474 Pa. 251, 378 A.2d 314, 315-16 (Penn. 1977); *State ex rel. Gongwer v. Graves*, 90 Ohio St. 311, 107 N.E. 1018, 1022 (Ohio 1913).

48 *Maine Taxpayers Action Network v. Sec'y of State*, 795 A.2d 75, 78 (Maine 2002).

well established that the Secretary has the authority to invalidate petitions *in toto* when the circulator has not complied with statutory or constitutional requirements."[49]

Similarly, in Montana, access to the initiative "is a unique right" granted by that state's constitution, and it is the courts' "judicial duty to preserve that right wherever possible and to decline to interfere unless it appears to be absolutely essential."[50] And yet again, the Montana Supreme Court affirmed the decertification of two constitutional amendments and a third initiative on the grounds that three unlawful practices — including certification of signatures that were not signed in the presence of the affiant — constituted a "pervasive and general pattern and practice of fraud and conscious circumvention of procedural safeguards" which justified invalidating all signatures in all booklets submitted. The initiative proponents argued that the court should not have grouped together valid and invalid signatures, but instead should have considered the signatures on an individual basis. But the court rejected this argument, recognizing that it is "impossible to precisely identify which certified signatures were untainted by [the] Proponents' signature gatherers' various deceptive practices," and affirmed the trial court's invalidation of all signatures included with the illegally gathered signatures.[51]

Although not tested in Alaska in the initiative context, where a circulator is proven to have falsely certified their circulation of one or more petitions, all petitions

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49 *Id*. at 80.

50 *Montanans For Justice v. State,* 146 P.3d 759, 775 (Mont. 2006)

51 See generally, *id*.

from that individual circulator could certainly be disqualified under the principle of "*falsus in uno, falsus in omnibus*," which roughly translates to "false in one thing, false in everything."[52] Doing so would be consistent with decisions from other jurisdictions, including North Dakota, Maine, and Montana.

Finally, Courts in other jurisdictions have concluded that where defective and illegal procedures in a petition campaign are pervasive, intentional, and/or it is impossible to determine which signatures were gathered legally and which were not, all signatures gathered in support of an entire petition can be discarded.[53] Plaintiffs have alleged that

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[52] *See e.g., Love v. State*, 457 P.2d 622, 629 (Alaska 1969) ("the prosecution … could argue, under the maxim *falsus in uno, falsus in omnibus*, that the testimony … should be disbelieved in its entirety."

[53] *Lebowitz v. Barnes*, 221 N.Y.S.2d 703, 705–06 (Sup. Ct. 1961) (In case addressing a candidate nominating petition, not an initiative, the court granted a motion to invalidate a candidate nominating petition for violations of state law requiring the subscribing witness to personally witness each signature. The court found that in "many of these instances, signatures were solicited on the same sheet by several different persons, yet it was subscribed by a person who had not personally known or solicited all of those signatures." As a result of these defects, the court invalidated the entire petition without itemizing which particular signatures were invalid due to the violations. As the court explained: "The court, as a matter of fact, finds gross deflections in the petition, too numerous and unnecessary to set forth, and so permeated with irregularities, rendering it invalid according to the provisions of the Election Law. The pattern is so definite and clear that to condone same would only serve to make a mockery of the Election Law. The record establishes wholesale disregard of the statutory requirement, engendered by carelessness or a desire to avoid the inconvenience associated with circulating petitions. While the courts feel that nothing should be done to discourage the circulation of independent petitions, it must be done legally."); *McCaskey v. Kirchoff*, 152 A.2d 140 (1959) (In another candidate nominating petition case, the Superior Court of New Jersey held that it should not sit as "a bookkeeper rather than a justice, to apply a rule of arithmetic rather than a principle of equity," and so the court invalidated entire nomination petitions where those seeking nominations themselves irregularly certified

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some circulators for 22AKHE "circulated" an unreasonable or impossible number of petition booklets simultaneously, patterns that indicate either that the petitions were abandoned and not supervised while signatures were gathered, that petitions were being shared among several circulators, and/or that the booklets were simply certified by individuals other than the person who actually circulated them.[54] Any of these patterns could justify a ruling that no petitions certified by these circulators identified can be counted.

As detailed more fully in Plaintiffs' Trial Brief, the evidence at trial will lay out a pervasive pattern and practice of mishandling petitions. Plaintiffs' Trial Brief also shows a conscious circumvention of procedural safeguards by the leader of the signature gathering campaign, who also happened to be the circulators with the most types and occurrences of unlawful and/or fraudulent signature gathering activities, and that these violations continued despite repeated contacts and warnings from the Division. These patterns potentially indicate that no petitions authenticated by these individuals can be counted, and/or that — as in prior cases from other jurisdictions — the entire 22AKHE signature petition campaign could be rejected.

None of these allegations are appropriate for resolution on summary judgment. This Court is going to be faced with the evidentiary equivalent of an iceberg — large and

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petitions which included forged signatures and a failure to personally witness all the signatures).

54 *See generally* Plaintiffs' Trial Brief.

largely undeniable direct confirmation of mishandled petitions. Based on that evidence, and the well-grounded conclusions in Plaintiffs' expert report, the Court will then have to decide which theory is more credible.

The Sponsors' theory is that the widespread direct evidence is the absolute limit of all lawbreaking in this case (and that this lawbreaking should not disqualify *any* petitions). In contrast, Plaintiffs' theory is that the correlations and substantiations between the evidence and the expert report demonstrate a justification for broader disqualification of signatures.[55] In sum, this Court will need to decide whether the Sponsors' theory that this "iceberg" of evidence somehow hovers over the ocean is correct, or whether the Plaintiffs' (more logical) theory — rooted in expert testimony — is that additional lawbreaking occurred out of sight and below the water line. Deciding which theory to believe will involve a fact-intensive, credibility-heavy analysis that could change the outcome of certification, and which requires this Court to make factual findings to resolve.

III. CONCLUSION

For the foregoing reasons, the Court should DENY Sponsors' Renewed Motion for Summary Judgment.

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[55] *See Nageak v. Mallott*, 426 P.3d 930 (2018) (considering expert testimony to determine the possible scope of the impact of malconduct on the outcome of an election).

DATED this 17th day of June 2024.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via email on June 17, 2024, on the following:

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