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Clerk of the Trial Courts
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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' CLOSING
ARGUMENT

Case No.: 3AN-24-05615CI

I. INTRODUCTION

Having resolved the first of two central issues in this case — whether the Division of Elections could allow the Sponsors of 22AKHE to “cure” defective petition booklets after filing and after relevant deadlines — this Court is now solely faced with resolving contested facts that primarily concern irrefutable violations of the law during the Sponsors’ petition signature drive. Apart from just two contested signatures involving

the Division's review, Plaintiffs' allegations relate to the Sponsors' circulators' unlawful behavior, both intentional and not.

The Plaintiffs' complaint and their retained expert witness identify pervasive violations and irregularities in the Sponsors' 22AKHE signature campaign. The testimony and other evidence, both in depositions and at trial, confirmed and even expanded the scope of these issues.

All of the relevant evidence and its significance is discussed in detail in Plaintiffs' Proposed Findings of Fact and Conclusions of Law.¹ This filing is intended to summarize the reasons why the weight and reliability of that evidence is fatal to 22AKHE's qualification for the ballot.

II. DISCUSSION

The sponsors of a ballot measure are entitled to a presumption of regularity in their signature-gathering activities. Stated differently, sponsors are not normally required to affirmatively prove that they gathered signatures in compliance with the law.

This presumption of validity is best illustrated by the fact that the Division largely reviews only the "four corners" of submitted petition booklets when determining whether a measure is properly filed. For example, even though the Division had received numerous complaints about the Sponsors' conduct in the 22AKHE signature campaign, a "four corners" review is precisely what the Division did here. Indeed, the Division took

¹ See generally Plaintiffs' Proposed Findings of Fact and Conclusions of Law (July 9, 2024).

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the circulator certifications in the Sponsors' petition booklets at face value — including for at least one petition booklet (0967; exhibit 2560) that the Division knew had been improperly left unattended at Tudor Bingo — and largely counted the vast majority of signatures submitted (absent facial defects).

But the sponsors' presumed validity of signature-gathering activities must be rebuttable. Otherwise, the legal requirements for petition signature gathering would not have any meaning. Challengers must be able to rebut the ordinary presumption of validity when they provide evidence (testimonial and/or direct) that the law was not followed. And when such evidence is presented, the burden shifts to the sponsors of an initiative to explain their conduct and that of their circulators.

Given the amount of evidence compiled by the Plaintiffs that implicates circulators responsible for nearly a quarter of the total signatures for 22AKHE, this Court should find that it is more likely than not that the measure lacks a sufficient number of lawfully-gathered signatures to qualify for the ballot.

The Plaintiffs anticipate that the Sponsors will make two main arguments in favor of 22AKHE's validity. First, the Sponsors will suggest that the circulators did not "intend" to break the law or have "nefarious" purposes in their lawbreaking (somehow rendering such lawbreaking irrelevant). And second, the Sponsors will argue that this Court must strictly limit its disqualifications to *only* the individual booklets or signatures that Plaintiffs have disqualified beyond all doubt. Neither of these arguments are availing.

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The Sponsors' first argument, as indirectly presented at trial and during depositions, appears to be that signatures cannot be excluded unless the Plaintiffs can prove that circulators had a specific intent to violate the law. But the legal requirements of petition signature-gathering are not contingent on a particular mental state. Plaintiffs need not prove the existence of a grand conspiracy; rather, Plaintiffs' burden is to present evidence showing that it is more likely than not that the legal requirements were not met.

Evidence presented at trial shows that some individuals indeed appeared to intentionally break the law related to Alaska's signature-gathering requirements, but at least some of the lawbreaking was the result of ignorance of the law and/or a lack of training by the Sponsors' leadership. Regardless of the individual intentions of the lawbreaking circulators, Plaintiffs have met their burden by demonstrating that — time and time again — 22AKHE booklets were circulated in a non-compliant manner in violation of the law.

22AKHE petition booklets were orphaned at businesses, shared amongst multiple circulators, and bore faulty notarizations. All of those categories of booklets with improperly-gathered signatures are just as defective; it does not matter whether the certifying circulators *intentionally* broke the law with a specific awareness of what the law requires. Accordingly, this Court must consider whether to exclude booklets (or all booklets from certain circulators) without regard for the mental state of any individual circulator. The only relevant inquiry is whether it is more likely than not that certain

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petition booklets were circulated in violation of the law, and whether certain individuals failed to follow the statutory requirements when circulating their booklets.

The Sponsors' second likely argument is also overcome by the evidence that Plaintiffs presented at trial. This evidence included an *unrebutted* expert opinion from John Costa, who was qualified as an expert in signature gathering and in signature and petition verification. Mr. Costa's testimony detailed how his careful and exhaustive review of the data from over 40,000 submitted signatures showed that over 11,000 of those signatures were gathered in a manner that raised grave concerns about whether certain circulators complied with the law. And after Mr. Costa reviewed the trial and deposition testimony in the case, his suspicions were heightened, and in many cases confirmed his suspicions entirely.

Based on this evidence, Mr. Costa's ultimate opinion is that it was more likely than not that non-compliant signature gathering methods were "endemic" to the entire 22AKHE petition drive, and that most of the circulators flagged should not have *any* of the booklets they certified counted towards the measure's validity. The Sponsors' likely argument that this Court can only disqualify booklets that are directly implicated by specific evidence (such as photos or videos) completely misses the mark. Although Mr. Costa's written expert report was based solely upon an analysis of the data, Mr. Costa's *testimony* considered both the testimony and evidence presented at trial, and confirmed that the issues he had previously documented based on the data alone were far more widespread.

Mr. Costa's un rebutted expert opinion testimony, complemented by the evidence presented at trial, shows that it is more likely than not that the Sponsors' petition drive was conducted significantly out of compliance with legal requirements. In particular, Mr. Costa's testimony shows that the core circulators implicated by the direct evidence of illegal signature-gathering were responsible for nearly a quarter of the signatures gathered for 22AKHE. This establishes that it is more likely than not that the petition lacked enough lawfully-gathered signatures to qualify for the ballot.

The evidence in this case shows the existence of a large "iceberg" of noncompliance. The Sponsors would have this Court believe that the tip of that iceberg is simply hovering over the ocean, and that there is nothing more to see. This argument defies logic, and is belied by the sheer volume of direct, testimonial, and expert opinion evidence marshalled by the Plaintiffs. On such a strong record, this Court has a sound factual basis to discard the entirety of the 22AKHE petition, or at a minimum invalidate all of the petition booklets certified by the circulators directly implicated in wrongdoing.

In either instance, 22AKHE should not be qualified for the ballot.

III. CONCLUSION

When the Sponsors of 22AKHE filed their petition, they were entitled to a presumption that their signatures were gathered in a lawful manner. But because of significant evidence showing: (1) rampant and widespread violations of the statutory circulator requirements (both intentional and not); (2) a failure by the Sponsors to properly train circulators; (3) lawbreaking by the leaders of the 22AKHE campaign; and

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(4) the continued promotion of locations known to be gathering signatures in violation of the law, the Sponsors' presumption of validity has been rebutted.

In response to Plaintiffs' evidence, the Sponsors failed to dispute many of the facts or provide any logical explanations. In other words, the Sponsors have failed to resuscitate their demonstrably defective signature campaign. Accordingly, this Court should enter an order disqualifying the impacted petition booklets and disqualifying 22AKHE from the ballot.

DATED this 9th day of July, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via email on July 9, 2024, on the following:

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