IN THE SUPREME COURT FOR THE STATE OF ALASKA

LA QUEN NÁAY ELIZABETH MEDICINE CROW, AMBER LEE, and KEVIN MCGEE, Appellants, v. DIRECTOR CAROL BEECHER, in her official capacity, LT. GOVERNOR NANCY DAHLSTROM, in her official capacity, the STATE OF ALASKA, DIVISION OF ELECTIONS, DR. ARTHUR MATTHIAS, PHILLIP IZON, and JAMIE R. DONLEY, Appellees.	)	Case No. S-19182 Trial Ct. No. 3AN-24-05615 CI

APPEAL FROM THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE
THE HONORABLE CHRISTINA RANKIN

BRIEF OF APPELLEES,
DR. ARTHUR MATHIAS, PHILLIP IZON, and JAMIE R. DONLEY

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STATUTORY PROVISIONS PRINCIPALLY RELIED UPON

Alaska Statute 15.45.130 provides:

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. The affidavit must state in substance

(1) that the person signing the affidavit meets the residency, age, and citizenship qualifications for circulating a petition under AS 15.45.105;
(2) that the person is the only circulator of that petition;
(3) that the signatures were made 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;
(5) that, to the best of the circulator's knowledge, the signatures are of persons who were qualified voters on the date of signature;
(6) that the circulator has not entered into an agreement with a person or organization in violation of AS 15.45.110(c);
(7) that the circulator has not violated AS 15.45.110(d) with respect to that petition; and
(8) whether the circulator has received payment or agreed to receive payment for the collection of signatures on the petition, and, if so, the name of each person or organization that has paid or agreed to pay the circulator for collection of signatures on the petition.

Alaska Statute 15.45.140 provides:

(a) The sponsors must file the initiative petition within one year from the time the sponsors received notice from the lieutenant governor that the petitions were ready for delivery to them. The petition may be filed with the lieutenant governor only if it meets all of the following requirements: it is signed by qualified voters

(1) equal in number to 10 percent of those who voted in the preceding general election;
(2) resident in at least three-fourths of the house districts of the state; and
(3) who, in each of the house districts described in (2) of this subsection, are equal in number to at least seven percent of those who voted in the preceding general election in the house district.

(b) If the petition is not filed within the one-year period provided for in (a) of this section, the petition has no force or effect.

Alaska Statute15.45.150 provides:

Within not more than 60 days of the date the petition was filed, the lieutenant governor shall review the petition and shall notify the initiative committee whether the petition was properly or improperly filed, and at which election the proposition shall be placed on the ballot.

Alaska Statute 15.45.160 provides:

The lieutenant governor shall notify the committee that the petition was improperly filed upon determining that

(1) there is an insufficient number of qualified subscribers;
(2) the subscribers were not resident in at least three-fourths of the house districts of the state; or
(3) there is an insufficient number of qualified subscribers from each of the house districts described in (2) of this section.

Alaska Statute 15.45.190 provides:

The lieutenant governor shall direct the director to place the ballot title and proposition on the election ballot of the first statewide general, special, special primary, or primary election that is held after

(1) the petition has been filed;
(2) a legislative session has convened and adjourned; and
(3) a period of 120 days has expired since the adjournment of the legislative session.

JURISDICTIONAL STATEMENT

The superior court issued its Order Re Summary Judgment on June 7, 2024. [Exc.283] The superior court issued its Final Judgment on July 24, 2024. [Exc. 314] Appellants timely filled their Notice of Appeal in this court and this court has jurisdiction to decide this appeal under AS 22.05.010.

LIST OF PARTIES

The Parties to this appeal are (a) the Appellants, La Quen Náay Elizabeth Medicine Crow, Amber Lee, and Kevin McGee; (b) the defendants Appellees, Director Carol Beecher, in her official capacity, lieutenant governor Nancy Dahlstrom, in her official capacity, and the State of Alaska, Division of Elections (collectively "the Division"), and (c) the intervenors Appellees, Dr. Arthur Mathias, Phillip Izon, and Jamie R. Donley (collectively "the Sponsors" of 22AKHE).

STATEMENT OF THE ISSUES

On January 12, 2024, the Sponsors timely filed their initiative petition with the Division as a single unit consistent with AS 15.45.130-15.45.140, and the Division acknowledged receipt of 641 petition booklets as part of a single unit. [Exc. 132] Pursuant to AS 15.45.150, the Sponsors' timely filing of their initiative petition triggered a sixty-day deadline for the Lt. Governor to review the petition and notify the initiative committee whether the petition was properly or improperly filed. The sixty-day deadline was scheduled to run out on March 12, 2024. Prior to that deadline and prior to counting the subscriptions contained in the booklets, the Division advised the Sponsors of certain minor defects in a few booklets and that the certifications on a total of 64 petition booklets had

been notarized by a notary with an expired commission that she had failed to renew. [Exc. 136-138] Pursuant to AS 15.45.130, before the expiration of the Lt. Governor's deadline and before the subscriptions in the booklets were counted, the Division returned booklets to the Sponsors so that they could correct the identified defects. As part of this, the Division returned the 60 booklets with expired notaries to the Sponsors so that they could correct them—by obtaining either substitute notaries or self-certifications and then returning the booklets to the Division on or before March 1, 2024, more than 10 days before the Lt. Governor's deadline under AS 15.45.150. [Exc. 136] The Sponsors retrieved the booklets and prior to March 1, 2024, returned nearly all of them corrected with either new notaries or self-certifications by the circulators. [Exc. 134-138]

The question presented is:

Whether AS 15.45.130, which states that "the lieutenant governor may not count subscriptions on petitions not properly certified at the time of filing or corrected before the subscriptions are counted," permits the Division to return individual petition booklets that were originally timely filed as part of a single unit to the sponsors for correction and subsequent return to the Division, prior to the Division's counting of subscriptions in the booklets within the allotted sixty-day timeframe established by AS 15.45.150?

STATEMENT OF THE CASE

A. FACTS.

The Sponsors filed a ballot measure application on November 23, 2022. [Exc. 119] The measure that the Sponsors filed, designated by the State of Alaska, Division of

Elections ("Division") as 22AKHE, is designed to eliminate open primaries and ranked choice voting, thus returning Alaska to the traditional election system it had throughout its statehood prior to the passage of Ballot Measure 2 in 2020.[1]

The Division certified the Sponsors' initiative application on January 20, 2023, [Exc. 119] and thereafter, issued petition booklets to the Sponsors on February 8, 2023. [Exc. 119] The deadline for the Sponsors to file their initiative petition with the Lt. Governor was one-year from when the Lt. Governor notified them that petitions were ready for delivery[2]—this deadline fell on February 7, 2024. [Exc. 126] Between February 8, 2023, and January 11, 2024, the Sponsors gathered 41,349 signatures from willing subscribers from all forty (40) of Alaska's House Districts [Exc. 140]—of these subscriptions the Division qualified 37,043 as having come from registered Alaskan voters who timely and correctly filled out their subscriptions. [Exc. 140] The required number of subscriptions under AS 15.45.150(a)(1) was only 26,705 [Exc. 140]—the Sponsors exceeded this total by 10,338. *Id.*

On January 12, 2024, the Sponsors timely filed their initiative petition as a single unit with the Division consistent with AS 15.45.130-15.45.140, and the Division acknowledged receipt of 641 petition booklets that had been filed as a single unit. [Exc. 132] Pursuant to AS 15.45.150, the Sponsors' timely filing of their initiative petition

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[1] Alaska's historical election system included political party primaries followed by a general election in which each registered voter was allowed to vote once for the single candidate of their choice for each elected office on the ballot. *See* https://www.elections.alaska.gov/petitions-and-ballot-measures/petition-status/.

[2] AS 15.45.140(a).

triggered a sixty-day deadline for the Lt. Governor to review the petition and notify the initiative committee whether the petition was properly or improperly filed. [Exc. 126] The sixty-day deadline for the Lt. Governor to complete her review of the timely filed initiative petition was March 12, 2024. [Exc. 126]

After the Lt. Governor began her review of the petition booklets but before subscriptions had been counted, between January 18, 2024, and February 21, 2024, consistent with AS 15.45.130, the Division returned a total of 64 petition booklets to the Sponsors for correction of the certifications in those booklets. [Exc. 122-125][3] This statute provides that "[i]n determining the sufficiency of the petition, the Lt. Governor may not count subscriptions on petitions not properly certified at the time of filing or corrected before the subscriptions are counted."[4]

Michaela Thompson, the Division of Elections Operations Manager, informed the Sponsors that they needed to return corrected petition booklets to the Division before the Division completed its signature review—the deadline for which was March 12, 2024. [Exc. 122-124] Eventually, Ms. Thompson shortened that time frame, requesting that the Sponsors correct and return booklets by March 1, 2024, before the 60-day deadline had expired—the shortened deadline was to permit the Division sufficient time to review the subscriptions in the returned petition booklets prior to the Lt. Governor's March 12, 2024,

[3] The certifications were incorrect for varying reasons. *Id.* A total of 60 booklets had been notarized by a notary, Ms. Kit Ritgers, who had failed to renew her notary commission after it had lapsed. [Exc. 123]

[4] AS 15.45.130.

deadline. [Exc. 123-124][5] The Sponsors complied with the Division's directions and returned a total of 62 of the 64 petition booklets to the Division with corrected certifications (including the booklets with a notarization from a lapsed notary), on or before February 23, 2024. [Exc. 124]

On March 8, 2024, the Division completed its review and counting of the subscriptions contained within the timely filed initiative petition booklets,[6] and notified the Sponsors that their petition was properly filed. [Exc. 126] The Division certified 37,043 qualified signatures contained on the petition booklets. [Exc. 140]

B. PROCEEDINGS BELOW.

The Appellants filed their complaint on April 2, 2024. [Exc. 1] In their complaint they alleged that the Division was not authorized to return petition booklets to the Sponsors as it had for correction. [Exc. 25-28] They asserted that despite the Sponsors' original timely filing of their petition on January 12, 2024, because the Division permitted booklets to be corrected prior to counting, the petition was untimely filed because corrected booklets were returned after the one-year deadline of February 7, 2024. [Exc. 28-31] The superior court granted the Sponsors intervention as of right into the case. [R. 251-252]

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[5] The Division never suggested to the Sponsors that they needed to return corrected booklets earlier than March 1, 2024. *Id*.

[6] The Sponsors originally timely filed the petition booklets with the Division as a single unit on January 12, 2024 [Exc. 132], and then had returned the 62 corrected booklets to the Division prior to its stated March 1, 2024, deadline [Exc. 124], a full 11 days prior to the Lt. Governor's March 12, 2024, deadline to complete her review of the initiative petition under AS 15.45.150.

The parties filed cross-motions for summary judgment on the issues related to the Division's permitting the Sponsors to correct certifications on petition booklets. [Exc. 141, 172, 199][7] On June 7, 2024, the superior court denied the Appellants motion and granted the state defendants' and the Sponsors' cross-motions. [Exc. 283-311] A bench trial on remaining issues was held between June 24 and July 3, 2024, and the court rejected the bulk of the Appellants' claims, finding them to be unsupported by either law or fact or both. [R. 733-827] The court found that "the proffered evidence at trial of limited circulator misconduct does not demonstrate widespread and pervasive fraud.… At most, the evidence presented demonstrated *limited* instances of circulators signing affidavits for booklets they did not circulate, sharing booklets amongst multiple circulators, and leaving petition booklets unmonitored…. [T]here is no evidence in this case that there was a pervasive pattern of intentional, knowing, and orchestrated misconduct to warrant invalidating the 22AKHE initiative petition *in toto*." [R. 733-827, Findings Nos. 498-499, 503 (emphasis in original)][8] On the substantial whole, the superior court ruled for the State Defendants

[7] The Sponsors also cross-moved for summary judgment related to the Appellants' challenges to the means and methods of petition circulation, but the superior court found genuine issues of material fact that required a trial, and those claims were eventually resolved at trial in favor of the Sponsors. [Exc. 314-315] Appellants have not appealed from the trial court's post-trial decision and Final Judgment.

[8] Appellants' overstated description of the superior court's findings and conclusions, just like their exaggerated claims throughout the case and at trial below, bear but a miniscule resemblance to reality. The "thousands of signatures" [Appellants Br. p. 12] that were ultimately rejected, amounted to just 2,462 [Exc. 417-419] out of the over 11,000 that Appellants had claimed needed to be rejected. [*See* R. 733-811, Findings 124, 126] The so-called "dozens of petition booklets" [Appellants Br. p. 12] that ultimately were rejected [R. 733-811, Finding 565], amounted to just 27 (barely over the number needed to justify the "s" pluralizing the word "dozen") out of the approximately 100 that the Appellants had claimed should be rejected.

and the Sponsors and entered Final Judgment accordingly, ruling that 22AKHE remains qualified for the November 2024 general election ballot. [Exc. 314-315]

STANDARD OF REVIEW

The court reviews questions of law, interpreting and applying constitutional and statutory provisions, *de novo*. *Kohlhaas v. State*, 518 P.3d 1095, 1103 (Alaska 2022).

ARGUMENT

I. CONSTITUTIONAL AND STATUTORY BACKDROP

Article XI, section 1, of the Alaska Constitution provides that "[t]he people may propose and enact laws by the initiative." The initiative process begins with at least one hundred qualified voters—known as the sponsors—signing an application, which includes the proposed bill, and filing it with the lieutenant governor.[9] The lieutenant governor may then certify the initiative application if she "finds it in proper form."[10] After the application has been certified, the lieutenant governor prepares petition booklets "containing a summary of the subject matter" of the initiative.[11] The sponsors then use circulators to gather and add signatures (subscriptions) from qualified voters (called subscribers) to the

[9] Alaska Const., art. 11, § 2; AS 15.45.030.

[10] Alaska Const., art. 11, § 2; AS 15.45.080 (an application may be denied certification if it is not confined to one subject, not substantially in the required form, or lacks qualified sponsors).

[11] Alaska Const., art. 11, § 3; AS 15.45.090.

petition booklets.[12] Circulators must certify certain things regarding their petition booklets by sworn affidavit.[13]

After gathering the requisite number of signatures,[14] the sponsors then file the petition with the lieutenant governor.[15] A petition must be filed within one year from the time that the lieutenant governor provided the sponsors notice that the petition was ready for delivery—a late filed petition is insufficient.[16] After the petition is filed, the Lt. Governor has 60 days to review it.[17] Under AS 15.45.150 the Lt. Governor "shall review the petition and shall notify the initiative committee whether the petition was properly or improperly filed."[18] After the Lt. Governor certifies an initiative as having been properly filed, the Constitution sets the timing for when the lieutenant governor may place the initiative onto the ballot[19]—specifically, the lieutenant governor is to place the initiative

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12 AS 15.45.105-.120; AS 15.80.010(38) (providing that a "'signature' or 'subscription' includes a mark intended as a signature or subscription").

13 AS 15.45.130. These sworn affidavits are called "certification affidavits," and are located on the last page of each petition booklet. There are two methods by which a circulator may authenticate their certification affidavit. First, a notary public can notarize the affidavit. Second, the circulator may complete a "self-certification" by swearing "under penalty of perjury" that the certification affidavit is accurate. *See North West Cruiseship Ass'n of Alaska v. State, Office of Lt. Governor*, 145 P.3d 573, 577-578 (Alaska 2006); AS 09.63.020.

14 The requisite number of signatures is set forth in both the Constitution and statute. *See* Alaska Const., art. 11, § 3; AS 15.45.140(a)(1)-(3).

15 AS 15.45.150-.160.

16 AS 15.45.140(a). In this case the deadline for the Sponsors to file the petition was February 7, 2024. [Exc. 126]

17 AS 15.45.150.

18 A petition is improperly filed if (1) there is an insufficient number of qualified subscribers; (2) the subscribers were not resident in at least three-fourths of the house districts of the state; or (3) there is an insufficient number of qualified subscribers from three-fourths of the house districts. AS 15.45.160.

19 *See* Alaska Const., art. 11, § 4.

on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session.[20]

The Sponsors initiative petition was timely filed on January 12, 2024, as a single unit prior to the start of the 2024 legislative session. During her review, the Lt. Governor discovered latent defects in certain circulator certifications (principally a lapsed and unrenewed commission for one notary) [Exc. 136] and pursuant to the express language of AS 15.45.130—and consistent with this court's repeated direction to interpret and apply the initiative statutes permissively to allow the people to engage in self-governance[21]—permitted those technical deficiencies to be corrected "before the subscriptions are counted."[22]

II. THE DIVISION DID NOT VIOLATE ITS OWN STATUTES AND REGULATIONS DURING THE PETITION FILING REVIEW PROCESS.

Appellants ignore the fact that the Sponsors filed their petition as a single unit (all 641 petition booklets) on January 12, 2024, twenty-six days prior to the one-year deadline of February 7, 2024, and four days prior to the start of the 2024 legislative session on January 16, 2024. The Sponsors' filing was timely and other than a few booklets was in a patently correct form. Nonetheless, Appellants repeatedly assert that the Sponsors filed a

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[20] Alaska Const., art. 11, § 4; AS 15.45.190.

[21] This court has repeatedly held that courts are to "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.'" *North West*, 145 P.3d at 577, 586; *also Boucher v. Engstrom*, 528 P.2d 456, 462 (Alaska 1974). Courts are to resolve "doubts as to technical deficiencies or failure to comply with the exact procedural requirements" of the initiative statutes, "in favor of the accomplishment of that purpose." *North West*, 145 P.3d at 577.

[22] AS 15.45.130.

"patently" defective petition because some 60 booklets, unknown to the Sponsors and the Division, had been notarized by a notary who had allowed her notary commission to lapse without renewal. Appellants arguments strip the word "patent" of all meaning—the word "patent" in common English means something that is easily recognizable or obvious.[23]

The defective notarizations here were anything but easily recognizable or obvious. Instead, they were latent defects—defects that existed but were not manifest or evident, but instead hidden or concealed.[24] The only way that the lapsed notary commission could be and was discovered, was for the Lt. Governor to check her records regarding current notaries. Even though the **latent** defects in the notarizations could only be, and were only, discovered around January 26, 2024 [Exc. 136] when the Lt. Governor checked notary records—there is no evidence in this case that the Sponsors or the Division had advance notice of the lapsed notary commission[25]—Appellants conveniently latch onto the timing of the discovery of these hidden defects (January 26, 2024) and argue that the 60 booklets

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[23] *See* Oxford Dictionary, https://www.bing.com/search?pglt=41&q=definition+of+patent&cvid=d529ab15e46642ed8987980c09e40807&gs_lcrp=EgZjaHJvbWUyBggAEEUYOTIGCAEQABhAMgYIAhAAGEAyBggDEAAYQDIGCAQQABhAMgYIBRAAGEAyBggGEAAYQDIGCAcQABhAMgYICBAAGEDSAQg0NzI5ajBqMagCCLACA&FORM=ANNTA1&PC=HCTS.

[24] *See* Oxford Dictionay, https://www.bing.com/search?q=define+latent&FORM=DCTSRC.

[25] Throughout this case, Appellants have displayed a distasteful practice of pouring forth baseless allegations of fraud and intentional criminality at the Sponsors and their over 400 inexperienced, citizen volunteer circulators, only to ultimately have the evidence-barren nature of their assertions exposed at trial. [*See* R. 733-827, Findings Nos. 498-499, 503]. There is no evidence in this case—none—that the notary, Ms. Kit Ritgers, was anything other than simply negligent when she forgot to renew her notary commission. There is no evidence in this case—none—that the Sponsors knew of Ms. Ritgers lapsed notary commission prior to being informed by the Division on January 26, 2024.

(calling them "unnotarized" booklets with "uncertified" signatures, as if the Sponsors had not in good faith acquired and relied upon the notarizations)[26] render the 22AKHE petition late on all counts and uncorrectable.

As demonstrated below, the Appellants' arguments are incorrect and should be rejected. The controlling statute, AS 15.45.130, expressly allows the correction of certifications after the sponsors file their petition and "before the subscriptions are counted." This correction period necessarily falls during the 60-day period between the time when the petition is timely filed (up to one-year after petition booklets are made available (AS 15.45.140(a)), and when the Lt. Governor completes her counting of subscriptions. AS 15.45.150.

Nothing about having the correction of latently defective certifications occur after the convening of a legislative session—provided the petition was originally filed before the legislature convened—interferes with the purpose of the deadline related to the commencement and adjournment of a legislative session. The purpose of that deadline (and the placement of the initiative on a statewide ballot at least 120-days after the legislature convenes) as set forth in Alaska Const. Art. 11, § 4 and AS 15.45.190, is to give the legislature an opportunity to consider the initiative and to enact substantially similar legislation if it so chooses.[27]

In *Yute Air*, the initiative challengers insisted that for an initiative to meet the legislative session deadline (Alaska Const. Art. 11, § 4; AS 15.45.190) the Lt. Governor

[26] Appellants Br. pp. 30-40.
[27] *See Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173, 1178 (Alaska 1985).

had to finish verifying signatures before the legislature convened. [28] This court rejected the argument, holding that "[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. It suffices for all practical purposes that a facially valid initiative be filed."[29] This court concluded "that actual filing of a facially valid initiative suffices to invoke th[e] safeguard" afforded by requiring the initiative to be filed before a complete legislative session.

Thus, a petition is deemed "filed" at the time of initial submission. Because AS 15.45.140 and AS 15.45.190 both require the petition to be "filed" (not "certified") by certain dates, the Division's processes to allow sponsors to cure defects and return a booklet "so long as it is received before the division completes its review of signatures," is supported by the plain meaning of the applicable statutes and by the court's reasoning in *Yute Air.* The original timely filing of 22AKHE as a single unit, gave the Alaska legislature ample notice of the initiative and its opportunity to consider substantially similar legislation if it so desired. The subsequent correction of certifications on petition booklets changed nothing in this regard.

[28] *Yute Air*, 698 P.2d at 1177-1179.
[29] *Id*. at 1179.

A. The Division May Return Individual Petition Booklets To Initiative Sponsors to Correct Certification Affidavit Errors After The Petition Is Filed, But Before The Division Is Done Counting Subscriptions.

1. AS 15.45.130 Permits The Correction of Certifications Prior to The Counting of Subscriptions

Appellants challenge the Division's decision to allow the Sponsors to correct errors in certification affidavits on petition booklets and then to return those booklets to the Division for counting. The relevant statute is AS 15.45.130, which provides, in part, that:

> 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.*[30]

Appellants' arguments ignore proper grammar and impermissibly attempt to rewrite the statute to eliminate the conjunctive "or" between the two phrases "properly certified at the time of filing" and "corrected before the subscriptions are counted." Or they simply attempt to erase the part of the statute that permits the correction of certifications from the statutes entirely. But rewriting or erasing part of the statute is not permissible.

"Statutory interpretation in Alaska begins with the plain meaning of the statute's text."[31] This court applies a "sliding scale approach to statutory interpretation," under which "'the plainer the statutory language is, the more convincing the evidence of contrary

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30 AS 15.45.130 (emphasis added).

31 *Phillips v. Bremner-Phillips*, 477 P.3d 626, 631-632 (Alaska 2020); *Ward v. State, Dep't of Pub Safety*, 288 P.3d 94, 98 (Alaska 2012).

legislative purpose or intent must be.'"[32] Thus, "[w]here a statute's meaning appears clear and unambiguous, ... the party asserting a different meaning bears a correspondingly heavy burden of demonstrating contrary legislative intent."[33] Courts do not rewrite statutes—not even when legislative history suggests that the legislature may have made a mistake in drafting.[34]

The Alaska Supreme Court has "repeatedly stated that unless words have acquired a peculiar meaning, by virtue of statutory definition or judicial construction, they are to be construed in accordance with their common usage."[35] Common dictionary definitions and common rules of grammar control the interpretation of Alaska statutes absent compelling evidence to the contrary.[36] When construing statutes, the court must presume that "every word, sentence, or provision of a statute" has "some purpose, force, and effect, and that no words or provisions are superfluous."[37]

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[32] *Phillips*, 477 P.3d at 632 (quoting *State v. Fyfe*, 370 P.3d 1092, 1095 (Alaska 2016) (quoting *Adamson v. Municipality of Anchorage*, 333 P.3d 5, 11 (Alaska 2014)); *Ward*, 288 P.3d at 98.

[33] *Fyfe*, 370 P.3d at 1095.

[34] *Phillips*, 477 P.3d at 632 and n. 18 (citing *State, Div. of Workers' Comp. v. Titan Enters., LLC*, 338 P.3d 316, 321 (Alaska 2014)).

[35] *Tesoro Alaska Petro. v. Kenai Pipe Line*, 746 P.2d 896, 905 (Alaska 1987); *accord Muller v. BP Exploration (Alaska) Inc.*, 923 P.2d 783, 788 (Alaska 1996); *Division of Elec. v. Johnstone*, 669 P.2d 537, 539 (Alaska 1983), cert. denied, 465 U.S. 1092 (1984); *Wilson v. Municipality of Anchorage*, 669 P.2d 569, 571-72 (Alaska 1983); *State, Dep't of Rev. v. Debenham Elec. Supply*, 612 P.2d 1001, 1002 (Alaska 1980); see also AS 01.10.040(a) ("Words and phrases shall be construed according to the rules of grammar and according to their common and approved usage").

[36] *See Tesoro*, 746 P.2d at 904; AS 01.10.040(a).

[37] *M.M. ex rel. Kirkland v. State*, 462 P.3d 539, 544 (Alaska 2020); *Nelson v. Municipality of Anchorage*, 267 P.3d 636, 642 (Alaska 2011).

Appellants offer no compelling legislative history to justify the court reading the plain language of AS 15.45.130 to mean anything other than what it plainly states: petitions must contain proper certifications either (1) "at the time of filing," "or" (2) as "corrected before the subscriptions are counted."[38] The statute expressly provides that "petitions not properly certified at the time of filing" may be "corrected before the subscriptions are counted." *Id.*

Pursuant to AS 15.45.130, "each petition shall be certified by an affidavit by the person who personally circulated the petition." The statute directs that when the Lt. Governor conducts her review 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."[39] This provision expressly permits the initiative sponsors an opportunity to correct certifications on petition booklets "before the subscriptions are counted."[40] The concept behind the statute is obviously that the subscriptions of qualified Alaskan voters who lent their support to an initiative, should not be lightly discarded over the technicality of an invalid certification on the petition booklet that the subscriber signed.

"[T]he right to initiative is not to be defeated by technical rule violations."[41] For example, a technical violation would include a certification affidavit that is defective only because of a notary's inadvertent and unknowing failure to renew their notary

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38 AS 15.45.130.
39 AS 15.45.130 (emphasis added).
40 *Id.*
41 *North West*, 145 P.3d at 586.

commission.[42] Alaska voters would have no knowledge—no more than would the Sponsors themselves—that a notary who notarized a certification on a petition booklet had previously allowed their notary commission to lapse without renewal. Rather than disenfranchise all the Alaska voters who signed that petition booklet, AS 15.45.130 permits the defective certification (defective only because the notary—not the Sponsors or even the circulator—made a mistake and failed to renew their notary commission) to be corrected before the subscriptions are counted.[43] The pertinent timing issue, is that the correction of latent defects in certifications must be made, as was the case here, before the Lt. Governor's 60-day deadline for reviewing the petition expires.[44] The Appellants ignore the patently obvious fact that any corrections of certifications as permitted by AS 15.45.130 must necessarily be made (1) after the petition is filed, and (2) during the Lt. Governor's 60-day counting period—the Sponsors would need no statutory permission to correct certifications prior to filing their petition and there is no statutory authority for extending the Lt. Governor's 60-day review deadline.

Therefore, when read correctly and consistent with proper grammar, the pertinent statute, AS 15.45.130, contains two conjunctive phrases[45] following the words "the

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[42] *See e.g.*, *Resource Dev. Council, Inc. v. Vote Yes for Alaska's Fair Share*, 494 P.3d 541, 545 (Alaska 2021) (quoting favorably Judge Thomas Matthews' decision to the effect that "invalidating signatures because of flaws in circulator affidavits would unduly penalize Alaska voters who had no way of knowing … what … [circulators] said in their affidavits.").

[43] AS 15.45.130.

[44] AS 15.45.150.

[45] The word "or" is a conjunction that is used as a function word to indicate an alternative. *See* Merriam-Webster Dictionary, found at https://www.merriam-webster.com/dictionary

lieutenant governor may not count subscriptions on petitions." Taken together, the conjunctive phrases of the statute establish that petitions must contain proper certifications either (1) "at the time of filing," **"or"** (2) as "corrected before the subscriptions are counted."[46] Appellants misunderstand the significance of the statute's legislative history, particularly the irrelevant history regarding the repeal of *former* AS 15.45.170 in 1998. The relevant legislative history is the subsequent amendment of AS 15.45.130 in 2005, when the legislature deliberately reorganized the statute and added the conjunction "or" followed by the phrase "corrected before the subscriptions are counted" to permit the correction of certifications on petition booklets prior to the subscriptions in those booklets being counted.[47]

The irrelevant legislative history the Appellants focus on relates to the repeal of *former* AS 15.45.170, a statute that previously permitted initiative sponsors to circulate "a supplementary petition," and thereby gather more subscriptions (*i.e.*, more signatures) in support of their initiative, **after** the Lt. Governor had already given them notice that "the filing of the petition was improper"—for example, because it lacked a sufficient number of subscriptions. *See former* AS 15.45.170 (1997).[48] Senator Sharp's comment about "you either got 'em or you don't"[49] related to the number of collected subscriptions—not to the

/or#:~:text=or%201%20of%208%20conjunction%20%281%29%20%C9%99r%2C%20%CB%88%C8%AFr,as%20a%20function%20word%20to%20indicate%20an%20alternative.

[46] AS 15.45.130 (emphasis added).

[47] R. 347-360.

[48] R. 347-360.

[49] *See* Sponsor Statement for SB 313.

certifications on petition booklets. Senator Sharp's objection was to sponsors being allowed to go back out and collect more signatures after the Lt. Governor had already determined their petition failed for a lack of sufficient qualified signatures. This case does not involve a situation wherein the Division gave the Sponsors more time to go out and gather more signatures in support of their initiative petition—in fact the Division went to significant lengths to make sure that the Sponsors added no signatures to the petition booklets that it returned to them. [Exc. 124-125]

The pertinent legislative history in 2005 shows that the legislature deliberately added two conjunctive phrases following the words "the lieutenant governor may not count subscriptions on petitions" that are: (1) "not properly certified at the time of filing; "or" (2) "corrected before the subscriptions are counted." AS 15.45.130.[50] The fact that the pertinent statute in this case, AS 15.45.130, was amended in 2005, seven years after the repeal of the irrelevant provisions in AS 15.45.170, demonstrates that the legislature was purposely making allowance for the correction of "certifications" on petition booklets "before the subscriptions are counted." AS 15.45.130.[51]

2. The Division's Regulations, Consistent With AS 15.45.130, Permit Correction of Certifications Prior to Counting of Subscriptions

The Division's regulations, specifically 6 AAC 25.240, which is the regulation setting forth the administrative procedures for initiatives, consistent with AS 15.45.130,

[50] Exc. 347-360.
[51] Exc. 347-360.

permits the correction of certifications prior to the counting of subscriptions. The critical language is in subsections (c) and (f):

> (c) All petition booklets must be filed together as a single instrument, and must be accompanied by a written statement signed by the submitting committee member or the committee's designee acknowledging the number of booklets included in the submission.
>
> ….
>
> (f) A petition that at the time of submission contains on its face an insufficient number of booklets or signed subscriber pages required for certification will be determined by the director to have a patent defect. The director will notify the committee, in writing, of the patent defect and provide information on resubmitting the petition, if applicable. A petition that contains a patent defect and that is filed
>
> (1) on the deadline specified in (d) of this section will be certified as insufficient;
>
> (2) before the deadline specified in (d) of this section will be declared incomplete and all petition booklets will be returned to the committee or designee for resubmission; the resubmitted petition must be filed by the deadline specified in (d) of this section.[52]

As the superior court concluded, subsection (c) provides that all the petition booklets must be filed together as a "single instrument" at which time the Division will perform a facial review process under subsection (f). The Division has interpreted 6 AAC 25.240 and AS 15.45.130 as creating two different review phases, with different mechanisms to correct defects in certification affidavits. First, the facial correction process is done "at the time of submission," and it is meant to detect patent defects that are immediately apparent upon filing; booklets with clear errors are rejected and, if insufficient signatures remain, then a

[52] 6 AAC 25.240(c) and (f).

"patent defect" exists (a petition that obviously lacks sufficient signatures), and the entire petition package is returned to the sponsors. Second, the Division also allows corrections to latent defects in certification affidavits that are identified after filing, but only before the expiration of the Lt. Governor's 60-day deadline for reviewing and counting signatures. The Appellants challenge the second correction process, arguing that the Division's interpretation violates 6 AAC 25.240(c), (f), and AS 15.45.130. But Appellants are incorrect.

a. The Division did not violate 6 AAC 25.240(c).

The Division's interpretation of the regulations does not violate subsection (c) of 6 AAC 25.240. As discussed above, under 6 AAC 25.240(c), "all petition booklets must be filed together as a single instrument." Appellants argue that this requirement prevented the Division from returning individual petition booklets to the Sponsors to make corrections to certification affidavits. But the rationale for requiring simultaneous filing of all the petition booklets as a "single instrument"—as the Sponsors timely did here with their submission of 641 booklets on January 12, 2024—is to prevent the confusion that would ensue if individual circulators returned their booklets to the Division piecemeal one at a time, rather than returning them to the sponsors, who then file them with the Division all together.

By requiring petition booklets to go through the sponsors, the Division avoids the confusion of working with multiple individual circulators. Filing as a "single instrument" also facilitates the Division's ability to perform the initial facial review of booklets. Nothing in the plain language of 6 AAC 25.240(c), refers to returning or re-filing the

petition as a single instrument after certification corrections are made, and the Division's interpretation of that subsection is reasonable. Appellants' position that entire petitions must be returned and refiled after corrections are made to a selection of booklets, makes no sense and would serve no purpose other than to create extra meaningless administrative rigmarole.

And Appellants assertion that 6 AAC 25.240(d) "makes it crystal clear that a defective initiative petition cannot be cured after the one-year deadline under any circumstances"[53] is pure fiction. Nothing in the regulation says anything of the sort—the regulation simply confirms the one-year filing deadline without mentioning the allowance in AS 15.45.130 for subsequent "correction" of certifications.[54] Perhaps Appellants might enlighten the court and the parties on when precisely "correction" of **latent** defects in certifications is to occur if not **after the petition is filed** (a filing that can be timely made up to one-year after the issuance of petition booklets) and **before the Lt. Governor's 60-day review deadline expires** (a deadline that could fall outside the one-year filing mark).[55] No matter how

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[53] Appellants' Br. p. 24 and n. 84.

[54] The regulation states only that "[t]he initiative committee or the committee's designee may file the petition at any time before the close of business on the 365th day after the date that notice is given to the initiative committee that the petition booklets are ready for initial distribution." 6 AAC 25.240(d).

[55] Appellants suggestion that corrections of certifications are to occur only before the Division starts, rather than completes, its counting of subscriptions [Appellants Br. pp. 26-27] makes no sense and has no support in the statutory language. Appellants' assertion that if corrections were permitted up to when "counting was completed" the statute would say so plainly ignores the fact that the statute states very plainly that certifications can be corrected "before the subscriptions are counted." AS 15.45.130. The statute's reference to "the subscriptions" that "are counted," is plainly a reference to the subscriptions that are contained in the booklets for which certifications require correction. The Division can start and continue counting subscriptions in booklets with certifications that do not require

Appellants argue their position, their assertion that the Sponsors' petition was patently defective because of latent defects in certification notarizations, or that it was untimely because certification notarizations were "corrected" after February 7, 2024, improperly attempts to either (1) erase the "corrected before the subscriptions are counted" phrase from AS 15.45.130, or (2) shorten the one-year filing deadline of AS 15.45.140(a).

Appellants' suggestion that the only way sponsors can ensure that their petition is timely filed if latent certification defects require correction, is to file well short of the one-year deadline,[56] is an impermissible attempt to rewrite AS 15.45.140(a) so as to shorten the filing deadline. Under Appellants' theory, if a petition is timely filed within less than 60-days of the one-year deadline contained in AS 15.45.140(a), then there would be no way for corrections to be made to latent defects found during the Lt. Governor's review because the return and resubmission of booklets would render the entire petition untimely. Under Appellants' theory, in such a circumstance the part of AS 15.45.130 that permits corrections before counting is completed would, contrary to this court's precedent, be rendered a superfluous dead letter.[57]

Initiative sponsors do not have to timely file their petition twice—the timely filing of a petition that triggers the Lt. Governors' review process, including the possible correction

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correction, and then wait to count the subscriptions in the booklets with defective certifications after the corrections are made—and so long as all of this is completed within the Lt. Governor's 60-day deadline which is only triggered in the first place by a timely filed petition (AS 15.45.150), there is nothing untimely about the petition once it is corrected.

[56] Appellants Br. pp. 30-40.

[57] *M.M.*, 462 P.3d at 544 (statutes are to be construed harmoniously and so that no provision is rendered superfluous); *Nelson*, 267 P.3d at 642 (same).

of latent defects in certifications under AS 15.45.130, tolls the filing deadline of AS 15.45.140(a) unless and until the Lt. Governor rejects the petition based upon her finding that it was improperly filed (a finding that must be made within 60-days).[58]

b. The Division Did Not Violate 6 AAC 25.240(f).

The Division's interpretation also does not violate subsection (f) of 6 AAC 25.240, which describes the procedures for the Division's facial review process. The Appellants characterize the 60 booklets with the lapsed notary issue as containing patent "defects"—they argue that the Division should have realized that the lapsed notaries developed into "patent defects" because, without the signatures in those booklets counting, the 22AKHE petition lacked enough signatures to get on the ballot. Therefore, the Plaintiffs believe that, at the point the Division discovered the 60 defective booklets, it should have returned all the petition booklets to the Sponsors.

Contrary to the Appellants' position, however, the Division reasonably explained the facial review process in the proceedings below. When sponsors file their petition, the Division reviews each petition booklet "on its face" to determine whether there are enough booklets containing enough signatures to put the initiative on the ballot. This process is intended to screen out obviously incomplete certification affidavits, such as those with missing dates or locations, or booklets that are missing certifications altogether. If, at the time of filing, the number of facially defective booklets identified indicates that the sponsors cannot possibly have the requisite number of signatures, then the petition has a

[58] AS 15.45.150-.160.

"patent defect." Upon finding that "patent defect," the Division may return "all [the] petition booklets" to the sponsors "for resubmission," but only if it is before the one-year deadline for filing—the reason the entire petition is returned in this event is because the sponsors may return to the public to obtain additional subscriptions.

Appellants' reading of 6 AAC 25.240(f) is inconsistent with the plain language of that subsection, which applies the facial review process *only* "at the time of submission." Precisely because the Division could not have detected the expired notary issue in the 60 booklets "on its face," and "at the time of submission," the petition did not have a "patent defect" when it was filed on January 12, 2024, and thus the requirement that "all petition booklets be returned" does not apply. The meaning of the term "patent defect" and the "return all" language must be read in harmony with the rest of subsection (f), including the term describing the relevant time-period, which is "at the time of filing."

Put another way, the "return all" rule applies only to a "patent defect" that is discovered "at the time of submission," which is during the initial facial review process on the day of filing. In the superior court below, the Division reasonably explained the policy justification for why the facial review process in 6 AAC 25.240(f) occurs at the time of submission. The process was designed as a preliminary safeguard to protect both the Division's time (by avoiding in-depth signature reviews on petitions which visibly fail to meet the minimum number of signatures) and the Sponsors' interests (by allowing them to take the submission back to gather more signatures, time permitting). The Division did not, and could not, find the lapsed notary commissions that created the latent defects in this case, during the initial review process under subsection (f)(2).

Appellants assertion that a "lapsed" notary commission for a notary who notarized petition booklets is equivalent to booklets being submitted with no certifications or notarizations at all, is incorrect. Sponsors can and should be expected to review petition booklets and to discover patent defects such as missing certifications or notarizations, prior to filing. Sponsors who discover such patent defects can and should be expected to obtain the missing certifications and notarizations prior to filing. However, Sponsors have no obligation, and it would be unreasonable to expect them to, review the commission of every notary who notarized a circulator's affidavit prior to filing their petition. And sponsors who file booklets containing notarized circulator affidavits have a right to reasonably expect that the notaries who notarized the affidavits had current commissions.[59] Even the Division itself does not ordinarily check the status of notaries who notarized certifications on petition booklets, and in this case the Division passed the initiative petition beyond the initial review phase. In this case, the record reflects that the Sponsors learned of the lapsed notary commission only upon being advised by the Division during the Lt. Governor's 60-day review and counting period, on January 26, 2024. [Exc. 136]

[59] Any claim by Appellants that the Sponsors bear responsibility for Ms. Ritgers' lapsed notary commission simply because she worked for Wellspring Ministries, a nonprofit organization affiliated with Dr. Matthias, would be groundless. There is no evidence in this case that any of the Sponsors, including Dr. Matthias, bore any responsibility for monitoring and maintaining Ms. Ritgers' notary commission—on this record, the only individual who bore responsibility for that was Ms. Ritgers. And on this record, her failure to renew her commission can be attributed to nothing more than her simple negligence. There is no evidence in this case that anyone, not the Sponsors or even Ms. Ritgers herself, knew that her notary commission had lapsed without renewal when she notarized some 60 22AKHE petition booklets on a variety of dates in 2023 and 2024.

As the superior court concluded, an expired notary commission is *not* an error that should be borne by the subscriber to a petition. In fact, the error is only *marginally* attributable to the circulator, who trusted that the notary who notarized their petition booklet did not have an expired commission. If anyone's state of mind should be considered, it is not that of the notary, but that of the circulators, who, like the self-certifiers in *North West,*[60] swore as to the truthfulness of their affidavits and had no reason to believe they were not swearing in front of a valid notary. Had the Sponsors or the circulators known of the lapsed and unrenewed commission, they could have either found another notary or had the circulators self-certify their affidavits. In any event, a circulator who swore to their affidavit before a lapsed-commissioned notary is the effective equivalent of a circulator who swears to their affidavit via a self-certification.

The Division properly returned petition booklets to the Sponsors for the correction of certifications prior to the subscriptions in those booklets being counted within the 60-day timeframe of AS 15.45.150. The Sponsors timely filed their petition as a single unit on January 12, 2024, within the one-year time frame required by AS 15.45.140. The Division did not allot the Sponsors more time to supplement (or amend) their initiative petition with additional subscriptions. The Sponsors filed their initiative petition timely, the Division properly allowed them to correct certifications on before subscriptions were counted, the Sponsors returned all corrected certifications before the subscriptions were counted, and the Lt. Governor timely completed her review prior to March 12, 2024.

60 *See North West*, 145 P.3d at 577-578.

3. The Appellants' Reliance On Election Filing Deadline Cases Is Misplaced

Appellants reliance on election filing deadline cases for candidates running for elected office, is misguided. First, the Division did not extend the filing deadline of AS 15.45.140 for the Sponsors—the Sponsors timely filed their petition on January 12, 2024. Second, the strict construction of rules related to "deadlines" for candidates seeking office (or judges seeking to retain their offices), have no application to initiative petitions by the Alaskan people under Alaska Const. art. 11. This court has ruled repeatedly that courts are to "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.'"[61]

With respect to initiatives, unlike with candidates running for elected office, this court has directed that "doubts as to technical deficiencies or failure to comply with the exact procedural requirements" are to be resolved "in favor of the accomplishment of that purpose."[62] By arguing that this court should "strictly construe" initiative procedural

[61] *North West*, 145 P.3d at 577 (quoting *Boucher*, 528 P.2d at 462 (quoting *Cope v. Toronto*, 8 Utah 2d 255, 332 P.2d 977, 979 (1958)), overruled on other grounds by *McAlpine v. Univ. of Alaska*, 762 P.2d 81 (Alaska 1988).

[62] *North West*, 145 P.3d at 577 (citing *Boucher*, 528 P.2d at 462; *Municipality of Anchorage v. Frohne*, 568 P.2d 3, 8 (Alaska 1977)). The Court's direction for liberal construction of the requirements of the initiative process is very appropriate given the Court's recognition that collecting signatures on petitions in Alaska sufficient to meet the requirements of AS 15.45.140(a)(2) and (3) can be a herculean and expensive task. *See Resource Dev.*, 494 P.3d at 552.

requirements,[63] Appellants—without so much as discussing the rules of *stare decisis*[64]—ask this court to overrule myriad of its past decisions spanning decades that hold the exact opposite of what they are arguing.[65] Appellants do not offer even an inkling of an explanation for why the court should abandon its repeated past rulings regarding the lenient way that initiative procedures are to be construed and applied. Nor do Appellants explain the inconsistency between the position they take herein and the position their legal funding benefactors took and received the benefit of in *Meyer*[66] when they defended Ballot Measure 2 in 2020. Appellants' request is inadequately developed, unsubstantiated, hypocritical, and should be rejected.

In any event, as pointed out above the Division did not permit the Sponsors to file a late petition. The Sponsors timely filed their petition as a single unit on January 12, 2024. Once that timely filing was made and the Lt. Governor's/Division's counting process began, there was no requirement or reason for the Sponsors to refile their petition *in toto*.

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63 Appellants Br. pp. 16, 18-20 *citing Falke v. State*, 717 P.2d 369, 373 (Alaska 1978); *State v. Jeffery*, 170 P.3d 226, 234 (Alaska 2007).

64 *See Thomas v. Anchorage Equal Rights Comm'n*, 102 P.3d 937, 943-947 (Alaska 2004); *State Commercial Entry Comm'n v. Carlson*, 65 P.3d 851, 859 (Alaska 2008); *Pratt Whitney Canada, Inc. v. United Technologies*, 852 P.2d 1173, 1175 (Alaska 1993).

65 Appellants would have this court overrule cases such as *Meyer v. Alaskans for Better Elections*, 465 P.3d 477, 481 and n. 19 (Alaska 2020); *North West*, 145 P.3d at 577; *Fairbanks v. Fairbanks Convention & Visitors Bureau*, 818 P.2d 1153, 1155 (Alaska 1991); *Citizens Coal, for Tort Reform v. McAlpine*, 810 P.2d 162 (Alaska 1991); *Thomas v. Bailey*, 595 P.2d 1, 3 (Alaska 1979) ("The right of initiative ... should be liberally construed to permit exercise of that right."); *Boucher*, 528 P.2d at 462; and *Frohne*, 568 P.2d at 8.

66 *See Meyer*, 465 P.3d at 481 and n. 19 (litigation brought and funded by Alaskans for Better Elections and its attorneys, Appellants' counsel herein).

III. APPELLANTS' MISLEADING DISCUSSION OF THE CIRCULATION PRACTICES AND CONDUCT OF THE SPONSORS' OVER 400 CITIZEN VOLUNTEERS IS IMPERTINENT, INAPPROPRIATE, AND MISLEADING

Displaying a remarkable lack of candor, Appellants recite to the court irrelevant allegations they made but could not prove at trial regarding the circulating conduct of the Sponsors over 400 citizen volunteers, and they misleadingly describe small parts of the superior court's findings related to petition circulation. [Appellants Br. pp. 36-37][67] To be candid with this court, Appellants should have quoted the superior court's findings and conclusions wherein the court rejected their assertions of fraud and illegality during the circulation process.

The superior court found that "the proffered evidence at trial of limited circulator misconduct does not demonstrate widespread and pervasive fraud…. [T]he Plaintiffs presented no proof that circulators forged voters' signatures or intentionally misled voters…. At most, the evidence presented demonstrated *limited* instances of circulators

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[67] Appellants should be required to explain their misrepresentation of the superior court's findings. Specifically they should be required to explain why they falsely assert that the superior court found that "numerous circulators" engaged in misconduct [Appellants Br. p. 36] when the superior court expressly found that there was evidence of only "limited circulator misconduct" [R. 733-827, Finding No. 498] and only "*limited* instances of circulators signing affidavits for booklets they did not circulate, sharing multiple booklets amongst multiple circulators, and leaving petition booklets unmonitored." [*Id.* at Finding 499 (emphasis in original)]. The Appellants' misrepresentations reflect more than a mere semantical play with words—"numerous" is an antonym to the word "limited." Moreover, the so-called "many booklets left unattended at businesses and other locations" [Appellants Br. p. 36] was in truth only eight booklets (from three places of business—Big Valley Bingo, Duane's Antique Shop, and Tudor Bingo), with only three of those booklets from only two places of business actually being submitted to the Division (the Sponsors caught the other five booklets and withheld them from filing). [R. 733-827, Findings 535, 536 (three booklets from Duane's Antiques and Tudor Bingo).

signing affidavits for booklets they did not circulate, sharing booklets amongst multiple circulators, and leaving petition booklets unmonitored…. [T]here is no evidence in this case that there was a pervasive pattern of intentional, knowing, and orchestrated misconduct to warrant invalidating the 22AKHE initiative petition *in toto*." [R. 733-827, Findings Nos. 498-499, 503 (emphasis in original)]

In fact, it would have been more candid for Appellants to have quoted their own expert witness, Mr. John Costa, who testified that in his review of the petition (all 641 booklets) he found only that "**a handful of circulators at least … some of the time** were not in fact circulating their booklets the entire time that they purported to be."[68] Appellants should be held to account for their constant misrepresentations (if by nothing more than being put to the task of explaining their mendacities), (a) previously of the evidence during proceedings in the superior court below, and (b) now of the record in this appeal.

The fact that Appellants managed to scare two citizen volunteer circulators (out of over 400) into claiming their Fifth Amendment privilege by constantly bandying about allegations of fraud and perjury (allegations that landed nowhere at trial), reflects nothing that bears even the slightest relevance to this appeal. Appellants did not appeal the superior court's post-trial findings and decision related to petition circulation. This section of Appellants' brief—raising these uncalled-for misrepresentations—is the type of impertinent argument that should be stricken.

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[68] Costa Dep. pp. 102-103 (emphasis added). Costa's deposition was admitted at trial and is contained in the record. Mr. Costa also repeated this statement in his live trial testimony.

CONCLUSION

For the reasons stated above, this court should affirm the superior court's June 7, 2024, summary judgment ruling related to the correction of petition booklet certifications [Exc. 283-313] and the superior court's Final Judgment [Exc. 314-315]. 22AKHE should remain on the November 5, 2024, general election ballot.

DATED this 15th day of August 2024.

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