IN THE SUPREME COURT FOR THE STATE OF ALASKA

LA QUEN NÁAY ELIZABETH MEDICINE CROW, AMBER LEE, and KEVIN MCGEE,

Appellants,

vs.

DIRECTOR CAROL BEECHER, in her official capacity, LT. GOVERNOR NANCY DAHLSTROM, in her official capacity, and the STATE OF ALASKA, DIVISION OF ELECTIONS,

Appellees,

vs.

DR. ARTHUR MATHIAS, PHILLIP IZON, and JAMIE R. DONLEY,

Intervenor Appellees.

Supreme Court No. S-19182
Trial Court Case No. 3AN-24-05615CI

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

APPELLANTS' REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

REGULATIONS

OTHER AUTHORITIES

RULES

AUTHORITIES PRINCIPALLY RELIED UPON

STATUTES

AS 15.45.130. Certification of circulator.

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.

AS 15.45.140. Filing of Petition.

(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.

AS 15.45.150. Review of petition.

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.

AS 15.45.190. Placing proposition on ballot.

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.

REGULATION

6 AAC 25.240. Initiative, referendum, and recall petitions.

(a) Upon certification of the application for a petition, the director will prepare petition booklets for circulation by petition circulators in the general manner prescribed by AS 15.45.090, 15.45.320, or 15.45.560. The director will prepare and have printed sequentially numbered official petition booklets as determined by the director to allow full circulation throughout the state or throughout the senate or house district that will be affected. The booklets will be sent, or otherwise made available for delivery, to a member of the initiative, referendum, or recall committee or the committee's designee for distribution to circulators. The committee or designee may request additional booklets. Upon the director's approval of the request, additional sequentially numbered booklets will be printed by the director and made available to committee or designee, or printed by the committee or designee in a format approved by the director. The committee or designee must pay the cost of printing additional booklets in excess of the initial booklets. If the committee or designee elects to have additional booklets printed, the first booklet from each additional printing shall be submitted to the director.

(b) Each subscriber to the petition shall provide

(1) the subscriber's printed name;

(2) a numerical identifier that can be verified against the voter's record for that subscriber;

(3) the subscriber's signature or mark;

(4) the date of the subscriber's signature or mark; and

(5) the subscriber's address.

(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.

(d) The 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. The referendum committee or the committee's designee may file the petition at any time before the close of business on the 90th day after the adjournment of the legislative session at which the act was passed. The recall committee or the committee's designee may file the petition at any time before the close of business on a date that is at least 180 days before

the termination of the term of office of the state public official subject to recall. If the deadline for filing an initiative or recall petition falls on a weekend or state holiday, the deadline is the close of business on the next regular business day for the division.

(e) The petition must be filed in person, by mail, or other shipping method at any office of the division.

(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.

(g) The signatures contained in a petition booklet filed under (c) of this section will not be counted in determining the sufficiency of the petition if the person who circulated the petition did not complete the certification affidavit for the booklet as required by AS 15.45.130, 15.45.360, or 15.45.600.

(h) An individual signature in a petition booklet will not be counted in determining the sufficiency of the petition if the signer

(1) does not provide an address;

(2) does not sign or make a mark;

(3) does not provide a numerical identifier;

(4) unknowingly signs the petition more than one time; any additional signature will not be counted; or

(5) does not date the individual's signature.

(i) Repealed 2/28/2014.

(j) Repealed 5/14/2006.

(k) Communication with the director shall be limited to the committee. A request for information must be made in writing.

(l) Repealed 2/10/2018.

INTRODUCTION

The Division and the Sponsors take entirely different approaches to justify the Division's new, ad-hoc process for qualifying 22AKHE, which allowed the Sponsors to retrieve and refile dozens of petition booklets well after the statutory deadlines expired. Although both parties rely solely on AS 15.45.130 as their basis for allowing new certifications after the statutory deadlines, they interpret this statute very differently.

The Sponsors agree with Appellants that only technical changes to certifications are allowed, [*See* Int. Ae. Br. 15-16] but incorrectly argue that the brand-new certifications they provided are merely technical. [*See* Int. Ae. Br. 16, 26] Alternatively, and surprisingly, the Division claims that AS 15.45.130 authorizes *any* conceivable changes to the certifications of petition booklets, not just technical changes, regardless of the nature and timing of those "corrections." [Ae. Br. 18-34] According to the Division, this would even allow initiative sponsors to belatedly "cure" a booklet that was completely missing a certification when filed, [Ae. Br. 8] despite the clear language in 6 AAC 25.240(g) that "signatures contained in a petition booklet" where a circulator "did not complete the certification affidavit" "will not be counted."[1] According to the Division's brief, "anything goes" when it comes to curing certifications under AS 15.45.130. [Ae. Br. 18-34]

The Division's interpretation of AS 15.45.130 — which is untethered to other statutes and its own governing regulation — cannot be correct. Appellants' plain language interpretation of the types and timing of corrections permitted by law is logical, consistent

[1] *See* 6 AAC 25.240(g).

with 6 AAC 25.240, and comports with the legislative history. And the process that occurred here — the piecemeal "refiling" of booklets with brand-new certifications, all of which were returned after the relevant statutory deadlines — is simply not allowed.

Because the Division's process here did not comply with its own statutes and regulations, this Court should REVERSE and declare that 22AKHE is disqualified.

ARGUMENT

I. Statutory Filing Deadlines Must Be Met, And Whether 22AKHE Met Those Deadlines Turns On This Court's Interpretation Of AS 15.45.130.

All parties agree that there are two clear statutory deadlines that the Sponsors had to meet for 22AKHE to appear on the ballot. [*See* At. Br. 15-26; Ae. Br. 38-43; Int. Ae. Br. 28] First, under AS 15.45.190(2), the petition needed to be filed with the Division before the legislature convened, which was January 16, 2024, in order to appear on this year's ballot.[2] [Exc. 126] Second, under AS 15.45.140(b), the Sponsors had until February 7, 2024 — one year from when they had notice that the petition was ready for delivery to them — to file a petition that could appear on any ballot, otherwise it would expire having "no force or effect."[3] [Exc. 126]

Consistent with this Court's direction that "election law filing deadlines are to be strictly enforced,"[4] the parties also agree that the statutory deadlines for the filing of ballot

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2 *See* AS 15.45.190(2).

3 *See* AS 15.45.140(b).

4 *See State v. Jeffery*, 170 P.3d 226, 234 (Alaska 2007) (quoting *Falke v. State*, 717 P.2d 369, 373 (Alaska 1986)); *see also Guerin v. State*, 537 P.3d 770, 779 (Alaska 2023) ("We affirm that election 'deadlines are mandatory, and therefore substantial compliance is not sufficient[.]'" (quoting *State v. Marshall*, 633 P.2d 227, 235 (Alaska 1981))).

initiatives apply and must be met.[5] The Division and the Sponsors' sole argument for 22AKHE's validity is that AS 15.45.130 and the accompanying regulations expressly authorize the Division to allow the Sponsors to physically retrieve dozens of individual defective booklets and then refile them with entirely new certifications after the statutory deadlines had passed and after the Division's signature counting had begun. [*See* Ae. Br. 38-43; Int. Ae. Br. 23 (arguing that AS 15.45.130 "tolls the filing deadline of AS 15.45.140(a)")]

Only if this Court were to interpret AS 15.45.130 and 6 AAC 25.240 to allow the refiling of booklets with brand-new "corrected" certifications during the Division's 60-day review period[6] — without that refiling establishing a new filing date,[7] and despite the absence of regulatory authority to do so[8] — would the Division and the Sponsors prevail.[9] But if this Court instead correctly determines that the statutory deadlines were not tolled,

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5 *See* AS 15.45.140; AS 15.45.150; AS 15.45.190.

6 *See* AS 15.45.150.

7 *See* AS 15.45.140; 6 AAC 25.240(f).

8 *See* 6 AAC 25.240.

9 Although the Sponsors make a half-hearted argument that this Court has held there should be unbridled leniency towards sponsors of ballot initiatives even as to filing deadlines, [*See* Int. Ae. Br. 27-28] they ultimately rely on AS 15.45.130 to allow corrections after the deadlines. This Court has repeatedly held that "election law filing deadlines are to be strictly enforced." *See Jeffery*, 170 P.3d at 234 (quoting *Falke*, 717 P.2d at 373); *see also Guerin*, 537 P.3d at 779. And in the context of filing ballot initiative petitions, this Court has held that "liberal[] constru[ction]" only applies to "technical deficiencies or failure to comply with the exact procedural requirements." *See N.W. Cruiseship Ass'n of Alaska, Inc. v. State*, 145 P.3d 573, 577 (Alaska 2006) (quoting *Boucher v. Engstrom*, 528 P.2d 456, 462 (Alaska 1974)).

and that the Division's process was not authorized by AS 15.45.130 and 6 AAC 25.240, then 22AKHE must be disqualified.

II. The Plain Language Of AS 15.45.130 Does Not Permit The Refiling Of Individual Petition Booklets with New Certifications *During* The Division's Review Of Signatures.

A. The plain language of AS 15.45.130 supports Appellants' interpretation.

The Division and the Sponsors fail to fully consider the correctness of Appellants' primary interpretation of AS 15.45.130: corrections can only be made *before* the statutory deadlines have passed and *before* counting has begun. Alaska Statute 15.45.130 begins by explicitly requiring that all petitions "shall" be certified "[b]efore being filed."[10] The Division and the Sponsors ignore the very first sentence of the statute which contains this mandatory requirement. In light of all of the language in AS 15.45.130, as well as the regulation adopted under this statute, the best interpretation of the plain language allowing corrections "before the subscriptions are counted," found later in AS 15.45.130, is that any corrections must occur before counting *begins*.

Under this interpretation, if a sponsor submits a petition 60 days before the deadline and it is accepted for filing, but the Division notices a week later that certifications in certain booklets are incomplete, the sponsor can correct the certifications if the Division has not yet started the counting process. But if counting has begun, it is too late to add missing information to a certification even though the statutory filing deadlines have not passed. And the sponsors would have to start over if the petition they filed does not meet

[10] *See* AS 15.45.130 ("Before being filed, each petition shall be certified by an affidavit by the person who personally circulated the petition.").

the statutory requirements for acceptance on the ballot without counting those petitions with flawed certifications.

This interpretation is consistent with the single instrument rule in 6 AAC 25.240(c), which provides that "[a]ll petition booklets must be filed together *as a single instrument*, and must be accompanied by a written statement . . . acknowledging the number of booklets included in the submission."[11] It is also consistent with 6 AAC 25.240(g), which provides that "signatures contained in a petition booklet filed under (c) of this section *will not be counted*" where a circulator "did not complete the certification affidavit."[12] Subsection (c) referred to in subsection (g) is the single instrument rule, once again reinforcing the need for "the [entire] petition" to be properly notarized *before* filing.[13] It is also consistent with AS 15.45.150, which confirms that the Division's role after filing is simply to determine "whether the petition was properly or improperly filed."[14]

Although there may be a short window available after filing but before counting begins to ask for the return of all petition booklets to fix technical errors or incomplete

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11 *See* 6 AAC 25.240(c) (emphasis added); *see also Res. Dev. Council for Alaska, Inc. v. Vote Yes for Alaska's Fair Share*, 494 P.3d 541, 544 (Alaska 2021) ("The signatures collected in the petition booklets are submitted 'as a single instrument' called the petition." (quoting 6 AAC 25.240(c)).

12 *See* 6 AAC 25.240(g) (emphasis added). Subsection (g) of the regulation is key. The Sponsors failed to discuss, let alone cite, this subsection of the regulation at all in their brief. And the Division uses circular reasoning that fails to neutralize this regulatory language that is fatal to its argument. [*See* Ae. Br. 33]

13 *See id.* ("The signatures contained in a petition booklet filed under (c) of this section will not be counted . . . if the person who circulated the petition did not complete the certification affidavit for the booklet as required by AS 15.45.130[.]").

14 *See* AS 15.45.150; *see also* AS 15.45.160.

certifications under AS 15.45.130, there is still an opportunity. And that opportunity would constitute a process that is consistent with what would happen if a patent defect is discovered upon filing under 6 AAC 25.240(f)(2) — a process which would allow the resubmission of the petition (specifically "[a]ll petition booklets" as a single instrument) so long as the applicable deadlines had not passed.[15] This process also maximizes the amount of time the Division has for counting the subscriptions under AS 15.45.150, since the 60-day review period would only commence once the corrected petition is filed.

On its face, AS 15.45.130 does not purport to change or extend the statutory filing deadlines in AS 15.45.140 or AS 15.45.190.[16] This Court has confirmed that "[w]hen a statute . . . is part of a larger framework or regulatory scheme, [it] must be interpreted in light of the other portions of the regulatory whole."[17] Appellants' interpretation, which

[15] The "patent defect" process in 6 AAC 25.240(f) allows correction of petitions, but only if the whole petition (meaning *all* booklets) is returned to the sponsors for resubmission. As the Division itself notes, "[t]his is a matter of administrative efficiency, so the Division does not waste time verifying signatures when the initiative would not qualify for the ballot even if every signature counted." [Ae. Br. 7] But that is exactly what the Division risked doing in this very case. The parties agree that without the 62 "corrected" booklets, 22AKHE would not qualify for the ballot. [Exc. 126] If the Sponsors had failed to return enough of those booklets, the Division would have spent two months of time and resources counting signatures in a petition that could not qualify. This is the exact situation that AS 15.45.130 and 6 AAC 25.240 were designed to prevent.

[16] *See Falke*, 717 P.2d at 370 (strictly enforcing a statutory deadline where a candidate had not signed and had notarized their declaration of candidacy, even though it was accomplished within ten minutes of the deadline).

[17] *Guerin*, 537 P.3d at 778 (alterations in original) (quoting *Alaska Ass'n of Naturopathic Physicians v. State*, 414 P.3d 630, 636 (Alaska 2018)).

should be accepted, creates "a harmonious whole;"[18] it properly reconciles AS 15.45.130's mandate that booklets be certified "[b]efore being filed" with the statutory deadlines and the Division's own regulation.

B. The Division's interpretation of AS 15.45.130 conflicts with its plain meaning and other applicable statutes and regulations.

Both the Sponsors and the Division argue that AS 15.45.130 allows corrections to certifications after signature counting has begun, and even after the statutory deadlines have run. [Ae. Br. 18-34; Int. Ae. Br. 9-26] The Sponsors agree that only *technical* corrections to certifications would be allowed, but argues that wholesale replacements of the certifications in 60 booklets qualifies as a "technical" correction.[19] [Int. Ae. Br. 15-16, 26] The Division — apparently recognizing that a faulty certification is equivalent to having no certification at all — argues that "anything goes," including completely missing certifications being added to individual booklets after filing. [Ae. Br. 18-34]

The Division is wrong that the plain language of the statute supports its interpretation. Even *if* AS 15.45.130 enables the Division to allow technical *corrections* to the certifications — such as adding a missing date or location [*See* Exc. 122-123, 139] — it cannot be interpreted to allow the Division to permit the complete replacement of (i.e., entirely new) certifications *after* filing, let alone after all applicable deadlines have passed.

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18 *Id.* at 779 (quoting *State v. Progressive Cas. Ins. Co.*, 165 P.3d 624, 629 (Alaska 2007)).

19 *See infra* Section VI and accompanying text.

The statutory framework for the filing and qualification of ballot initiatives is unambiguous and ensures that the process is fair, orderly, and resource efficient. Alaska Statute 15.45.130 begins by requiring that each petition be certified "[b]efore being filed," and prohibits the lieutenant governor from counting "petitions not properly certified" before filing "or corrected before the subscriptions are counted."[20] This Division argues that this language creates a whole new deadline for the addition or completion of certifications; in other words, that "anything goes" as to certifications so long as it is done before the Division's review deadline in AS 15.45.150. [*See* Ae. Br. 30] But if the legislature intended to permit correction until the counting of *all* signatures was completed, it would have said so using explicit language.[21] Indeed, the legislature *did* use more precise language to that effect in other sections of Title 15, such as in AS 15.15.370, which describes actions that occur "[w]hen the count of ballots is completed."[22] Had the legislature intended to allow any change to a certification throughout the Division's review process, including the addition of a missing certification, it would have explicitly used language creating a new clear deadline only applying to "corrected" certifications. Here, the language on which the Division relies is from a *prohibition* as to what signatures the

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20 *See* AS 15.45.130.

21 *See Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173, 1178 (Alaska 1985) ("Had the legislature contemplated the meaning attributed to the term by Yute Air, it is more likely than not that a more precise term would have been used by it . . . . It is much more likely that the legislature would have added appropriate language to [the statute.]").

22 *See* AS 15.15.370.

Division can count, not a provision affirmatively and expressly granting any more time to sponsors than is allowed in AS 15.45.140 and AS 15.45.190.

The Division's interpretation also conflicts with the rest of the statutory and regulatory whole governing ballot initiatives.[23] It ignores the statutory deadlines in AS 15.45.140 and AS 15.45.190. It is not consistent with the single instrument rule in 6 AAC 25.240(c), or the clear directive in 6 AAC 25.240(g) that "signatures contained in a petition booklet filed [as a single instrument] will not be counted" where a circulator "did not complete the certification affidavit." It is not consistent with the Division's duty to review the petition under AS 15.45.150. And as the Division recognized in its discussion of the deadline for a voter to withdraw their signature from a booklet,[24] it is not consistent with the filed petition being a "***closed universe of signatures that the Division must review***."[25] [Ae. Br. 42 (emphasis added)]

The clear expectation under this framework is that the petition booklets are filed together as a single instrument, i.e., one "petition," and nothing changes after filing during the Division's review process under AS 15.45.150. This framework prohibits the indiscriminate plucking of individual booklets out of this filed "single instrument" for

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23 *See Guerin*, 537 P.3d at 778.

24 *See* AS 15.45.120 ("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.").

25 The Division wants this Court to find that the "closed universe of signatures" being counted during the 60-day review process prevents individual voters from removing their signatures, while remaining wide open for sponsors to add or correct certifications, effectively adding thousands of new signatures, during that same review. [Ae. Br. 42]

correction, or even the removal of one signature by a voter who changed their mind.[26] After filing, the petition (now a single instrument) cannot be released piece-meal to sponsors, and certifications not properly included before filing cannot be added. Under 6 AAC 25.240(g), signatures that are not properly certified simply cannot be counted.

III. The Legislative History Surrounding Changes To AS 15.45.130 Supports Appellants' Interpretation.

A. Original 2004 proposal

The Division claims that previously uncited legislative history supports its "anything goes" interpretation of AS 15.45.130. [*See* Ae. Br. 23-24] But just like the Division incorrectly described the relevant legislative history before the superior court,[27] the Division has grossly mischaracterized this new legislative history as well.

[26] The Division's reliance on *Yute Air Alaska, Inc. v. McAlpine* is misplaced. [*See* Ae. Br. 39-43] There, the issue was whether the use of the term "filed" implied that a petition also had to be "verified" before it was considered "filed." *See Yute Air*, 698 P.2d at 1178-79. The *Yute Air* Court declined to add an additional verification requirement into the statutory filing deadline, and nothing in that case concerned the meaning of the word "corrected" or AS 15.45.130 at all. *See id.* at 1177-79. If anything, *Yute Air* actually supports *Appellants'* position. If a filing deadline concerns a filing alone, it necessarily cannot be tolled or ignored during the Division's separate verification process. The same principle should apply to corrections for retrieved, replaced, and *refiled* certifications. Nothing in AS 15.45.130 or AS 15.45.150 states that corrections may occur at any point during the 60-day verification period; rather, any corrections must occur "before the subscriptions are counted," and the refiling of any corrected certifications would naturally restart the filing of the "single instrument." *See* AS 15.45.130; *see also* AS 15.45.150; 6 AAC 25.240.

[27] The Division at that time (incorrectly) claimed that the "or corrected" language was *not* in the proposed legislation when then-Division Director Laura Glaiser was testifying. [*See* Exc. 194-195] This was easily disproven, since that language existed in every version of that bill. [*See* Exc. 235, 238, 270]

As an initial matter, the Division has relied on cherry-picked comments from a *prior legislature* for *different* legislation that *never passed*.[28] That is why no party cited that hearing before the superior court; it was for a different piece of legislation that "died" after being heard in a single committee before a different legislature. But more importantly, the Division *completely ignores* unambiguous testimony from four days prior to the testimony it cites that the proposed language change was intended to apply only: (1) to "***very technical***" corrections to certifications;[29] (2) *if* corrections are filed *before* the counting of

[28] Alaska Statute 15.45.130 was modified in 2005 by the *24th* legislature. *See* ch. 2, § 36, FSSLA 2005. The hearing cited by the Division occurred during the *23rd* legislature in 2004. [Ae. Br. 23-24] A lot changed in that single year. For example, there was turnover of over half of the members of that committee (House state affairs) between 2004 and 2005, including the addition of three members who did not become legislators until 2005. *Compare* Committee Detail, House State Affairs, 23rd Legislature, *available at* https://www.akleg.gov/basis/Committee/Details/23?code=HSTA (showing committee members from 2004), *with* Committee Detail, House State Affairs, 24th Legislature, *available at* https://www.akleg.gov/basis/Committee/Details/24?code=HSTA (showing committee members from 2005, including newly-elected Representatives Jim Elkins, Jay Ramras, and Berta Gardner). Moreover, voters enacted major changes to Alaska's election laws during the 2004 general election; voters not only modified the way that vacancies in the US Senate are filled, but they also approved a constitutional amendment that created the disparate house district requirement that forms the underlying basis for this appeal. *See* State of Alaska, 2004 General Election, November 2, 2004, Official Results (Dec. 3, 2004), *available at* https://www.elections.alaska.gov/results/04GENR/data/results.htm (showing passage of ballot measures 1 and 4); *see also* State of Alaska, 2004 Official Election Pamphlet, at 91, https://www.elections.alaska.gov/doc/oep/2004/2004_oep_reg_1.pdf (providing a sample ballot for the 2004 ballot measures). This drastically different election landscape is completely ignored by the Division. [*See* Ae. Br. 23-24] Moreover, the proposed legislation was never even heard by another committee in 2004. *See* 2004 House Journal 3730. If anything, the fact that the proposed language "died" in committee could cut against any those comments, because the legislature decided not to amend the statute at that time.

[29] *See* Testimony on HB 523, H. State Affairs Comm., 23rd Leg., 2nd Sess. (Apr. 22, 2004), https://www.akleg.gov/ftr/archives/2004/HSTA/68-HSTA-040422.mp3, at 41:45 – 41:53 [hereinafter Apr. 22, 2004 Hearing].

signatures for the petition began;[30] and (3) *if* circulators came into the Division to "sign[] off" on those newly-filed corrections.[31] The Division ignored this relevant testimony which thoroughly undermines its position and confirms that Appellants' interpretation of AS 15.45.130 is what the legislature intended.

In a hearing prior to the testimony cited by the Division, [*See* Ae. Br. 23-24] the same legislator (Representative Max Gruenberg) first proposed the same language to amend AS 15.45.130.[32] And as the meeting minutes and audio from that hearing confirm, the intended purpose of adding "or corrected before the subscriptions are counted" to AS 15.45.130 was to allow for "*very technical*" corrections to petitions, and nothing more.[33]

When he first presented this language to the committee, Representative Gruenberg testified that his amendment would "make[] only one substantive change . . . from the current language of the bill itself."[34] Representative Gruenberg explained that his:

> concern was that *there may be* ***a very technical problem*** *with a petition*. For example, somebody forgets to make a statement that the person . . . is the only circulator of that petition. . . . So in other words, let's say a petition is brought to the lieutenant governor, and they forgot that, then they should be able to *file* a supplemental affidavit saying, "we forgot to put this on the

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30 *See id.* at 43:13 – 43:25.

31 *See id.* at 45:53 – 45:59.

32 *See id.* at 40:08 – 42:23. The only difference in the amendment a few days later is that the proposed language would also apply to referendum and recall. [*See* Ae. Appx. A at 6-9]

33 *See* Apr. 22, 2004 Hearing at 41:45 – 42:23; *see also* Minutes for HB 523 (H. State Affairs) (Apr. 22, 2004) [hereinafter Minutes for HB 523].

34 *See* Apr. 22, 2004 Hearing at 40:24 – 40:46.

> original, but in fact, I'm the only person that circulated." . . . Very simply, *the only change I've made from the bill itself is to allow a technical correction to be made by the **filing** of a supplemental affidavit **before the petition is counted***.[35]

In sum, the architect of the "or corrected" language of AS 15.45.130 intended for it to only allow for "very technical" corrections — like the Division's failure to include a statement that is otherwise required by AS 15.45.130[36] — and that any of those technical corrections must be filed "before the *petition* [(singular)] is counted."[37]

Members of the committee objected to Representative Gruenberg's proposed amendment.[38] And after another legislator expressed a desire for the amendment to be consistent with prior court decisions, and that the language not be used as a vehicle to excuse *any* technicality,[39] then-Division Director Laura Glaiser stated that she believed that Representative Gruenberg's proposed amendment would be consistent with prior case law.[40] Director Glaiser also envisioned that a circulator would "still have to be responsible,

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35 *See id.* at 41:45 – 43:25. The minutes reflect this as well. *See* Minutes for HB 523 (explaining that Representative Gruenberg was "concern[ed] that there may be a *technical* problem with a petition," and that his proposed language "would allow a supplement[al] affidavit . . . to add *missing* information" (emphasis added)).

36 An example of this could be if the Division discovered a printing error for the certifications while the petition booklets were being circulated.

37 *See* Apr. 22, 2004 Hearing at 43:13 – 43:25.

38 *See id.* at 42:34 – 42:41. In fact, Representative Gruenberg's proposal was very nearly rejected. *See id.* at 42:45 – 43:09.

39 *See id.* at 44:21 – 44:27 ("Before I start excusing technicalities, I want to look at where the courts have landed[.]").

40 *See id.* at 45:30 – 45:40; *see also id.* at 45:40 – 45:47 ("[I]f [the proposed language] allows someone to sign, to file a supplementary [affidavit], to make a correction, I don't think that's wrong.").

and ***come in*** *and sign off*" on any correction.[41] Representative Gruenberg agreed with Director Glaiser's assessment, confirming that his proposed change to AS 15.45.130 was far more limited in scope than the Division's interpretation.[42] [*See* Ae. Br. 23-24]

The chair of the committee then set aside the proposed amendment for further consideration.[43] It was only after this hearing occurred that the comments cited by the Division were made a few days later.[44] [*See* Ae. Br. 23-24] And even at that subsequent hearing, the Division also ignores a couple of critical pieces of testimony. [*See* Ae. Br. 23-24] First, Representative Gruenberg again confirmed that any corrections would need to be made to "the *petition* [(singular)] . . . *before* subscriptions are counted."[45] Again, this supports Appellants' interpretation of both the single instrument filing requirement and the need for corrections to be filed "before [any] subscriptions are counted."[46]

41 *See id.* at 45:53 – 45:59. Presumably Director Glaiser made this comment to ensure that the Division would retain control of all previously-filed petition booklets while any corrections were made, and that the certification requirement would still have meaning.

42 *See id.* 46:03 – 46:04 ("That's all I'm doing.").

43 *See id.* at 46:41 – 46:44.

44 The particular legislation in 2004 was not heard by any other committee during the 23rd legislature, but the proposed "or corrected" language that would later become part of AS 15.45.130 was included in the Governor's proposed legislation the following year. [*See* Exc. 235, 238, 270]

45 *See* Testimony on HB 523, H. State Affairs Comm., 23rd Leg., 2nd Sess. (Apr. 26, 2004), https://www.akleg.gov/ftr/archives/2004/HSTA/69-HSTA-040426.mp3, at 38:10 – 38:17.

46 *See id.*; *see also id.* at 36:57 – 36:59.

Second, and perhaps more critically, Director Glaiser explicitly acknowledged that any correction process *could* be addressed by regulation.[47] But despite having nearly twenty years to do so (and despite amending 6 AAC 25.240 *five times* since AS 15.45.130 was amended),[48] the Division has never enacted or amended regulations to permit the type of ad hoc correction process that the Division allowed.[49] It has left untouched the single instrument rule in subsection (c) and the clear directive in subsection (g) that "signatures contained in a petition booklet filed [as a single instrument] will not be counted" where a circulator "did not complete the certification affidavit,"[50] and it has never added *any* other process for correction in regulation besides the one in 6 AAC 25.240(f)(2) which requires the Division to return "all petition booklets" to the Sponsors for formal refiling at a later date.[51]

47 *See id.* at 38:45 – 38:51 ("We can do that in regulation and say, you know, you have 10 days, 15 days, to *come in* and correct[.]").

48 *See* Register 178 (amending 6 AAC 25.240 on May 14, 2006); Register 186 (amending 6 AAC 25.240 on Apr. 25, 2008); Register 209 (amending 6 AAC 25.240 on Feb. 28, 2014); Register 225 (amending 6 AAC 25.240 on Feb. 10, 2018); Register 241 (amending 6 AAC 25.240 on Feb. 24, 2022).

49 *See Stefano v. State*, 539 P.3d 497, 503 (Alaska 2023) ("The first time an agency adopts a commonsense interpretation of a statute, rulemaking may not be required. But when an agency 'alters its previous interpretation' in a way that is inconsistent, then rulemaking is required." (quoting *Chevron U.S.A., Inc. v. State*, 387 P.3d 25, 37 (Alaska 2016))); *see also id.* at 502 (holding that an agency cannot have "'unfettered discretion to vary the requirements of its regulations at whim,' which 'invites the possibility that state actions may be motivated by animosity, favoritism, or other improper influences.'" (quoting *Jerrel v. State*, 999 P.2d 138, 144 (Alaska 2000))).

50 *See* 6 AAC 25.240(g).

51 *See* 6 AAC 25.240(f)(2).

In sum, the Division's characterization of the legislative history is wrong, and the testimony from 2004 supports Appellants' logical plain language interpretation. Alaska Statute 15.45.130 was only ever intended to apply to "very technical" corrections, before the counting of signatures in the petition began. It also confirms that once filed, a petition would not be returned or released piece-meal during the Division's review process, consistent with the Division's treatment of any filed petition as a "single instrument."

B. 2005 testimony

The Division and the Sponsors also suggest that Director Glaiser's comments in 2005 cited by the Appellants in their Opening Brief did not actually address the "or corrected" language that was later added to AS 15.45.130. [Ae. Br. 24-26; *see also* Int. Ae. Br. 15, 18] But it is the Division's and the Sponsors' interpretation of those comments that are strained, especially in the context of the prior testimony from 2004 and the 1998 repeal of the statute that previously allowed the filing of supplemental petitions.[52]

Director Glaiser made her comments at a hearing in 2005 in response to a conceptual amendment that would have prohibited paid signature gathering.[53] That amendment did not pass.[54] But Director Glaiser was naturally testifying within the context of what the proposed amendment and legislation would do; otherwise, Director Glaiser would have

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52 *See* Apr. 22, 2004 Hearing; *see also* former AS 15.45.170 (1997).

53 *See* Testimony on HB 94, H. State Affairs Comm., 24th Leg., 1st Sess. (Mar. 15, 2005), at 9:17:44 – 9:30:10, available at https://www.akleg.gov/basis/Meeting/Detail?Meeting=HSTA%202005-03-15%2008:00:00.

54 *See id.* at 9:29:40 – 9:30:10.

explained that it was the *current* law that she was describing, which she did not.[55] And most importantly, Director Glaiser's testimony was entirely consistent with the original sponsor's (Representative Gruenberg) intended purpose of that proposed language: the new language would only permit "very technical" corrections "before the petition is counted," and a sponsor's delay could still lead to the invalidation of a petition because any corrections would require a new "filing."[56] Indeed, nothing in Director Glaiser's 2005 testimony is inconsistent with that original interpretation or explanation of purpose.

The legislative history surrounding the changes to AS 15.45.130 strongly support Appellants' plain language interpretation of that statute. This Court should adopt Appellants' reasoning, which is also consistent with the Division's regulation.

C. Repeal of supplemental petition process

Finally, the Division and the Sponsors also fail to appreciate the import of the legislature's decision to repeal the supplemental petition process for initiatives in 1998.[57] [Ae. Br. 26-27; Int. Ae. Br. 17-18] By not treating the single instrument "petition" as a closed universe upon filing and releasing booklets piece-meal to the Sponsors for the substantive additions of replacement certifications, the Division effectively allowed the Sponsors to "amend and correct" their petition with a specific period of time;[58] a process

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55 *See id.* at 9:22:53 – 9:24:25.

56 *See* Apr. 22, 2004 Hearing at 41:45 – 43:25.

57 *See* former AS 15.45.170 (1997), *repealed by* 1998 SLA, ch. 80, § 7.

58 *See id.* ("Submission of supplementary petition: Upon receipt of notice that the filing of the petition was improper, the initiative committee may amend and correct the

no longer allowed. Even if "technical" corrections are permitted by AS 15.45.130, the repeal of AS 15.45.170 confirms that substantive amendments to supplement a filed initiative petition — like the addition of certifications required before filing — are no longer allowed.

IV. The Division's Process For 22AKHE Shows How Unworkable, Arbitrary, And Chaotic Their Interpretation Is In Practice.

In arguing that "anything goes" when it comes to corrections, the Division tries to justify its actions here by distinguishing its wildly disparate treatment of petition booklets. [Ae. Br. 8-11] But all the Division does is highlight the absurdity of its claim that it may treat the Sponsors' petition booklets in ways that are internally inconsistent and ignore the relevant laws.

The Division's inconsistency is most apparent in its treatment of approximately fifteen (15) 22AKHE petition booklets that were not accepted on January 12, 2024.[59] [*See* Ae. Br. 8] Those petition booklets were rejected and immediately returned to the Sponsors; they were rejected because they contained blank, improper certifications. [*See* Exc. 132] This was the correct response, because uncertified booklets cannot be counted.[60] Under AS 15.45.130, each petition booklet must be certified by affidavit "[b]efore being filed,"[61]

petition by circulating and filing a supplementary petition within 30 days of the date that notice was given.").

[59] Appellants agree with the Division's representation that only 640 petition booklets were ultimately received. [*See* Ae. Br. 8 n.24]

[60] *See* AS 15.45.130; 6 AAC 25.240.

[61] *See* AS 15.45.130.

and if the circulator "did not complete the certification affidavit for the booklet as required by AS 15.45.130," the Division cannot count those signatures.[62]

However, the Division now claims — without support — that the Sponsors were nevertheless still able to "correct" those certifications and file them with the Division at a later date. [*See* Ae. Br. 8] Not only is there *no* evidence, whatsoever, that the Division actually advised the Sponsors that they could take such corrective actions, [*See* Exc. 117-128] but this behavior is not permitted by law.[63] It also shows how far the Division will go to justify its new "anything goes" approach to allowing replacement certifications for filed petitions that lacked valid certifications upon filing, even after the relevant filing deadlines have passed.[64]

Moreover, having a faulty or false notarization is the same as having *no* certification. If, for example, a petition booklet was purported to have been notarized by "Mickey Mouse," that would be a "patent defect" noticeable on the day of filing, and that booklet would not be accepted or counted.[65] The same would be true if a petition booklet contained

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62 *See* 6 AAC 25.240(g).

63 *See* AS 15.45.130 ("***Before being filed***, each petition ***shall*** be certified by an affidavit by the person who personally circulated the petition." (emphasis added)); *see also* 6 AAC 25.240(c), (f), (g).

64 This approach is impermissible. *See Stefano*, 539 P.3d at 502-03.

65 *See* 6 AAC 25.240(f). According to a prior Alaska Attorney General Opinion addressing the supplement petition process in former AS 15.45.170, *patent* defects noticeable upon filing *required* rejection, even where there was a process available to cure latent defects. STATE OF ALASKA, ATT'Y GEN. OP., 1984 WL 60987 (Feb. 1, 1984) ("[Former] AS 15.45.170 authorizes a supplementary petition, but that privilege is afforded only when a petition, believed to contain a sufficient number of signatures of qualified voters, is later found to contain signatures of [those] who are not qualified voters; in such

a certification that was clearly not notarized because the "notary" signature did not contain a notary stamp.[66] In both of those circumstances, the Division would be required to not count the signatures in those petition booklets due to the lack of a proper certification.[67]

The circumstances presented here should not lead to a different outcome. The Division noticed — from the face of the petitions — that certain notarizations could not have been correct, because a purported notary wrote down different expiration dates for her notary commission.[68] [Exc. 123] Indeed, the parties do not dispute that these certifications were improper and could not be counted in that form. [Exc. 122-125, 133-139] The timing of when the Division noticed this facial issue with the certifications should not matter. There is no functional difference between the unnotarized certifications at issue here and the completely blank notarizations that were rejected during filing: neither set of booklets could be counted. [*See* Exc. 123, 132] Consistent with 6 AAC 25.240(g), "signatures contained in" booklets where "the certification affidavit" was "not complete[d]"[69] — booklets that "must [have] be[en] filed together as a single instrument"[70] — "will not be counted."[71]

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a case, the [latent] defect of numbers may be cured. However, where the defect is patent, the petition may not be accepted for filing." (emphasis in original)).

66 *See* AS 09.63.030(c)(1)(A).

67 *See* AS 15.45.130; 6 AAC 25.240.

68 *See* AS 09.63.030(c)(1)(B).

69 *See* 6 AAC 25.240(g).

70 *See* 6 AAC 25.240(c); *see also* 6 AAC 25.240(g) (referencing booklets "filed under (c) of this section").

71 *See* 6 AAC 25.240(g).

Moreover, after the Division started counting signatures, it identified 65 booklets with certification errors, but only allowed the Sponsors to correct the certificates on 64 of them. [Exc. 122-125] The Division concedes that they did not return one of the booklets for fixing and "did not count that booklet's signatures" because the notary error was not identified until some unidentified point "later in the process." [Ae. Br. 10] Despite the Division identifying precise dates for their activities during the review of 22AKHE, the timing of their discovery of this additional booklet is a mystery. Whether the additional booklet was found one day after the other falsely certified booklets or one month, the conclusion is the same: the Division unilaterally and arbitrarily selected a random point in time that they decided was "too late" for the correction.[72] Neither the plain language of the statutory framework, nor the applicable regulation, gives the Division this incredible breadth of discretion.[73]

The Division's other ad-hoc decisions and treatment of certain booklets fare no better. Four (4) petition booklets were released back to the Sponsors throughout the

[72] The circumstances presented here might have been consistent with a supplemental petition under former AS 15.45.170, although even under that law there was an explicit 30-day supplemental filing period. *See* former AS 15.45.170 (1997). That is why it is relevant that the legislature chose to repeal that statute; the Division should not be permitted to effectively ignore that legislative decision.

[73] The Division recognizes the absurdity of allowing a deadline to be wholly within its discretion. The Division argued against an interpretation that requires corrections before the Division begins its review by asserting that this interpretation "would set the deadline for corrections at date wholly within the Division's discretion, that only the Division would know." [Ae. Br. 22] Ironically, this is precisely what the Division did when it arbitrarily decided the deadline during the review process that booklets can be corrected and when they need to be refiled.

Division's review process. [*See* Exc. 122-123] But unlike the later-released booklets, none of the signature pages on these booklets were scanned prior to being given back to the Sponsors, and the Division did not even record when some of these booklets were returned. [*See* Exc. 122-123]

Finally, even though the Division returned 64 booklets to the Sponsors, not all of them were refiled by the Sponsors. [*See* Exc. 125] This highlights a serious problem; if the Sponsors had failed to return more "corrected" booklets to the Division, the Division would have engaged in an extensive signature verification process without there being a facially sufficient number of signatures to qualify for the ballot.[74] [*See* Exc. 126] Again, the statutory and regulatory scheme is crafted for agency efficiency: the petition is a "closed universe" to facilitate the Division's binary choice of either accepting or rejecting the entire petition under AS 15.45.150.

V. Deference To An Agency's Longstanding Statutory Interpretation Does Not Apply To The Division's Recently-Formed Decision To Ignore Statutory Deadlines And Permit Replacement Of Invalid Certifications During Counting.

Contrary to the Division's claim, no deference should be given to the Division's interpretation of AS 15.45.130. [Ae. Br. 29-30] Not only is the Division's interpretation unsupported by the plain language of the statute, the legislative history, the rest of the regulatory scheme, or the agency's own application of its "anything goes" interpretation to the petition here, this is not a circumstance where agency deference applies.

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74 *See* 6 AAC 25.240(f).

One of two standards of review applies to an agency's interpretation of a statute: an independent judgment standard when "the agency's specialized knowledge and expertise would not be particularly probative on the meaning of the statute" or a reasonable basis standard "when the interpretation at issue implicates agency experience or the determination of fundamental policies within the scope of the agency's statutory functions."[75] Here, the Division's "specialized knowledge and experience" is not probative of the meaning of AS 15.45.130. Moreover, the agency's proffered interpretation is not "longstanding."[76]

The Division's decision to permit the Sponsors to retrieve and cure substantively invalid certifications for dozens of booklets in the middle of signature counting and after filing deadlines is novel to 22AKHE.[77] 60 booklets that completely lacked valid

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[75] *Marathon Oil Co. v. State, Dep't of Nat. Res.*, 254 P.3d 1078, 1082 (Alaska 2011) (quoting *Matanuska-Susitna Borough v. Hammond*, 726 P.2d 166, 175 (Alaska 1986)).

[76] *See Chugach Elec. Ass'n, Inc. v. Regul. Comm'n of Alaska*, 49 P.3d 246, 250 (Alaska 2002); *see also Marathon Oil*, 254 P.3d at 1082 ("We give more deference to agency interpretations that are longstanding and continuous." (cleaned up)). Although this Court has never specified a standard for what constitutes "longstanding," cases where an agency's interpretation has been found to be longstanding include evidence that the interpretation has been applied for at least a decade. *See, e.g.*, *Marathon Oil Co.,* 254 P.3d at 1082-83, 1085 (noting that the Department of Natural Resources' interpretation of a statute had been applied in its contract pricing "for at least a decade"); *Premera Blue Cross v. State*, 171 P.3d 1110, 1119 (Alaska 2007) (explaining that the Division of Insurance's longstanding interpretation of a statute was shown through "the schedules, forms, and instructions it has made available to taxpayers since 1986"); *Bullock v. State*, 19 P.3d 1209, 1210, 1215-16 (Alaska 2001) (noting that the Department of Revenue's "continuous, long-standing" interpretation of a tax statute was shown through evidence including a 1978 letter to the mayor and a 1990 report specifically applying that interpretation).

[77] The Division far overstates its claims that it has previously allowed such changes, baselessly referring to it as the Division's "established practice." [Ae. Br. 30] The Division can only point to a vague recollection of a single instance from January 2022 as proof of

certifications were allowed to be removed from the Division's "closed universe" of the filed petition, "cured" with entirely new certifications, and returned in the middle of the Division's review and counting process. [*See* Exc. 123-126] And it is undisputed that without the dozens of new certifications added to the booklets that had been improperly notarized, the petition could not be certified or placed on the ballot. [*See* Exc. 126]

The Division also cites to a June 2019 training handbook given to sponsors. [Ae. Br. 29-30] At best, this handbook suggests that the Division believed "incomplete" certifications could be "corrected" before the end of its signature review, and that this interpretation arose less than five years before the filing of 22AKHE. [*See* Ae. Br. 29-30] The handbook certainly does not establish a "longstanding practice" of permitting the complete replacement of invalid certifications of dozens of booklets.[78] But more importantly, the best evidence of the Division's interpretation of AS 15.45.130 and its interplay with the statutory deadlines is found in the regulation it promulgated, including after AS 15.45.130 was amended to add the "or corrected" language.[79] And because the Division had previously promulgated a regulation, any change from that position had to

this so-called "established practice" where the Division permitted *one* booklet to be returned "for corrections" while an initiative was under review. [*See* Ae. Br. 29-30; Exc. 125-126] The Division cannot even identify the type of error that was allowed to be corrected on this single booklet, supporting an inference that the error was a minor, technical one. And allowing the correction of a single booklet likely did not change the outcome of the qualification of that petition.

78 Moreover, this handbook does not have the force of law; it itself refers the reader to the applicable statutes and regulations. [*See* Exc. 96; *see also* Exc. 41]

79 *See* 6 AAC 25.240.

have gone through rulemaking, and could not be changed through revising a handbook — something even the handbook itself acknowledges.[80] [*See* Exc. 96; *see also* Exc. 41]

The Division admits that "[t]he regulation does not say anything about the manner of *returning* a petition to the sponsors for certificate corrections." [Ae. Br. 35 (emphasis in original)] What the regulation *does* say is that uncertified signatures *cannot* be counted, and that when defects in the booklets are observed, the entire petition must be returned to the sponsors as a single instrument and refiled with the Division prior to the one-year deadline.[81] The Division's interpretation also wholly ignores AS 15.45.130's temporal requirement that booklets must be certified "[b]efore being filed."[82] This Court should thus give little (if any) deference to the Division's new interpretation of the statutes.

VI. The Constitutional Canon Of Liberal Construction Only Applies To Technical Deficiencies, And The Replacement Of 60 Certifications Was Substantive, Not Technical.

Finally, the Division's reliance on the constitutional canon of liberally construing initiative petition requirements is misplaced. [Ae. Br. 27] This Court has explained that "courts are reluctant to invalidate [initiative petitions] in cases of merely doubtful

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80 *See Stefano*, 539 P.3d at 503 ("The first time an agency adopts a commonsense interpretation of a statute, rulemaking may not be required. But when an agency 'alters its previous interpretation' in a way that is inconsistent, then rulemaking is required." (quoting *Chevron U.S.A.*, 387 P.3d at 37)); *see also id.* at 502 (holding that an agency cannot have "'unfettered discretion to vary the requirements of its regulations at whim,' which 'invites the possibility that state actions may be motivated by animosity, favoritism, or other improper influences.'" (quoting *Jerrel*, 999 P.2d at 144)).

81 *See* 6 AAC 25.240(f).

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

legality."[83] But this Court's liberal construction of the constitutional and statutory provisions for initiatives applies only to issues of "technical deficiencies or failure to comply with the exact procedural requirements."[84]

The 60 booklets lacking certification by an authorized notary is not a minor technical deficiency or trivial procedural failure like neglecting to include the place of execution,[85] or omitting certain information in the petition summary that "did not substantially misrepresent the essential nature of the [initiative]" as to undermine "the integrity of the initiative process."[86] The booklets here completely lacked the required notarization or self-certification of the circulator affidavits to verify the authenticity of the signatures contained therein, and they were not "cured" until after all deadlines had run. [*See* Exc. 122-126] This verification is required by law; it is essential to maintaining the integrity of the initiative process and is not a mere technicality.[87]

This Court's discussion in *Fischer v. Stout* sheds light on the issue. There, an election challenger questioned the counting of certain votes or classes of votes based on a variety of errors.[88] One category included absentee ballots that were required under

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83 *See Yute Air*, 698 P.2d at 1181.

84 *See N.W. Cruiseship Ass'n*, 145 P.3d at 577; *Fischer v. Stout*, 741 P.2d 217, 225 (Alaska 1987).

85 *See N.W. Cruiseship Ass'n*, 145 P.3d at 577.

86 *Planned Parenthood v. Campbell*, 232 P.3d 725, 734 (Alaska 2010). However, this case — cited repeatedly by the Division — cannot "have precedential effect." *See* Alaska App. R. 106(b).

87 *See* AS 15.45.130; 6 AAC 25.240.

88 *See Fischer*, 741 P.2d at 219.

AS 15.20.081(d) to be signed by the voter in the presence of an attesting officer.[89] The challenger argued that the ballots must be void and uncountable "unless the authority of the attesting officer is clear from the face of the ballot envelope."[90] The *Fischer* Court rejected the argument, noting two critical points significant to this case.

First, this Court noted that it was aware of "no authority" that "requires the production of such information."[91] To the contrary, here, the statutory and regulatory framework for ballot initiatives repeatedly demands proper certification of petitions prior to filing.[92] Second, this Court noted that although it would presume the person who signed the absentee ballot was an authorized official, "[t]his presumption may be rebutted by an affirmative showing that the attesting officer lacks appropriate authority."[93] Importantly, the *Fischer* Court did not say that the required attestation by an authorized officer was merely technical and could be ignored; indeed, it could be invalidated if the official lacked the requisite authority.[94] Here, the parties stipulated to the fact that 61 booklets filed by

89 *See* AS 15.20.081(d) ("Upon receipt of an absentee ballot by mail, the voter, in the presence of a notary public, commissioned officer of the armed forces including the National Guard, district judge or magistrate, United States postal official, registration official, or other person qualified to administer oaths, may proceed to mark the ballot in secret, to place the ballot in the secrecy sleeve, to place the secrecy sleeve in the envelope provided, and to sign the voter's certificate on the envelope in the presence of an official listed in this subsection who shall sign as attesting official and shall date the signature.").

90 *See Fischer*, 741 P.2d at 219.

91 *See id.* at 223.

92 *See* AS 15.45.130; 6 AAC 25.240.

93 *See Fischer*, 741 P.2d at 223.

94 *See id.*

the Sponsors were notarized by someone who lacked the requisite authority (because she was not an authorized notary at all) and that none of those booklets could be counted without completely replacing that certification. [*See* Exc. 122-125, 133-139] The subscriptions in those booklets were thus invalid and uncountable.

Similarly, the Sponsors' argument that the lack of valid certifications on 60 booklets were mere technical deficiencies that could be corrected after filing and after the statutory deadlines also fails. [Int. Ae. Br. 15-16, 26] 6 AAC 25.240(g) only permits the counting of petition booklets that are filed in the manner "required by AS 15.45.130,"[95] and AS 15.45.130 explicitly requires that "each petition *shall* be certified by an affidavit" "***b]efore*** being filed."[96] This confirms that an improper certification is a substantive deficiency.

The Sponsors also did not adequately distinguish this Court's discussion in *N.W. Cruiseship Ass'n of Alaska, Inc. v. State* as to what constitutes a technical violation for booklet certifications.[97] [Int. Ae. Br. 15, 26] Under that case, "[n]eglecting to include *the*

95 *See* 6 AAC 25.240(g).

96 *See* AS 15.45.130 (emphasis added). Both the Sponsors and the Division attempt to downplay the lack of a valid certification by arguing that no one was at fault. [*See* Ae. Br. 9-10; Int. Ae. Br. 4, 25] But notaries have legal obligations that are enforceable by law, potentially leading to criminal and civil liability if they are ignored. *See* AS 09.63.020(b); AS 44.50.062; AS 44.50.068; AS 44.50.160. And here, it is clear that the individual in this case either knew or should have known that her notary commission had long expired; she notarized different petitions with different notary expiration dates, [*See* Ae. Br. 10] which indicates either deliberate misconduct or gross negligence. *See* AS 09.63.030(c)(1)(B).

97 *See N.W. Cruiseship Ass'n of Alaska*, 145 P.3d at 577-79.

place of execution in a self-certification is a technical violation,"[98] because the purpose of the certification was still achieved where the circulators had still sworn to the "truth by signing under penalty of perjury."[99] In contrast, the entirely new certifications added to the 60 booklets that were returned after the deadlines do not constitute technical corrections. They instead fulfilled the substantive requirement of having all signatures properly certified; a requirement that must be met "before filing."[100]

CONCLUSION

The Division claims that it has unfettered discretion to permit *any* type of correction to petition certifications — from minor technical errors like a juxtaposed date, to major substantive issues like a fully invalid or missing certification — at *any* time after the petition is filed, after all applicable deadlines have passed, and after the Division has already started counting signatures. No statute or regulation allows this indiscriminate process that undermines the clear, consistent framework for fair petition evaluation. The Division's handling of 22AKHE demonstrates the inconsistent and arbitrary process that derives from their faulty interpretation.

Because the Division unlawfully allowed the Sponsors to recertify and refile petition booklets after statutory deadlines expired, this Court should REVERSE and declare that 22AKHE is disqualified.

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98 *See id.* at 577 (emphasis added).

99 *See id.* (emphasis omitted).

100 *See* AS 15.45.130.

RESPECTFULLY SUBMITTED at Anchorage, Alaska this 19th day of August, 2024.

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