

EMERGENCY

IN THE SUPREME COURT OF 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.

**EMERGENCY REQUEST FOR
SCHEDULING CONFERENCE AND
EXPEDITED BRIEFING SCHEDULE**

Case No.: S-_____
Trail Court Case No.: 3AN-24-05615CI

Pursuant to Alaska Appellate Rules 503.5(e) and 504, Appellants La Quen Náay Elizabeth Medicine Crow, Amber Lee, and Kevin McGee (collectively “Appellants”) respectfully request a scheduling conference to set an expedited briefing and decision schedule for this appeal. As explained below, the parties have previously stipulated that a decision on the merits of this appeal is required before September 3, 2024,¹ because that

¹ See Stipulation and Proposed Order for Expedited Deadlines and Resolution at 1-2, 11 (Apr. 23, 2023) [hereinafter Stipulation] (Attachment 1).

is when the State Division of Elections (“the Division”) “plans to finalize the [November 2024] general election ballot for printing.”² A scheduling conference is therefore requested as soon as possible.

This appeal concerns the application of statutory deadlines for the filing of ballot initiative petitions.³ The parties previously stipulated that the Sponsors (Intervenor-Appellees Dr. Arthur Matias, Phillip Izon, and Jamie R. Donley) of 22AKHE — a proposed ballot initiative that, if enacted, would impose closed-party primaries and repeal ranked-choice voting in Alaska — had not submitted a sufficient number of qualified signatures to the Division before two key statutory deadlines.⁴ The main legal questions presented in this appeal concern whether the Division lawfully allowed the Sponsors to correct and resubmit over five dozen 22AKHE petition booklets that had been originally filed without proper certifications after the applicable statutory deadlines had passed.⁵ Final judgment was entered on July 24, 2024,⁶ and 22AKHE remains qualified for the November 2024 general election ballot.⁷

² *See id.* at 11.

³ *See* AS 15.45.140; AS 15.45.190.

⁴ *See* Stipulation at 6-10 (Attachment 1); *see also* AS 15.45.140; AS 15.45.190.

⁵ *See* AS 15.45.130 (“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.”); *see also* AS 15.45.140; AS 15.45.190.

⁶ *See* Final Judgment (July 24, 2024) (Attachment 2).

⁷ *See id.* at 2.

The parties have previously stipulated that “[t]he Division plans to finalize the general election ballot for printing on September 3, 2024.”⁸ A decision from this Court is therefore required before September 3 to give guidance to the Division on whether the November 2024 general election ballot should include 22AKHE.⁹ Appellants respectfully request a scheduling conference without delay so that this Court can set an expedited briefing and decision schedule that allows the Division to move forward with the timely printing of general election ballots.

As required by Appellate Rule 504(c) for emergency motions, the telephone numbers and office addresses of counsel are as follows:

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⁸ See Stipulation at 11 (Attachment 1).

⁹ See *id.* at 1-2.

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Counsel for the other parties were notified by email about this upcoming emergency request for a scheduling conference and expedited briefing schedule on July 25, 2024. Counsel for the State Appellees does not oppose Appellants' emergency request for a scheduling conference, and agrees that this Court's decision must be made before the Division's September 3 printing deadline. Counsel for the Intervenor Appellees also does not oppose Appellants' emergency request, but has indicated that he will be traveling out of the country from July 29 until August 13, and that he will need to appear telephonically for the scheduling conference.

Appellants respectfully request that this Court promptly hold a scheduling conference.

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DATED this 25th day of July, 2024.

CASHION GILMORE & LINDEMUTH
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

La Quen Náay Elizabeth Medicine)
Crow, Amber Lee and Kevin McGee,)
)
Plaintiffs,)
)
v.)
)
Director Carol Beecher, in her official)
capacity, Lt. Governor Nancy)
Dahlstrom, in her official capacity, and)
the State of Alaska, Division of)
Elections,)
)
Defendants.)

FILED in the Trial Courts
State of Alaska Third District

APR 19 2024

Clerk of the Trial Courts
By _____ Deputy

Case No. 3AN-24-05615CI

**STIPULATION AND PROPOSED ORDER
FOR EXPEDITED DEADLINES AND RESOLUTION**

The plaintiffs, the State defendants (collectively, "the Division"), and the proposed intervenors file this stipulation and proposed order regarding facts and deadlines. The plaintiffs and the Division agree that the Court should grant the motion to intervene filed by Phillip Izon III, Jamie R. Donley, and Arthur Mathias, the sponsors of the Alaskans for Honest Elections initiative (collectively, "the Sponsors"). All of the parties, including the proposed intervenors, have conferred in good faith and agree that this case is non-routine and requires expedited litigation and resolution. Specifically, the parties request that this Court issue a ruling on all claims by July 19, 2024. This would allow time for any appeals to be resolved before September 3, 2024, when the Division plans to finalize the general election ballot, with or without the

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contested initiative. The parties agree to expedite discovery, briefing, and—if necessary—trial, as reflected in the deadlines proposed below.

The parties also agree that the claims concerning the Division’s conduct can be resolved on cross motions for summary judgment, without discovery or trial on these claims. To expedite the resolution of these claims, the parties do not dispute the following facts and agree that this stipulation is in lieu of an answer from the Division. Any factual allegation in the complaint that concerns the Division and is not specifically addressed here is denied. The parties expect that the Division will not provide Rule 26 initial disclosures, send or respond to discovery requests, or call witnesses at trial.¹ The parties note that the Court’s resolution of the claims against the Division in favor of the plaintiffs would require that the Division find this initiative improperly filed.

The plaintiffs, the Division, and the Sponsors stipulate to the following:

I. Jurisdiction and Parties

1. The plaintiffs are three Alaska residents, La Quen Náay Elizabeth Medicine Crow, Amber Lee, and Kevin McGee.
2. Carol Beecher is the Director of the Division of Elections and is named as a defendant in her official capacity.

¹ However, the Division has agreed to provide unredacted copies of all petition booklets received by the Division for 22AKHE to both the plaintiffs and the Sponsors, marked as Confidential and subject to the proposed protective order pending before the Court.

3. Nancy Dahlstrom is the Lieutenant Governor of the State of Alaska and is named as a defendant in her official capacity.
4. The Division of Elections administers elections and ballot initiatives in Alaska.
5. The proposed intervenors are Phillip Izon III, Jamie R. Donley, and Arthur Mathias, the three sponsors of the Alaskans for Honest Elections initiative.
6. The Court has jurisdiction pursuant to AS 15.45.240 and venue is proper in the Third Judicial District.

II. Facts

1. The Sponsors filed an application for the Alaskans for Honest Elections initiative on November 23, 2022.
2. As suggested by the sponsors, the Division designated this initiative 22AKHE.
3. The Division certified the application on January 20, 2023.
4. The Division issued the petition booklets to the Sponsors on February 8, 2023.
5. The Division conducts a training session with sponsors of initiatives, where it presents the legal and regulatory requirements for gathering signatures and submitting petitions.

6. The Division also provides the Initiative Petition Training Handbook to sponsors of initiatives at the training, a true and correct copy of which is attached to the complaint as Exhibit A.
7. All of the Sponsors attended this training on February 8, 2023.
8. Mr. Mathias signed an “Acknowledgment of Receipt of Initiative Petition Booklets, Training and Filing Deadline” on behalf of the Sponsors, a true and correct copy of which is attached as Exhibit 1.
9. On July 11, 2023, the Division received an email concerning a 22AKHE petition booklet at Duane’s Antique Market.
10. A true and correct copy of this email, with an attorney-client communication and the sender’s name and contact information redacted, is attached as Exhibit 2.²
11. On the morning of July 17, 2023, Director Beecher visited Duane’s Antique Market. She saw an open booklet on a table near the entrance. No one was nearby. She found an employee and told him that booklets cannot be signed while unattended.
12. Director Beecher took two photos of the booklet, true and correct copies of which are attached as Exhibit 3.

² The Division will provide a copy of this email without the sender’s name and contact information redacted to both the plaintiffs and the Sponsors, marked as Confidential and subject to the proposed protective order pending before the Court.

13. On July 17, 2023, Director Beecher called Mr. Izon to remind him of the requirements for circulators and petition booklets.
14. The same day, Director Beecher followed up with an email, a true and correct copy of which is attached to the complaint as Exhibit C.
15. On October 22 or 23, 2023, the Division received a phone call alleging that two petition booklets, booklets 967 and 968, were left unattended at a bingo hall in Anchorage.
16. A Division of Elections employee took a note during this phone call, a true and correct copy of which is attached as Exhibit 4, with the caller's name and phone number redacted.³
17. On October 23, 2023, Michaela Thompson, the Division of Elections Operations Manager, called Mr. Izon to remind him of the requirement that petition booklets must be signed in the circulator's presence and cannot be left unattended.
18. The next day, Ms. Thompson followed up with an email, a true and correct copy of which is attached to the complaint as Exhibit D.
19. The Sponsors filed the petition with the Division on January 12, 2024.

³ The Division will provide an unredacted copy of this note to both the plaintiffs and the Sponsors, marked as Confidential and subject to the proposed protective order pending before the Court.

20. On behalf of the Sponsors, Mr. Izon signed a “Receipt of Initiative, Referendum, or Recall Petition Signature Booklets” form, a true and correct copy of which is attached as Exhibit 5.
21. An example of a completed petition booklet, with confidential or potentially confidential information redacted, is attached as Exhibit 6.
22. On January 18, 2024, Ms. Thompson emailed Mr. Izon to inform him that the notary who notarized the certificate on booklet 4 had written a date of December 3, 2024. Ms. Thompson allowed Mr. Izon to retrieve this booklet, have the notary correct the date, and return the booklet before the Division completed its review of the petition booklets.
23. A true and correct copy of this email is attached as Exhibit 7.
24. One of the Sponsors retrieved booklet 4 on January 23, 2024.
25. That day, one of the Sponsors also retrieved booklet 579, which the Division discovered was missing the location where the circulator self-certified the certificate.
26. The Sponsors returned booklets 4 and 579 to the Division on or after February 12, 2024 and before March 1, 2024.
27. On February 15, 2024, the Sponsors retrieved booklet 470, which the Division discovered was missing the date on which the certificate was notarized.

28. On February 21, 2024, the Sponsors retrieved booklet 954, which the Division discovered was also missing the date on which the certificate was notarized.
29. The Sponsors returned booklet 470 on February 21, 2024, and booklet 954 on February 23, 2024.
30. By January 22, 2024, the Division discovered that the person who purported to notarize the certificates on 60 booklets was not a commissioned notary.
31. This came to light when the Division noticed this person provided different dates for the expiration of her commission on different booklets. The Division then confirmed that her notary commission had expired in 2022.
32. On January 26, 2024, Ms. Thompson emailed the Sponsors to allow them to retrieve, correct, and return these 60 booklets with certificates that were not notarized by a commissioned notary. Ms. Thompson explained that the certificates in these booklets could be corrected by the original circulators if the circulators completed the self-certification portion of the certificates or if the circulators completed new certificates that were notarized by commissioned notaries.
33. Ms. Thompson stated that the booklets had to be corrected and returned before the Division completed its signature review, the deadline for which is 60 days from the filing of the petition. However, due to the

large number of booklets that were not properly notarized, Ms.

Thompson requested that the Sponsors correct and return these booklets by March 1, 2024, before the 60-day deadline.

34. A true and correct copy of these emails is attached as Exhibit 8.
35. Before Ms. Thompson returned any of these 60 booklets to the Sponsors, she photocopied the signature pages. Ms. Thompson did not similarly photocopy the signature pages of the other four booklets that were previously returned to the Sponsors.
36. On February 12, 2024, the Sponsors returned the following 50 booklets: 10, 11, 21, 31, 43, 45, 64, 88, 89, 362, 430, 457, 472, 476, 479, 482, 540, 774, 776, 794, 897, 906, 923, 926, 936, 939, 945, 955, 958, 959, 967, 1296, 1299, 1303, 1317, 1318, 1322, 1323, 1326, 1333, 1334, 1349, 1353, 1354, 1359, 1373, 1374, 1375, 1394, and 1402.
37. On February 15, 2024, the Sponsors returned the following three booklets: 487, 807, and 1314.
38. On February 21, 2024, the Sponsors returned the following four booklets: 902, 938, 950, and 1316.
39. On February 23, 2024, the Sponsors returned booklet 477.
40. When the Division received these booklets, it compared the number of signatures in the photocopy to the number of signatures in the returned booklet.

41. The Division did not identify any discrepancy in the number of signatures.
42. The Sponsors never returned booklets 891 and 1338.
43. In all, the Division returned 64 booklets to the Sponsors, two of which the Sponsors never returned to the Division.
44. Attached as Exhibit 9 is a true and correct copy of a form signed by Mr. Mathias on behalf of the Sponsors that acknowledges the Sponsors' receipt of the 60 booklets and tracks the dates on which the Sponsors returned booklets to the Division.
45. The Division returned original, complete booklets to the Sponsors, rather than copies of booklets or parts of booklets.
46. The Division reviewed the signatures in all 62 booklets returned by the Sponsors and accepted those signatures by registered voters who provided all of the required information and had not already signed a petition booklet.
47. After the Division returned the 60 booklets with certificates that were not notarized by a commissioned notary, the Division discovered one more booklet, booklet 1, which was similarly not notarized by a commissioned notary. The Division did not accept any of the signatures in this booklet.
48. The Division recalls but cannot document prior instances of returning individual petition booklets to initiative sponsors after the sponsors had submitted their petitions, so that the sponsors could correct errors on the

certification pages before the Division completed its review of the petition booklets. Most recently, the Division recalls returning one booklet to the sponsors of the 2021 Alaska Tribal Recognition Act in January 2022.

49. The Alaska Legislature convened on January 16, 2024.
50. One year after the Division issued the 22AKHE booklets was February 7, 2024.
51. On March 8, 2024, the Division completed its review of the petition booklets and notified the Sponsors that the petition was properly filed.
52. The Division also informed the sponsors that the initiative would appear on the November 5, 2024, general election ballot, unless there was a special election or the Legislature adjourned on or before April 22, 2024.
53. 60 days after the filing of the petition was March 12, 2024.
54. If all of the signatures in the 62 booklets that the Sponsors returned to the Division were invalidated, the Division could not certify the petition because there would only be sufficient signatures in 26 of the 40 house districts.
55. Attached at Exhibit 10 is a true and correct copy of an annotated petition summary report that the Division created after the filing of the complaint to determine the result if these 62 booklets were invalidated.

56. A copy of the public petition signers report on which this analysis is based, titled “22AKHE – Public Petition Signers Report_Research,” has been provided to the parties.
57. The Division plans to finalize the general election ballot for printing on September 3, 2024.

III. Deadlines

1. Given the deadline to finalize the general election ballot, and the likely necessity of appellate review, the parties agree that a final decision on the merits should be issued no later than July 19, 2024.
2. The parties agree that the claims concerning the Division’s conduct in Counts III and IV can be resolved on cross motions for summary judgment, rather than at trial.
3. Therefore, the parties agree and request that:
 - a. The plaintiffs’ motion for summary judgment on Counts III and IV be due by April 24.
 - b. The Division’s combined opposition and cross motion for summary judgment, along with any response by the Sponsors, be due on May 10.
 - c. The plaintiffs’ combined opposition and reply be due on May 22.
 - d. Oral argument on the motions for summary judgment be scheduled on May 28, 29, or 30.

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4. As to the other claims, the parties agree that initial disclosures by the plaintiffs and the Sponsors will be due April 30.
5. The parties agree to respond to discovery requests within three weeks of receipt.
6. The parties anticipate requesting that a bench trial, if necessary, would last five days and take place the second half of June. This Court has set a trial setting conference for May 15, 2024; however the parties request an earlier date at this Court's convenience, both to set a trial date and pretrial deadlines, and to set a date and time for oral argument.

Dated April 18, 2024.

TREG TAYLOR
ATTORNEY GENERAL

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Assistant Attorney General
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By: /s/ Thomas S. Flynn
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Medicine Crow, et al. v. SOA, et al.
Stipulation and Proposed Order

Case No. 3AN-24-05615CI
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Attachment 1
Page 12 of 14

APR 19 2024

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By: /s/ Kevin Clarkson [by consent]
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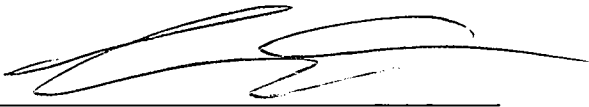
[PROPOSED] ORDER

IT IS SO ORDERED.

1. The Sponsors' motion to intervene is granted and Phillip Izon III, Jamie R. Donley, and Arthur Mathias are recognized as intervenors. The intervenors' names shall be added to the case caption as intervenor defendants.
2. The plaintiffs' motion for summary judgment on Counts III and IV is due on April 24, 2024.
3. The Division's combined opposition and cross motion for summary judgment, along with any response by the Sponsors, is due on May 10, 2024.
4. The plaintiffs' combined opposition and reply is due on May 22, 2024.
5. Oral argument on the motions for summary judgment shall be held on May 28, 2024 at 9:00-11:00 am.
6. Initial disclosures by the plaintiffs and the Sponsors will be due April 30.

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DATED April 23, 2024 at Anchorage, Alaska.


Hon. Christina Rankin
Superior Court Judge

Certificate of Service

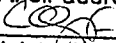
I certify that on April 18, 2024, true and correct copies of the aforementioned documents were served on the following via email:

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/s/ Nomi Saxton 04/18/2024
Nomi Saxton
Legal Office Assistant II

I certify that on 4/23/24 a copy of the above was emailed via Case Parties (unless noted otherwise below) to each of the following at their address of record.


Administrative Assistant
S Gottstein
J Lindemuth
S Kendall
T Flynn
L Harrison
K Clarkson

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE**

LA QUEN NAA Y ELIZABETH)
MEDICINE CROW, AMBER LEE,)
KEVIN MCGEE,)

Plaintiffs,)

v.)

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

Defendants,)

v.)

DR. ARTHUR MATTHIAS, PHILLIP)
IZON, AND JAMIE R. DONLEY,)

Case No. 3AN-24-05615 CI #33

Intervenors.

FINAL JUDGMENT

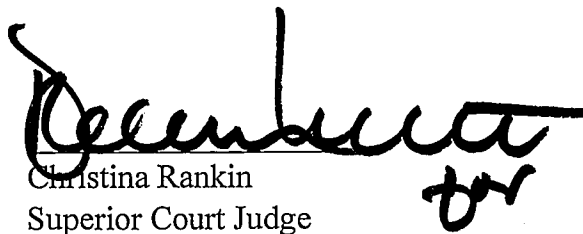
This case having been tried to the Court between June 24, 2024, and July 3, 2024; the Court having considered and weighed the evidence; the Court having issued its Order re Summary Judgment dated June 7, 2024, its Order re Renewed Motion for Summary Judgment dated June 21, 2024, and its Findings of Fact and Conclusions of Law dated July 19, 2024; the State of Alaska, Division of Elections having recounted the subscribers to the 22AKHE initiative petition in accordance with the Findings of Fact and Conclusions of Law; and good cause otherwise appearing;

JUL 24 2024

Now, therefore, FINAL JUDGMENT is hereby entered against the plaintiffs, their request for relief is denied, and their claims are resolved in favor of the defendants and Sponsors. The Initiative identified as 22AKHE shall remain on the November 2024 general election ballot consistent with the Court's decisions dated June 7, June 21, and July 19, 2024, and the Division of Elections' subsequent recount of subscribers.

Dated this 24 day of July 2024.

By


Christina Rankin
Superior Court Judge

I certify that on July 24, 2024,
a copy of this Proposed Final Judgment
was emailed to:

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Kevin Clarkson

Kevin G. Clarkson

I certify that on _____ a copy
of the above was emailed via Case Parties
(unless noted otherwise below) to each of
the following at their address of record.

Administrative Assistant
CKendall, SGottstein, JLindemuth,
SKendall, T Flynn, LHarrison,
KClarkson
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Final Judgment
Case No. 3AN-24-05615 CI

EMERGENCY

IN THE SUPREME COURT OF THE STATE OF ALASKA

LA QUEN NÁAY ELIZABETH
MEDICINE CROW, AMBER LEE, and
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vs.

DIRECTOR CAROL BEECHER, in her
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DIVISION OF ELECTIONS,

Appellees,

vs.

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

Intervenor Appellees.

**[PROPOSED] ORDER GRANTING
EMERGENCY REQUEST FOR
SCHEDULING CONFERENCE AND
EXPEDITED BRIEFING SCHEDULE**

Case No.: S-_____

Trail Court Case No.: 3AN-24-05615CI

Upon full consideration of Appellants' Emergency Request for Scheduling Conference and Expedited Briefing Schedule, and any opposition thereto, it is hereby ORDERED that the Emergency Request is GRANTED.

A Scheduling Conference for this appeal is set for the _____ day of _____, 2024, at _____ a.m. / p.m. to set an expedited briefing and decision schedule for this appeal.

[PROPOSED] ORDER GRANTING EMERGENCY REQUEST FOR SCHEDULING CONFERENCE AND EXPEDITED BRIEFING SCHEDULE

Medicine Crow, et al., vs. Beecher, et al., S-_____

Cashion Gilmore & Lindemuth
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Anchorage, Alaska 99501
(907) 222-7932 fax (907) 222-7938

IT IS SO ORDERED.

DATED: _____

CLERK OF COURT