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3 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

4 THIRD JUDICIAL DISTRICT AT ANCHORAGE

5 BENJAMIN NAGEAK, ROB ELKINS,)
6 ROBIN D. ELKINS, LAURA WELLES)
7 and LUKE WELLES,)

8 Plaintiffs,)

9 v.)

10 LT. GOVERNOR BYRON MALLOTT,)
11 in his official capacity as Lt. Governor for)
12 the State of Alaska, and)
13 JOSEPHINE BAHNKE, in her official)
14 capacity as Director of the Division of)
15 Elections,)

16 Defendants.)

Case No.: 3AN-16-09015 CI

FILED
IN THE
THIRD JUDICIAL DISTRICT
2016 OCT -14 PM 4:25
ANCHORAGE, ALASKA

17 **NOTICE OF FILING ORIGINAL AFFIDAVIT**

18 Defendants hereby file this original Affidavit of Josephine Bahnke. The attached
19 original signed affidavit is to be substituted for the scanned copy submitted in support of
20 the defendants' Unopposed Motion for Status Conference filed on September 21, 2016.

21 DATED: October 4, 2016.

22 JAHNA LINDEMUTH
23 ATTORNEY GENERAL

24 By: *M. A. Paton Walsh*
25 Margaret Paton-Walsh (0411074)
26 Elizabeth M. Bakalar (0606036)
Assistant Attorneys General

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STATE OF ALASKA
THIRD DISTRICT

3 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

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4 THIRD JUDICIAL DISTRICT AT ANCHORAGE

5 BENJAMIN NAGEAK, ROB ELKINS,)
6 ROBIN D. ELKINS, LAURA WELLES)
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9 v.)

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10 LT. GOVERNOR BYRON MALLOTT,)
11 in his official capacity as Lt. Governor for)
12 the State of Alaska, and)
13 JOSEPHINE BAHNKE, in her official)
14 capacity as Director of the Division of)
15 Elections,)

16 Defendants.)

17 **CERTIFICATE OF SERVICE**

18 I hereby certify that on this date true and correct copies of the *Notice of Filing*
19 *Original Affidavit*, and this *Certificate of Service* were served via U.S. Mail on the
20 following:

21 Timothy A. McKeever
22 Stacey C. Stone
23 Holmes Weddle & Barcott, PC
24 701 West Eighth Avenue, Suite 700
25 Anchorage, AK 99501

Thomas P. Amodio
Reeves Amodio, LLC
500 L Street, Suite 300
Anchorage, AK 99501

26 Ninia Dizon October 4, 2016
Ninia Dizon Date
Law Office Assistant

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

BENJAMIN N. NAGEAK, ROB)
ELKINS, ROBIN D. ELKINS, LAURA)
WELLES and LUKE WELLES,)

Plaintiffs,)

v.)

BYRON MALLOT, in his capacity as)
Lieutenant Governor, and JOSEPHINE)
BAHNKE, in her capacity as Director)
of the Division of Elections,)

Defendants.)

Case No. 3AN-16-09015 CI

AFFIDAVIT OF JOSEPHINE BAHNKE

STATE OF ALASKA)
) ss
FIRST JUDICIAL DISTRICT)

Josephine Bahnke, on oath duly sworn, hereby states as follows:

1. I am employed by the State of Alaska, Division of Elections ("Division"),
as the Director of the Division of Elections.

2. I have personal knowledge of all matters set out in this affidavit.

3. I am aware that the result of the primary election for House District 40,
held on August 16, 2016, is being challenged in this case and that the Court may
overturn the Division's determination of the winner of that race.

4. The Division's determination of the winner is based on the following:

a. On September 6, 2016, the State Ballot Review Board certified

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1
2 Dean Westlake as the winner of the House District 40 primary, with 819 votes. The
3 incumbent Benjamin Nageak had 815 votes.

4 b. On September 12, 2016, the Division conducted a recount for
5 House District 40. The result of the recount was 825 votes for Dean Westlake and 817
6 votes for Benjamin Nageak.

7 5. This case was filed on September 16, 2016.

8 6. The general election will be on November 8, 2016.

9 7. Ballots for the general election currently are being printed with the name
10 of Dean Westlake as the Democratic candidate for House District 40, in accordance
11 with the Division's recount.

12 8. Should the Court determine that the ballots should be changed, the
13 Division can substitute ballots for House District 40 with either (1) the name of
14 Benjamin Nageak or (2) the names of both Democratic candidates—Benjamin Nageak
15 and Dean Westlake. The Division can make these substitutions only if it has notice of
16 the final court decision by Friday, October 14, 2016, at the latest.

17 9. The Division needs a final court decision—including any decision on
18 appeal rendered by the Alaska Supreme Court—by October 14 for the following
19 reasons:

20 a. Early voting, absentee in-person, and special needs voting must
21 begin on October 24, 2016, according to the timelines found in AS 15.20.061 (entitling
22 qualified voters to vote an absentee in-person ballot “on or after the 15th day before an
23 election”), AS 15.20.064 (entitling a qualified voter to vote early “[f]or 15 days before
24
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26

1
2 an election”), and AS 15.20.072 (entitling a qualified “special needs” voter to vote an
3 absentee ballot “on or after the 15th day before an election”).

4 b. To assure that ballots are received by October 24 in the locations
5 that allow early voting, absentee in-person, and special needs voting, the Division must
6 send them by October 17, 2016. Voting locations that will have these House District 40
7 ballots are statewide: Anchorage, Fairbanks, Juneau, Nome, Wasilla, and Prudhoe Bay;
8 and within House District 40: Allakaket, Coldfoot, Barrow, Kotzebue, Kaktovik,
9 Ambler, Buckland, Deering, Noatak, Noorvik, Shungnak, Selawik, Kivalina, and Point
10 Lay. A week is the smallest window that the Division believes will assure delivery to
11 these locations by the statutory date for early and absentee in-person voting, based on its
12 experience in many elections.
13

14 c. To assure that these ballots are sent by Monday, October 17, 2016,
15 the Division intends to print, well before that date, 10,600 copies of each of the possible
16 substitute ballots for House District 40, one version with the name of Benjamin Nageak
17 and another version with the names of both Democratic candidates—Benjamin Nageak
18 and Dean Westlake. But the Division must know which version of the ballot it should
19 send to the early and absentee in-person locations by the end of the day on Friday,
20 October 14, 2016, so that workers can package the ballots to be ready for shipment on
21 Monday.
22

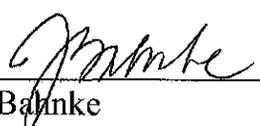
23
24 10. Ballots to uniformed and overseas voters must be transmitted not later
25 than September 24, 2016 under the federal Uniformed and Overseas Citizens Absentee
26 Voting Act (UOCAVA) and its associated amendments under the Military and Overseas

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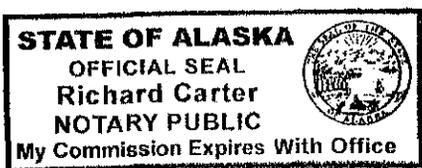
Voter Empowerment Act (MOVE) (see 52 U.S.C. § 1973ff et seq.) (requiring the Division to transmit ballots to all military and overseas voters 45 days before an election at which a federal race will appear on the ballot). Additionally, special advance ballots must be transmitted by this date under state law, AS 15.20.081(l) (requiring the director to transmit ballots not later than 45 days before the election to voters who have requested a special advance ballot under that statute). Because September 24 falls on a Saturday, the Division intends to transmit ballots to this group of voters on Friday, September 23, 2016. The ballots for this group of voters in House District 40 will have Dean Westlake's name on them, as certified by the Division at the election and in the recount. The Division will send a notice with these ballots explaining that if the court orders it, substitute ballots will be provided to these voters for the House District 40 race.

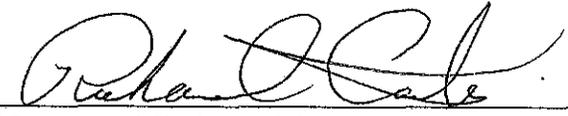
11. This timeline is based on significant discussion with my staff about how to provide the court with the most time possible to consider and decide this case and still provide ballots to voters according to statutory deadlines.



Josephine Bahnke

SWORN TO AND SUBSCRIBED before me this 21st day of September, 2016.





Notary public in and for Alaska
My commission expires: with office