

FILED
STATE OF ALASKA
THIRD DISTRICT

2016 SEP 26 PM 4:04

CLERK TRIAL COURT

BY:
OFFICIAL CLERK

Timothy A. McKeever, Esq.
tmckeever@hwb-law.com
Stacey C. Stone, Esq.
sstone@hwb-law.com
Holmes Weddle & Barcott, P.C.
701 W. 8th Ave., Suite 700
Anchorage, Alaska 99501
Ph: (907) 274-0666
Fax: (907) 277-4657

Counsel for Plaintiffs

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

BENJAMIN N. NAGEAK, ROB ELKINS,
ROBIN D. ELKINS, LAURA WELLES,
LUKE WELLES, RICH THORNE, MARY
PAPKOTAK, HARRY PAPKOTAK, SOPHIE
TRACEY, MARIE TRACEY, BILL TRACEY,
AMANDA KALEAK, and RANDOLPH
RUEDRICH

Plaintiffs,

vs.

LT. GOVERNOR BYRON MALLOTT, in his
official capacity as Lt. Governor for the State of
Alaska, and JOSEPHINE BAHNKE, in her
official capacity as Director of the Division of
Elections,

Defendants.

Case No. 3AN-16-09015CI

**REVISED MOTION AND
MEMORANDUM FOR LEAVE TO
AMEND COMPLAINT**

COMES NOW Plaintiff Benjamin N. Nageak, and other qualified voters by and through their attorneys, Holmes Weddle & Barcott, P.C., and pursuant to Alaska R. Civ. P. 15(a), hereby moves the Court for an order allowing Plaintiff to file its Revised First Amended Complaint against Defendants Lt. Governor Byron Mallott and Josephine Bahnke, in their official capacities. A proposed order and the First Amended Complaint are lodged herewith.

FACTS

Plaintiffs filed their complaint in this action on or about September 16, 2016. As the undersigned has come to further develop this case, conduct discovery, and prepare for trial, it has become evident that there are additional qualified voters to be named as Plaintiffs, and the location of at least one city alleged in the complaint required revision. These revisions are set forth in the First Amended Complaint in the interests of both parties and judicial economy. Plaintiff has not been dilatory in any fashion, but has now collected pertinent information to develop the allegations contained in the First Amended Complaint.

LEGAL AUTHORITY

Alaska R. Civ. P.15(a) provides that a party may amend its pleading by leave of the court and that such “leave shall be freely given when justice so requires.” Alaska Civil Rule 15(a) is identical to Federal Rule of Civil Procedure 15(a). The federal rule has been interpreted by the United States Supreme Court as follows:

Rule 15(a) declares that leave to amend “shall be freely given when justice so requires”; this mandate is to be heeded. If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. – the leave sought should, as the rules require, be “freely given.”

Foman v. Davis, 371 U.S. 178, 182 (1962). The Alaska Supreme Court has “expressly” adopted this interpretation of Rule 15. *Bauman v. Day*, 942 P.2d 1130, 1132 (Alaska 1997). *See also, Estate of Thompson v. Mercedes Benz, Inc.*, 514 P.2d 1269, 1271 (Alaska 1973).

Plaintiff submits that justice requires that leave to amend be granted. Because this case is still in the early stages of litigation, no prejudice will accrue to Defendants as a result of this amendment. Furthermore, because this amendment is not due to any lack of diligence or bad

HOLMES WEDDLE & BARCOTT, P.C.
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, AK 99501-3408
TELEPHONE (907) 274-0666
FACSIMILE (907) 277-4657

motive on the part of Plaintiff, but rather due to further factual information that has come to light during the course of litigation or become ripe for prosecution, the leave requested should be "freely given."

CONCLUSION

Plaintiff respectfully requests that the motion to amend its complaint be granted and that the proposed first amended complaint be deemed filed.

DATED this ___ day of September, 2016, at Anchorage, Alaska.

HOLMES WEDDLE & BARCOTT, P.C.
Attorneys for Plaintiff

By: 

Timothy A. McKeever
Alaska Bar No. 7611146
Stacey C. Stone
Alaska Bar No. 1005030

HOLMES WEDDLE & BARCOTT, P.C.
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, AK 99501-3408
TELEPHONE (907) 274-0666
FACSIMILE (907) 277-4657

CERTIFICATE OF SERVICE

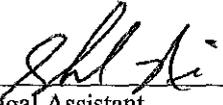
The undersigned certifies that on this 26 day of
September, 2016, a true and correct copy of the
foregoing document was served via:

- E-Mail
- U.S. Mail
- Facsimile
- Hand-Delivery

to:

Elizabeth Bakalar
libby.bakalar@alaska.gov
Margaret Paton-Walsh
margaret.paton-walsh@alaska.gov
Alaska Department of Law – Civil Div.
P.O. Box 110300
Juneau, AK 99801

Thomas Amodio
Reeves Amodio LLC
500 L St. Ste 300
Anchorage, AK 99501
tom@reevesamodio.com

By: 
Legal Assistant
Holmes Weddle & Barcott, P.C.