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STATE OF ALASKA
THIRD JUDICIAL DISTRICT
2016 SEP 21 AM 10:22

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.)

Case No.: 3AN-16-09015 CI

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 UNOPPOSED MOTION FOR EXPEDITED CONSIDERATION OF
18 MOTION FOR STATUS CONFERENCE

19 The defendants, Lieutenant Governor Byron Mallott and Director of the Division
20 of Elections Josephine Bahnke, request expedited consideration of their Motion for
21 Status Conference. The defendants request a decision on their Motion for Status
22 Conference by the close of business on Wednesday, September 21 (the underlying
23 motion requests a status conference by Thursday, September 22).

24 Counsel for the defendants has contacted Tim McKeever and Stacey Stone,
25 counsel for the plaintiffs, and Tom Amodio, counsel for the proposed intervenor
26 Dean Westlake, and they have indicated via email that they do not oppose the Motion
for Status Conference or the Motion for Expedited Consideration. It was not possible to
resolve the issue of scheduling with opposing counsel because the Court's participation

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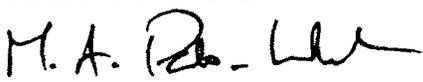
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2 is needed.

3 An expedited decision on the defendants' motion is needed for the same reasons
4 an immediate status conference is needed: The general election is scheduled to be held
5 on November 8, 2016, and many pre-election deadlines are fast approaching. *See*
6 Affidavit of Josephine Bahnke. Because of printing and mailing deadlines, the Division
7 of Elections needs a final appellate decision by the morning of October 14 telling it
8 what should appear on the general election ballot for House District 40.¹ *See id.* To
9 build in time for the Alaska Supreme Court consideration, a decision from this Court
10 will be needed even sooner than that. This case raises factual issues that will take some
11 time to litigate, even on an expedited basis. The Court should establish a schedule for
12 this litigation as soon as possible so that a final decision can be reached by the
13 Division's deadline, preventing disruption of the general election and
14 disenfranchisement of voters.
15
16

17 Accordingly, the Court should grant expedited consideration of the Motion for
18 Status Conference.

19 DATED: September 21, 2016.

20
21 JAHNA LINDEMUTH
ATTORNEY GENERAL

22 By: 
23 Margaret Paton Walsh (0411074)
24 Elizabeth M. Bakalar (0606036)
Assistant Attorneys General

25
26 ¹ A parallel proceeding—appealing the recount directly to the Alaska Supreme Court under AS 15.20.510—has been stayed pending the outcome of this election contest. *See* S-16462.

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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

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STATE OF ALASKA
JUDICIAL DISTRICT

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

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

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

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

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

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

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

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

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

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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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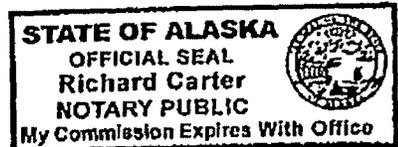
Voter Empowerment Act (MOVE) (see 52 U.S.C. § 1973ff et seq.) (requiring the Division to transmit ballots to all military and overseas voters 45 days before an election at which a federal race will appear on the ballot). Additionally, special advance ballots must be transmitted by this date under state law, AS 15.20.081(I) (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

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