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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

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 15<sup>th</sup> day before an election”), AS 15.20.064 (entitling a qualified voter to vote early “[f]or 15 days before

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

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

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

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

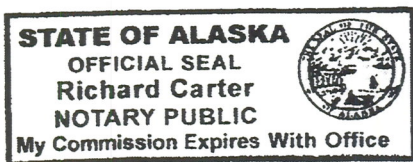



1  
2 Voter Empowerment Act (MOVE) (see 52 U.S.C. § 1973ff et seq.) (requiring the  
3 Division to transmit ballots to all military and overseas voters 45 days before an election  
4 at which a federal race will appear on the ballot). Additionally, special advance ballots  
5 must be transmitted by this date under state law, AS 15.20.081(I) (requiring the director  
6 to transmit ballots not later than 45 days before the election to voters who have  
7 requested a special advance ballot under that statute). Because September 24 falls on a  
8 Saturday, the Division intends to transmit ballots to this group of voters on Friday,  
9 September 23, 2016. The ballots for this group of voters in House District 40 will have  
10 Dean Westlake's name on them, as certified by the Division at the election and in the  
11 recount. The Division will send a notice with these ballots explaining that if the court  
12 orders it, substitute ballots will be provided to these voters for the House District 40  
13 race.  
14  
15

16 11. This timeline is based on significant discussion with my staff about how  
17 to provide the court with the most time possible to consider and decide this case and still  
18 provide ballots to voters according to statutory deadlines.  
19

20   
21 Josephine Bahnke

22 SWORN TO AND SUBSCRIBED before me this 21<sup>st</sup> day of September, 2016.



27   
28 Notary public in and for Alaska  
29 My commission expires: with office  
30