

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

JEFFRY SCHMITZ, GUADALUPE)
MARROQUIN, and MATTHEW)
FRAIZE,)

Plaintiffs,)

vs.)

BARBARA A. JONES, in her capacity)
as Municipal Clerk for the Municipality)
of Anchorage and AMANDA K.)
MOSER, in her capacity as Deputy)
Clerk-Elections for the Municipality of)
Anchorage,)

Defendants.)

Case No. 3AN-17-04050CI

ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

The parties have filed motions for summary judgment seeking a ruling on the issues of law applicable to the above-captioned case. The parties stipulated there are no issues of material fact.

RELEVANT FACTS

On November 16, 2016, sponsors submitted to the Municipal Clerk an application for an initiative petition that "approves a tighter spending limitation on the general government operating budget." The Municipal Clerk issued a certification letter informing the application's sponsors that certification was granted "contingent on acceptance of [the] Municipal Attorney's modifications" and advising them that the

Clerk's office had prepared the required "master form of petition," which the sponsors were invited to retrieve from the Clerk's office. This master form made changes to the title and summary of the initiative as it was presented in the sponsors' application, based on the recommendations of the Municipal Attorney. Among other things, it struck the word "tighter" from the petition title presented by the sponsors. The sponsors then accepted the master form and began collecting signatures. Soon after, Plaintiffs initiated this action, claiming both procedural defects in the certification process, and violation of the Alaska Constitution and the Anchorage Municipal Charter.

ANALYSIS

The actions of Barbara A. Jones, in her capacity as Municipal Clerk for the Municipality of Anchorage and Amanda K. Moser, in her capacity as Deputy Clerk-Elections for the Municipality of Anchorage (hereinafter collectively referred to as "Defendants"), regarding Initiative 2016-6, were contrary to Anchorage Municipal Code and state law. Defendants' conditional approval of an altered initiative without obtaining the consent of the two sponsors and ten voters was improper. Thus, issuance of the master petition form was not in strict compliance with the Municipal Code. However, despite these deviations from the Municipal Code, the Defendants acted in substantial compliance with the code, and their actions did not cause substantial prejudice to anyone. *See Adamson v. Municipality of Anchorage*, 333 P.3d 5, 14 (Alaska 2014). Accordingly, the initiative is not void because of procedural irregularities.

The parties dispute whether Initiative 2016-6 violates the Alaska Constitution and the Municipal Charter. In determining whether there's a violation of state law, the Court relies upon *Alliance of Concerned Taxpayers, Inc. v. Kenai Peninsula Borough*, 273 P.3d 1128 (Alaska 2012). In *Kenai*, the Alaska Supreme Court held that "an initiative may run afoul of the core objectives underlying the initiative restrictions when it allocates public assets away from a particular purpose." *Id.* at 1137. Initiative 2016-6's flat cap on the municipal budget is broader than the proposed initiative in *Kenai*, which would have allowed the vetoing of certain projects. However, the broad nature of this restriction does not lessen the degree to which it "infringes on the assembly's ability to allocate resources among competing uses."

Defendants rely upon *City of Fairbanks v. Fairbanks Convention and Visitors Bureau*, 818 P.2d 1153 (Alaska 1991), for the proposition that Initiative 2016-06 does not involve an appropriation and therefore is not illegal. There, in resolving whether an initiative repealing a law was repealing an appropriation, the Alaska Supreme Court applied a narrow definition of "appropriation." *Id.* at 1157. This test is inapplicable to the present case. The court in *Fairbanks* was specific in stating that this narrower test was only to apply to initiatives which arguably repeal an appropriation: "The purpose of the prohibition on repeal of appropriations by initiative is to ensure that the legislative body remains in control of and responsible for the budget. A broad construction of 'appropriations' is not necessary to accomplish this purpose." *Id.*

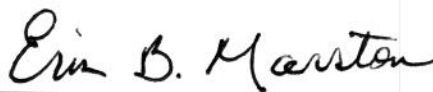
Initiative 2016-6 does not repeal any particular law, but prospectively limits the legislature's ability to create a budget exceeding certain limits, affirmatively taking this decision out of the control of the assembly. As such, it is squarely within the contemplated restrictions on initiatives in Article XII, usurping discretion and control over municipal finances which were intended to rest with the Assembly alone. Initiative 2016-6 violates Article XII of the Alaska Constitution and therefore was not properly certified by the Defendants. For similar reasons, the initiative is barred by section 3.02 of the Anchorage Municipal Charter, which is a similar, but broader restriction on the initiative process.

Based on the foregoing, IT IS ORDERED:

1. Defendants shall withdraw the December 5, 2016 conditional approval of Initiative 2016-06;
2. Defendants shall cease and desist from reviewing any petition signatures relating to placing that measure on the ballot; and
3. Defendants shall not place Initiative 2016-06 on the April 4, 2017 Regular Municipal Election Ballot.

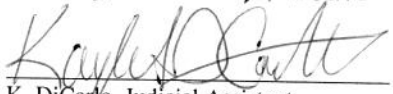
IT IS SO ORDERED.

Dated at Anchorage, Alaska this 26th day of January 2017.



Erin B. Marston
Superior Court Judge

I certify that on 1/26/17
a copy of this document was delivered to:
W. Falsey, T. McKeever, RDuerre



K. DiCarlo, Judicial Assistant

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Jeffry Schmitz, et al. v. Barbara A. Jones, et al.