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

LA QUEN NÁAY ELIZABETH MEDICINE CROW, AMBER LEE, and KEVIN MCGEE,

Plaintiffs,

v.

DIRECTOR CAROL BEECHER, in her official capacity, LT. GOVERNOR NANCY DAHLSTROM, in her official capacity, and the STATE OF ALASKA, DIVISON OF ELECTIONS,

Defendants,

v.

DR. ARTHUR MATHIAS, PHILLIP IZON, and JAMIE R. DONLEY,

Intervenors.

Case No. 3AN-24-05615CI

ORDER RE SUMMARY JUDGMENT

I. Introduction

This case concerns a dispute over the validity of the filing of a petition to place an initiative on the November 2024 general election ballot. The Plaintiffs are individual Alaskans challenging the Defendants' finding that the initiative petition designated as 22AKHE was properly filed. The Defendants are the state officials and public agency charged with reviewing and verifying ballot initiative

petition booklets,[1] including the Lieutenant Governor, the Division of Elections, and its Director (collectively, "the Division"). The Intervenors are the individual Alaskans who sponsored 22AKHE (collectively, the "Sponsors").

Plaintiffs move for summary judgment on Counts III[2] and IV[3] of the Complaint, arguing that the Division violated the initiative petition filing and validation procedures by determining that 22AKHE qualified for inclusion on the 2024 statewide ballot. The Division opposes, and cross-moves for summary judgment on the same counts. The Sponsors also oppose, and cross-move for summary judgment on those counts and Counts I, II, V, VI, and VII.[4] The Sponsors argue that they are entitled to summary judgment on all counts because Plaintiffs cannot disqualify enough signatures to prevent 22AKHE from becoming placed on the ballot.

For the reasons stated herein, the Court DENIES the Plaintiffs' Motion for Summary Judgment on Counts III and IV, and GRANTS the Cross-Motions for Summary Judgment on those counts. The Court also DENIES the Sponsors' Cross-Motion for Summary Judgment on the remaining counts, without prejudice, and GRANTS the Plaintiffs' oral motion for an Alaska Civil Rule 56(f) continuance.

[1] The statutes, including AS 15.45.130, use the term "petitions" when referencing individual signature booklets, which together form the overall "petition." To avoid confusion, this Order will refer to "petitions" as "petition booklets" or "booklets."

[2] Count III seeks declaratory judgment that the Defendants violated AS 15.45.130 and 6 AAC 25.240(c) by permitting the Intervenors to retrieve individual petition booklets to "cure" deficiencies after filing the petition for review and verification of signatures. Complaint (April 2, 2024), at 25-28.

[3] Count IV seeks declaratory judgment that Defendants violated AS 15.45.130, AS 15.45.140, AS 15.45.190, and 6 AAC 25.240(d) and (f) by allowing the "re-fil[ing]" of cured petition booklets after the one-year deadline for filing the petition. Complaint (April 2, 2024), at 28-31.

[4] These counts include allegations regarding the treatment of specific petition booklets. Complaint (April 2, 2024), at 22-34.

II. Background

The parties stipulate to many of the relevant facts.[5] Additionally, all the parties agree that there is no genuine dispute of material fact regarding resolution of the Motion or Cross-Motions for Summary Judgment on Counts III and IV of the Complaint.[6] The outcome of these motions thus turns on this Court's interpretation of the applicable constitutional provisions, statutes, and regulations, which are pure questions of law. The Sponsors' Cross-Motion on the remaining counts implicates additional facts, which, as explained below, remain in dispute, thus preventing summary judgment at this time.

A. Constitutional and Statutory Backdrop

Article XI, section 1, of the Alaska Constitution provides that "[t]he people may propose and enact laws by the initiative." The initiative process begins with at least one hundred qualified voters – the sponsors – signing an application, which includes the proposed bill, and filing it with the lieutenant governor.[7] The lieutenant governor may then certify the initiative application "[i]f he finds it in proper form."[8]

After the application has been certified, the lieutenant governor prepares petition booklets "containing a summary of the subject matter" of the initiative.[9] The sponsors then use circulators to gather signatures from qualified voters, called subscribers, which are added to the petition booklets.[10] Circulators must certify,

[5] Stipulation (April 19, 2024), at 3-11.
[6] *Id.* at 2, 11.
[7] Alaska Const. art. XI, § 2; *see also* AS 15.45.030.
[8] Alaska Const. art. XI, § 2; *see also* AS 15.45.080 (providing that an application may be denied certification if it is not confined to one subject, not substantially in the required form, or lacking qualified sponsors).
[9] Alaska Const. art. XI, § 3; *see also* AS 15.45.090.
[10] AS 15.45.105-.120. *See* AS 15.80.010(38) (providing that a "'signature' or 'subscription' includes a mark intended as a signature or subscription"). To avoid confusion, this Order will primarily use only the term "signature."

by sworn affidavit,[11] that they were the only circulator of the petition booklet, and that each of the subscriber's signatures was made in the circulator's actual presence.[12] For the initiative to be placed on the ballot, the Alaska Constitution requires signatures from ten percent of qualified voters who voted in the preceding general election.[13] It further requires gathering signatures from qualified voters in three-fourths of the house districts equal to at least seven percent of voters who voted in the preceding general election for each such house district.[14] After gathering the requisite signatures, the sponsors file the petition with the lieutenant governor, who determines whether the petition was properly or improperly filed.[15]

A petition must be filed within one year from the time the that the lieutenant governor provided the sponsors notice that the petition was ready for delivery, or it is insufficient.[16] The lieutenant governor then has 60 days to review the petition.[17] The Constitution also sets timing constraints for when the lieutenant governor may place the initiative onto the ballot.[18] Specifically, the lieutenant governor calculates "one hundred twenty days after adjournment of the legislative session,"[19] and then places the initiative on the ballot for the next statewide election.

[11] These sworn affidavits are called "certification affidavits," and are located on the last page of each petition booklet. There are two methods by which a circulator may authenticate their certification affidavit. First, a notary public can notarize the affidavit. Second, the circulator may complete a "self-certification" by swearing "under penalty of perjury" that the certification affidavit is accurate. *See* Stipulation (April 19, 2024), at Exhibit 6

[12] AS 15.45.130(2)-(3). There are additional certification affidavit requirements, including that the circulator meets qualifications (residency, age, citizenship), that "the signatures are the signatures of the persons whose names they purport to be," that the subscribers were qualified voters when they signed, that the circulator did not pay the subscriber to sign, and that the circulator provided notice if the circulator was being paid. *See* AS 15.45.130(1), (4)-(5), (7)-(8).

[13] Alaska Const. art. XI, § 3.

[14] *Id.*

[15] AS 15.45.150-.160.

[16] AS 15.45.140(a).

[17] AS 15.45.150.

[18] Alaska Const. art. XI, § 4.

[19] *Id.*; *see also* AS 15.45.190.

If the initiative is approved by a majority of qualified voters, then the initiative becomes the law.[20] The effective date of the new law is ninety days after certification by the lieutenant governor.[21] Notably, an initiated law is not subject to the governor's veto and it is also insulated from repeal by the legislature, or further initiative, for a period of two years from the effective date.[22] Finally, the Constitution provides lawmaking authority for additional procedures in the initiative process, which are discussed in greater detail below.[23]

B. Stipulated Facts

The Sponsors filed the application for 22AKHE on November 23, 2022.[24] The Division certified the application on January 20, 2023.[25]

The Division issued the petition booklets to the Sponsors on February 8, 2023.[26] This triggered the start of the one-year filing deadline. The Division provides training sessions to initiative sponsors instructing them about the legal requirements for gathering signatures and submitting petitions, including petition booklets.[27] It also provides an Initiative Petition Training Handbook.[28] On February 8, the Sponsors attended one of the Division's training sessions.[29]

On July 11, 2023, the Division received an email about a petition booklet left unattended as Duane's Antique Market in Anchorage.[30] The Director of the Division of Elections, Carol Beecher, went to Duane's Antique Market on July 17

[20] Alaska Const. art. XI, § 6.
[21] *Id.*
[22] *Id.* For example, if placed on the ballot and approved by a majority of voters, 22AKHE would end the system of ranked choice voting that was approved by Alaska voters via initiative in the 2020 general election.
[23] *Id.*
[24] Stipulation (April 19, 2024), at 3.
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.* at 4. *See* Complaint (April 2, 2024), at Exhibit A (December 2023 version); *see also* Defendants' Notice of Exhibits for Oral Argument (May 24, 2024), at Exhibit 11-12; Plaintiffs' Notice of Exhibit for Oral Argument (May 24, 2024), at Plaintiffs' Demonstrative Exhibit 1.
[29] Stipulation (April 19, 2024), at 4.

and saw an unattended open booklet on a table near the entrance.[31] She informed an onsite employee that petition booklets cannot be signed while unattended.[32] That day, Director Beecher also called one of the Sponsors, Mr. Izon, to remind him about the requirements for circulators and petition booklets.[33] She followed up with an email a day later.[34]

On October 22 or 23, 2023, the Division received a phone call alleging that two petition booklets were left unattended at an Anchorage bingo hall.[35] A Division of Elections employee called Mr. Izon and reminded him that the petition booklets must be signed in the circulator's actual presence, and they cannot be left unattended in public areas for signing.[36] The next day, the employee followed up with another email.[37]

On January 12, 2024, the Sponsors submitted 655 petition booklets to the Division for filing.[38] That day, after performing its initial facial review, the Division returned 14 petition booklets to the Sponsors and accepted the remaining 641 for filing.[39] On January 16, the Thirty-Third Alaska Legislature convened for the Second Regular Session.

On January 18, 2024, a Division employee emailed Mr. Izon about an error in Booklet 4 – the notary had written a date of December 3, 2024, on their

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[30] *Id.*
[31] *Id.* Director Beecher photographed the petition booklet. Stipulation (April 19, 2024), at Exhibit 3.
[32] *Id.* at 4.
[33] *Id.* at 5.
[34] *Id.*; Complaint (April 2, 2024), at Exhibit C.
[35] Stipulation (April 19, 2024), at 5.
[36] *Id.*
[37] *Id.*; Complaint (April 2, 2024), at Exhibit D.
[38] Stipulation (April 19, 2024), at 5, Exhibit 5.
[39] *Id.* At oral argument, the Division stated that these petition booklets were returned for being obviously incomplete. Although it could not provide specific reasons for why each of the 14 petition booklets was returned, it provided examples of reasons why booklets would ordinarily be returned, such as completely missing certification affidavits or obviously being incorrectly dated.

notarization of the certification affidavit.[40] The Division permitted the Sponsors to retrieve Booklet 4 on January 23.[41] On that same day, the Sponsors also retrieved Booklet 579, which was missing the location where the circulator had self-certified the certification affidavit.[42] The Sponsors fixed the errors in Booklets 4 and 579, and returned those booklets sometime between February 12, 2024, and March 1, 2024.[43]

On January 22, 2024, the Division discovered that the commission of the notary who had notarized the certification affidavits for 60 petition booklets had expired in 2022.[44] On January 26, the Sponsors retrieved those 60 booklets.[45] The Division provided the Sponsors with two options to correct the booklets – the original circulators could complete the self-certification for the booklet, or the circulators could complete new certificates that were properly notarized by a commissioned notary.[46] The Division provided the Sponsors with a deadline of March 1, 2024, to correct and return the booklets.[47] The Division also photocopied the signature pages of these booklets before turning them back over to the Sponsors.[48]

February 7, 2024, was the one-year deadline for filing the 22AKHE petition.[49]

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[40] Stipulation (April 19, 2024), at 6, Exhibit 7.
[41] Stipulation (April 19, 2024), at 6.
[42] *Id.*
[43] *Id.*
[44] *Id.* at 7. Although not stipulated, the Plaintiffs agreed at oral argument that there was no evidence any of the circulators knew the notary's commission had expired. The following booklets were returned: 10, 11, 21, 31, 43, 45, 64, 88, 89, 362, 430, 487, 457, 472, 476, 477, 479, 482, 540, 774, 776, 794, 807, 891, 897, 902, 906, 923, 926, 936, 938, 939, 945, 950, 955, 958, 959, 967, 1296, 1299, 1303, 1314, 1316, 1317, 1318, 1322, 1323, 1326, 1333, 1334, 1338, 1349, 1353, 1354, 1359, 1373, 1374, 1375, 1394, and 1402. *Id.*
[45] *Id.*
[46] *Id.* at 7, Exhibit 8.
[47] *Id.* at 8, Exhibit 8.
[48] *Id.* at 8.
[49] *Id.* at 10.

On February 15, 2024, the Sponsors retrieved Booklet 470, which was missing a notarization date for the certification affidavit.[50] On February 15, the Sponsors retrieved Booklet 954, which was missing the same information.[51] The Sponsors returned these booklets on February 21 and February 23, respectively.[52]

Between February 17 and 23, 2024, the Sponsors returned 58 out of the 60 booklets that contained the shared error of the expired notary commission.[53] The Division compared the number of signatures in each of the returned booklets to the number in the photocopies, and confirmed there were no discrepancies between the two, i.e., there were no new signatures collected after the booklets were initially filed.[54]

In total, the Division returned 64 petition booklets to the Sponsors and accepted corrections to 62 petition booklets (the 4 booklets with individual errors plus 58 out of the 60 booklets with the shared notary error).[55] The Division reviewed the corrected petition booklets and accepted all the signatures by registered voters who provided the required information and did not sign another petition booklet.[56]

After the Sponsors returned the 58 out of the 60 petition booklets with the shared notary error, the Division discovered Booklet 1 was also not notarized by a commissioned notary.[57] The Division did not count any of the signatures in Booklet 1.[58]

The Division completed counting the petition booklets on March 8, 2024, and it notified the Sponsors that 22AKHE was properly filed and would appear on

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[50] *Id.* at 6.
[51] *Id.* at 7.
[52] *Id.*
[53] *Id.* at 8-9, Exhibit 9. The Sponsors did not return Booklets 891 and 1338. *Id.* at 9.
[54] *Id.* at 8-9.
[55] *Id.*
[56] *Id.* at 9.
[57] *Id.*
[58] *Id.*

the November 5, 2024, general election ballot.[59] The Division's review deadline, 60 days after the filing of the petition, was March 12, 2024.[60]

The parties agree that "[i]f all of the signatures in the 62 booklets that the Sponsors returned to the Division were invalidated, the Division could not certify the petition because there would only be sufficient signatures in 26 of the 40 house districts."[61]

C. Proceedings

The Plaintiffs timely filed a Complaint on April 2, 2024, within the 30-day time period under AS 15.45.240.[62] They challenged the Division's determination that 22AKHE was properly filed and would be placed on the November 5, 2024, general election ballot. The Court permitted the Sponsors to intervene under Alaska Civil Rule 24(a) and (b).[63] The parties briefed the motion and cross-motions for summary judgment, per an expedited stipulated pretrial briefing schedule. The Court heard oral arguments on May 28, 2024.

III. Summary Judgment Standard

Summary judgment is appropriate when "there is no genuine issue as to any material fact" and "the moving party is entitled to judgment as a matter of law."[64] The moving party bears the burden of proving an absence of issues of material fact.[65] Upon that prima facie showing, the non-moving party must demonstrate that there is a genuine issue of fact by showing that it can produce admissible

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[59] *Id.* at 10.
[60] *Id.*
[61] *Id.*
[62] AS 15.45.240 ("Any person aggrieved by a determination made by the lieutenant governor under AS 15.45.010-15.45.220 may bring an action in the superior court to have the determination reviewed within 30 days of the date on which notice of the determination was given.").
[63] Order Granting Intervention (April 22, 2024), at 2.
[64] *Christensen v. Alaska Sales & Serv., Inc.*, 335 P.3d 514, 517 (Alaska 2014) (quoting Alaska R. Civ. P. 56(c)).
[65] *Broderick v. King's Way Assembly of God*, 808 P.2d 1211, 1215 (Alaska 1991).

evidence reasonably tending to dispute the movant's evidence.[66] All reasonable inferences – or inferences that a reasonable factfinder could draw from the evidence – are drawn in favor of the non-movant.[67]

The non-moving party cannot rely on mere allegations, mere assertions of fact in pleadings and memoranda, or unsupported assumptions and speculation.[68] But the non-moving party must present only some, i.e., more than a mere scintilla, of contrary evidence to survive a motion for summary judgment.[69]

IV. Discussion

A. The Division did not violate their own statutes and regulations during the petition filing review process.

1. The Division may return individual petition booklets to sponsors to correct certification affidavit errors after the petition is filed, but before it is done counting signatures.

In Count III, the Plaintiffs challenge the Division's decision to allow the Sponsors to "cure" errors to certification affidavits in petition booklets and return those booklets for counting. This challenge applies to the four booklets with varied errors and the 58 booklets with the shared notary issue. The specific statute relevant to this challenge is AS 15.45.130, which provides, in part, that:

> Before being filed, each petition shall be certified by an affidavit by the person who personally circulated the petition. In determining the sufficiency of the petition, the lieutenant governor may not count

[66] *Id.*
[67] *Alakayak v. British Columbia Packers, Ltd.*, 48 P.3d 432, 449 (Alaska 2002).
[68] *Witt v. State Dep't of Corrections*, 75 P.3d 1030, 1033 (Alaska 2003).
[69] *Cikan v. ARCO Alaska, Inc.*, 125 P.3d 335, 339 (Alaska 2005).

> subscriptions on petitions not properly certified at the time of filing *or corrected before the subscriptions are counted.*[70]

(Emphasis added.)

There are two methods by which a circulator may authenticate the certification affidavit in a petition booklet. First, they may use a notary to authenticate their affidavit on the certificate. Second, if a notary is unavailable, then they may self-certify by swearing, under penalty of perjury, that they complied with the circulator requirements. They must also affirm the date and the location where the certification occurred.[71]

Another relevant authority is found in 6 AAC 25.240, which is the regulation setting forth the administrative procedures for initiatives. The critical language is in subsections (c) and (f):

> (c) All petition booklets must be filed together as a single instrument, and must be accompanied by a written statement signed by the submitting committee member or the committee's designee acknowledging the number of booklets included in the submission.
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> . . . .

[70] AS 15.45.130 further provides that:

> The affidavit must state in substance (1) that the person signing the affidavit meets the residency, age, and citizenship qualifications for circulating a petition under AS 15.45.105; (2) that the person is the only circulator of that petition; (3) that the signatures were made in the circulator's actual presence; (4) that, to the best of the circulator's knowledge, the signatures are the signatures of the persons whose names they purport to be; (5) that, to the best of the circulator's knowledge, the signatures are of persons who were qualified voters on the date of signature; (6) that the circulator has not entered into an agreement with a person or organization in violation of AS 15.45.110(c); (7) that the circulator has not violated AS 15.45.110(d) with respect to that petition; and (8) whether the circulator has received payment or agreed to receive payment for the collection of signatures on the petition, and, if so, the name of each person or organization that has paid or agreed to pay the circulator for collection of signatures on the petition.

[71] *See* Stipulation (April 19, 2024), at Exhibit 6 (exemplifying petition booklet with final page showing certification affidavit).

(f) A petition that at the time of submission contains on its face an insufficient number of booklets or signed subscriber pages required for certification will be determined by the director to have a patent defect. The director will notify the committee, in writing, of the patent defect and provide information on resubmitting the petition, if applicable. A petition that contains a patent defect and that is filed

(1) on the deadline specified in (d) of this section will be certified as insufficient;

(2) before the deadline specified in (d) of this section will be declared incomplete and all petition booklets will be returned to the committee or designee for resubmission; the resubmitted petition must be filed by the deadline specified in (d) of this section.

In summary, subsection (c) provides that all the petition booklets must be filed together as a "single instrument" at which time the Division will perform a facial review process under subsection (f).

The Division has interpreted 6 AAC 25.240 and AS 15.45.130 as creating two different review phases, with different mechanisms to cure defects in certification affidavits. First, the facial curing process is done "at the time of submission," and it is meant to detect defects that are immediately apparent upon filing; booklets with clear errors will be rejected and, if insufficient signatures remain, then a "patent defect" exists, and the entire petition package will be returned. Second, the Division also allows corrections to defects in certification affidavits that are identified after filing, but only before the expiration of the Division's 60-day deadline for reviewing and counting signatures. The Plaintiffs challenge the second curing process, arguing that the Division's interpretation violates 6 AAC 25.240(c), (f), and AS 15.45.130, when read as a whole and in context of legislative history.

a. The Division did not violate 6 AAC 25.240(c).

The Plaintiffs first argue that the Division's interpretation violates subsection (c) of 6 AAC 25.240. As discussed above, under 6 AAC 25.240(c),

"all petition booklets must be filed together as a single instrument." The Plaintiffs argue that this requirement prevented the Division from returning individual petition booklets to the Sponsors to make corrections to certification affidavits.

In its briefing, the Division discusses the rationale for requiring simultaneous filing of all the petition booklets as a "single instrument." The Division explains that the "intent of this requirement is to prevent circulators from returning their booklets to the Division one at a time, rather than returning them to the sponsors, who then file them altogether."[72] By requiring petition booklets to go through the sponsors, the Division avoids the confusion of working with multiple individual circulators. Filing as a "single instrument" also facilitates the ability to do the initial facial review. Notably, nothing in the plain language of 6 AAC 25.240(c), refers to returning or re-filing the petition as a single instrument, and the Division's interpretation of that subsection is, thus, reasonable.

b. The Division did not violate 6 AAC 25.240(f).

The Plaintiffs also argue that the Division's interpretation violates subsection (f) of 6 AAC 25.240, which describes the procedures for the Division's facial review process. The Plaintiffs characterize the 60 booklets with the expired notary issue as containing a "sleeper defect." They argue that the Division should have realized that the "sleeper defect" developed into a "patent defect" because, without the signatures in those booklets counting, the 22AKHE petition lacked enough signatures to get on the ballot. Therefore, the Plaintiffs believe that, at the point the Division discovered the 60 defective booklets, it should have returned *all* the petition booklets to the Sponsors, thus complying with the facial review process under subsection (f)(2).[73]

[72] Defendants' Opposition and Cross-Motion (May 10, 2024), at 17-18.
[73] The argument that the entire petition should have been returned at this point also informs Plaintiffs' second argument, that the petition submission was untimely, which is discussed further below.

The Division explains the facial review process in its briefing and at oral argument. When a sponsor files their petition, the Division reviews each petition booklet "on its face" to determine whether there are enough booklets containing enough signatures to put the initiative on the ballot. This process is intended to screen out incomplete certification affidavits, such as those with missing dates or locations, or missing certificates all together. If, at the time of filing, the number of facially defective booklets means that the sponsors cannot possibly have the requisite number of signatures, then the petition has a "patent defect." The Division may return "all [the] petition booklets" to the sponsors "for resubmission," but only if it is before the one-year deadline for filing.

The Plaintiffs reading of 6 AAC 25.240(f) is inconsistent with the plain language of that subsection, which applies the facial review process *only* "at the time of submission." Precisely because the Division could not have detected the expired notary issue in the 60 booklets "on its face," and "at the time of submission," the petition did not have a "patent defect" when it was filed, and thus the requirement that "all petition books [] be returned" does not apply. The meaning of the term "patent defect" and the "return all" language must be read in harmony with the rest of subsection (f), including the term describing the relevant time period, which is "at the time of filing." Put another way, the "return all" rule applies only to a "patent defect" that is discovered "at the time of submission," which is during the initial facial review process on the day of filing.

Again, at oral argument and in its pleading, the Division explains the policy justification for why the facial review process in 6 AAC 25.240(f) occurs at the time of submission. The process was designed as a preliminary safeguard to protect both the Division's time (by avoiding in-depth signature reviews on petitions which visibly fail to meet the minimum number of signatures) and the Sponsors' interests (by allowing them to take the submission back to gather more signatures, time permitting). The Division did not, and could not, find the errors

in the 60 booklets without comparing the dates on multiple petition booklets, which required more in-depth review than what is performed on filing day.[74] Therefore, the 60 booklets did not contain the type of errors that 6 AAC 25.240(f) was designed to address, and the "return all" rule is inapplicable.[75]

c. The Division did not violate the overall statutory framework of AS 15.45.010 et seq.

The Plaintiffs' next argument challenges the Division's interpretation of the relevant statutes as whole. The Plaintiffs argue, correctly, that the Division's interpretation must take into context the whole statutory framework, and they cite to various statutory history to support their position.[76]

The Plaintiffs point out that the Division previously had statutory authority to allow sponsors to prepare "supplementary petitions" under the former version of AS 15.45.170, which was repealed by Senate Bill 313 in 1998. This statute previously stated that: "Upon receipt of notice that the filing of the petition was improper, the initiative committee may amend and correct the petition by circulating and filing a supplementary petition within 30 days of the date that notice was given."[77] Although such authority no longer exists for the sponsors of initiative petitions, it still exists for the sponsors of referendum and recall petitions, who are authorized by statute to prepare "supplementary petitions" after the filing deadline.[78] The Plaintiffs argue that the Division could not allow the

[74] According to the Division, they discovered this error because the notary provided different dates for the expiration of her commission on different booklets. Therefore, the error required comparing multiple booklets to detect the inconsistent pattern, which then trigged an investigation into the expiration date of the notary's commission. *See* Stipulation (April 19, 2024), at 7.

[75] Plaintiffs argue that 6 AAC 25.240(f) provides for the *only* mechanism by which the Division can return petition booklets. However, as discussed further below, the Court finds that the Division's implemented cure procedure was a reasonable interpretation of AS 15.45.130.

[76] *Thiessen v. State*, 844 P.2d 1137, 1139 (Alaska Ct. App. 1993) ("Any single statute must be interpreted in light of the whole statutory framework.").

[77] *See* former AS 15.45.170 (1997).

[78] *See* AS 15.45.400 (referendum); AS 15.45.640 (recall).

Sponsors to correct the certification affidavits after filing the 22AKHE petition because "supplementary petitions" no longer apply to initiatives.

However, the statute that provided for "supplementary petitions" addressed a dissimilar concern to those presented in this case. Specifically, the elimination of "supplementary petitions" was designed to keep sponsors from gathering *additional signatures* after timely filing the initiative petition. The change did *not* address potential issues with certification affidavits. The Plaintiffs cite legislative history from S.B. 313, including the bill sponsor's statement that: "[E]xisting law grants a 30 day extension to a sponsor if they are unsuccessful in obtaining the required number of verified signatures within the allowed time frame. SB-313 will eliminate this 30 day extension. This way, if the required number of signatures are not successfully obtained, the initiative simply does not appear on the ballot."[79] Like the sponsor explained, "[s]imply put, you either got 'em, or you do[]n't!!!"[80] The "got 'em" can reasonably be read as applying to only *signatures*, and not *certification affidavits*.

The Court will not read more into the legislative history than what it plainly states, and the legislative history related to S.B. 313 is of little to no relevance to the matter before this Court. In the instant case, the Sponsors did not gather *any* additional signatures after filing the 22AKHE petition. The Division photocopied the vast majority of the booklets that they returned to the Sponsors, and then compared the number of signatures in the booklets before and after the Sponsors gave the booklets back to the Division. The Division found no additional signatures. Thus, the Sponsors did not commit the type of conduct that the Legislature intended S.B. 313 to eliminate.

The Plaintiffs point to additional legislative history from House Bill 94, passed in 2005, which was the legislation that amended AS 15.45.130 to add the

[79] Sponsor Statement for S.B. 313, Senator Bert Sharp, Before the Senate Judiciary Committee; Plaintiffs' Motion for Summary Judgment (April 24, 2024), at Appendix 3.

"or corrected before the subscriptions are counted" language. The Plaintiffs point to the following statement by then-Director of Elections Laura Glassier:

> Should [a circulator] . . . fail to [comply with the circulator requirements], that often times causes – at the beginning of the process, when we can notify the carriers of the petition that they've got a problem, it can be resolved. But should it happen, should they turn in their books at the last minute, and not have that certification done, it is a way to prevent signatures [from] being counted. . . . [Circulators] have to know their law, they have to be well trained, to know to complete that section on the petition booklet. Or it does become a way for the petition booklet to be partially or completely invalidated.[81]

The Plaintiffs argue that this legislative history suggests that H.B. 94 was *not* intended to allow circulators to correct errors discovered *after the filing deadline*.

However, Director Glassier was not referring to the "or corrected before the subscriptions are counted" language when making this statement. Plaintiffs also ignore Director Glassier's subsequent statement that the goal of H.B. 94 was actually to make it "easier to carry a petition" and "qualify more signatures."[82] Looking at the legislative history of H.B. 94 as a whole, it appears that the Legislature created the law to *remove* barriers in the petition process, and thus make it easier for circulators to certify their booklets by allowing corrections to certification affidavits, even after filing. The Division's interpretation of the statutes and regulations is consistent with this intent.

d. The Division did not violate AS 15.45.130.

Under the sliding-scale approach to statutory interpretation,[83] the Court agrees with the Division's interpretation of AS 15.45.130, which unambiguously

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[80] *Id.* at Appendix 2.

[81] Hearing on H.B. 94 Before the H. State Affairs Comm., 24th Leg., 1st Sess. 09:22:53-09:24:30 (Mar. 15, 2005).

[82] *Id.*

[83] *Res. Dev. Council for Alaska, Inc. v. Vote Yes for Alaska's Fair Share*, 494 P.3d 541, 546 (Alaska 2021) ("When determining a statute's meaning, we consider three factors: 'the language of the statute, the legislative history, and the legislative purpose behind the statute.'" (quoting

provides that certification affidavits may be "corrected before the subscriptions are counted." As evident from the instant action, there will be errors in certification affidavits that are not visibly evident at the time of submission – the review process does not happen instantaneously in a vacuum. Plaintiffs' reading of AS 15.45.130 as allowing corrections only under the process in 6 AAC 25.240(f) is an unreasonably narrow interpretation of the statutory language, to the extent of rendering the added language superfluous,[84] and contradicts the stated intent behind H.B. 94 that added the language – to make it "easier to carry a petition" and "qualify more signatures."[85]

As required by statute, after the 22AKHE petition was filed, the Division went booklet by booklet, performing an in-depth review of each signature as well as a review of the circulator's certification affidavit at the end of each petition booklet. The Division detected a variety of defects in the 22AKHE certification affidavits, including incorrect dates, missing dates, missing locations, and 60 instances of notarization by a notary with an expired commission. The Division was acting within its statutory authority under AS 15.45.130 to allow the Sponsors to cure these errors "before the subscriptions were counted." Per AS 15.45.150, the Division had 60 days to complete its review and counting process. Therefore, as discussed further below, the Division could allow corrections to certification affidavits up and until that 60-day deadline. Moreover, its method of doing so,

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Cora G. v. State, Dep't of Health & Soc. Servs., Office of Children's Servs., 461 P.3d 1265, 1277 (Alaska 2020))).

[84] Notably, the regulatory language in 6 AAC 25.240(f) predates the addition of the "or corrected by" language in AS 15.45.130. The Plaintiffs' position would essentially have the Court ignore the subsequent statue, and instead rely only on the pre-existing facial review process in the regulation. But, to the extent that the older regulation and the newer statute are in conflict, the older regulation must yield. *See Allen v. Alaska Oil & Gas Conservation Comm'n*, 147 P.3d 664, 668 (Alaska 2006) ("In general, if two statutes conflict, then the later in time controls over the earlier, and the specific controls over the general."); *See also Nordlund v. Dep't of Corr.*, 520 P.3d 1178, 1183 (Alaska 2022) ("If there is a conflict between the regulation and the statute, the statute controls . . . .").

[85] Hearing on H.B. 94 Before the H. State Affairs Comm., 24th Leg., 1st Sess. 09:22:53-09:24:30 (Mar. 15, 2005).

returning only the booklets with errors, was a reasonable interpretation of the statute.[86]

The Plaintiffs point out that the Division's post-filing cure process could be open to selective application because it has not been promulgated in regulation. However, a review of the training materials that the Division provided to the Sponsors suggests that their concern is unwarranted. The earliest available version of the Initiative Petition Training Handbook provided to the Court, from June 2009, states that there is *no* correction procedure for certification affidavits, which does not follow the plain language of AS 15.45.130.[87] The Handbook remained unchanged until August 2015, when it was revised to state that corrections could be made if the "circulator did not complete the back cover," i.e., the certification affidavit, of a petition booklet.[88] In June 2019, the Division again revised the Handbook to state that:

> After the booklets have been filed with the division, if it is discovered during the division's review that [the] certification affidavit is incomplete, the division will notify the committee or designee that it is incomplete and the committee or designee can have the booklet corrected and returned to the division so long as it is received before the division completes its review of signatures.[89]

The October 2021 version of the Handbook similarly states that:

> If the booklets have been filed, and it is discovered during the division's review that the certification affidavit is incomplete, the division will notify the committee or designee and the committee or designee can have the booklet corrected and returned to the division so long as it is received before the division completes its review of signatures.[90]

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[86] Plaintiffs' argument that the Division should have returned all the booklets as required by 6 AAC 25.240(f) is not supported by the language in the statute and, as explained by the Division, would create significant inefficiencies in the signature review process.
[87] Plaintiffs' Notice of Exhibit for Oral Argument (May 24, 2024), at Plaintiffs' Demonstrative Exhibit 1, at 1-2.
[88] *Id.* at Plaintiffs' Demonstrative Exhibit 1, at 10.
[89] *Id.* at Plaintiffs' Demonstrative Exhibit 1, at 11-12.
[90] Defendants' Notice of Exhibits for Oral Argument (May 24, 2024), at Exhibit 12, at 12.

This was the same guidance provided to the Sponsors in the February 2023 version of the Handbook, and it remains the guidance in the December 2023 version of the Handbook.[91] Although the Division's post-filing cure process for certification affidavits has not been adopted by regulation, the ability to cure has been written down and publicly available since 2015, making the risk of abuse low.[92]

The Plaintiffs argue that the Handbook contemplates a different defect than what is at issue in the instant case. The Plaintiffs argue that the defect in the 60 petition booklets was a "faulty" certification affidavit. They distinguish this from the Handbook, which discusses treatment of an "incomplete" certification affidavit. The Plaintiffs argue that allowing corrections to "faulty" affidavits is more likely to welcome fraudulent behavior by circulators and notaries than simply "incomplete affidavits."[93] The Court considers this line of argument to be too hypothetical to consider. Simply put, the Plaintiffs do not plead fraud with specificity as to the expired notary commission, and the facts do not support such a claim.

The Plaintiffs also argue that an "absurd outcome" could result from the Division's interpretation. They posit that certification affidavits with an incomplete notary could be rejected at the facial review stage, while certification affidavits with a faulty notary would get an additional 60 days to cure the error. The Plaintiffs' concerns are misplaced. As explained above, the facial review process exists as an expedient way to save time and costs by making sure that the petition has enough signatures on its face. It is not designed to address more peculiar errors, like expired notary commissions, that are not immediately

[91] *Id.* at Exhibit 11, at 12 (February 2023 version); Complaint (April 2, 2024), at Exhibit A (December 2023 version).
[92] Also, a regulation was not necessary because the statute plainly provides such authority.

apparent on the face of the petition booklets. Plaintiffs also fail to articulate what "advantage" sponsors would gain in allowing curing of a defective notary commission particularly when the circulator could have self-certified before submission.

Moreover, Alaska caselaw directs this Court to a "constitutional principle[]" of "interpret[ing] legislative procedures in favor of the exercise of the initiative power."[94] In *North West Cruiseship Association of Alaska, Inc. v. State, Office of Lieutenant Governor, Division of Elections*, the Alaska Supreme Court quoted a superior court decision describing this principle:

> The right to initiative is a key feature of Alaska's governance. Our Supreme Court has reiterated on several occasions that the right to initiative is not to be defeated by technical rule violations. When strict adherence to a regulatory scheme, with exclusion of signature ballots for what may be deemed trivial rule violations, itself becomes the obstacle to a fair initiative process, our Supreme Court has drawn a clear line in favor of lenity toward the initiative proponents.[95]

In *North West Cruiseship Association*, the Supreme Court affirmed the Division's interpretation of AS 15.45.130 as requiring the rejection of the signatures on only pages of petition booklets that did not identify the payor of the circulator, as opposed to the entire petition booklet. The Supreme Court explained that voters who sign a petition "have a right to participate in the initiative process and should not be disenfranchised because of the error of a circulator that had no impact upon them."[96]

In the same decision, the Alaska Supreme Court addressed errors in certification affidavits, namely the failure "to include the place of execution in a

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[93] Plaintiffs' Combined Reply and Cross-Oppostition for Summary Judgment (May 22, 2024), at 20.
[94] *N. W. Cruiseship Ass'n of Alaska, Inc. v. State, Off. of Lieutenant Governor, Div. of Elections*, 145 P.3d 573, 582, 586 (Alaska 2006).
[95] *Id.* at 586.
[96] *Id.*

self-certification."[97] It held that the signatures in those booklets with a faulty self-certification should still be counted, stating:

> But the purpose of certification is to require circulators to swear to the truthfulness of their affidavits. That purpose is readily achieved by requiring the circulators to swear that they had stated the truth by signing *under penalty of perjury.* The failure to write in the name of the place of execution does not reduce the force of that assertion. Furthermore, as we have previously noted, we liberally construe the requirements pertaining to the people's right to use the initiative process so that "the people [are] permitted to vote and express their will on the proposed legislation." We therefore resolve doubts as to technical deficiencies or failure to comply with the exact procedural requirements "in favor of the accomplishment of that purpose." Because the failure to provide a place of execution is a technical deficiency that does not impede the purpose of the certification requirement, we conclude that the petition booklets should not be rejected on these grounds.[98]

An expired notary commission is *not* an error that should be borne by the signer of a petition. In fact, the error is only *marginally* attributable to the circulator, who trusted that the notary who notarized their petition booklet did not have an expired commission. The Plaintiffs point out that the notary of the 60 booklets at issue in the instant case was actually an employee of the Sponsors, and thus the Sponsors were best positioned to discover the error before filing.[99] However, if anyone's state of mind should be considered, then it is not the notary's, but that of the circulators, who, like the self-certifiers in *North West Cruiseship Association*, swore as to the truthfulness of their affidavits and had no reason to believe they were not swearing in front of a valid notary.

Applying the holding from *North West Cruiseship Association*, the Court finds that a certification notarized by a notary with an expired commission is

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[97] *Id.* at 577.
[98] *Id.* at 577-578 (alteration in original) (footnotes omitted).
[99] While no party disputed this representation, it was not included in the stipulated facts.

precisely the type of technical rule violation that warrants application of the constitutional principle of interpreting legislative procedures in favor of placing initiatives on the ballot. Such an error is comparable to a certification with an incorrect date, missing date, or a missing location because it does not go to the validity of the signature from the circulator, much less from the subscriber.

The Division's post-filing curing process complied with the applicable statutes and regulations. The Division was permitted to return petition booklets to the Sponsors to correct certification affidavits after filing, but before the Division had completed its counting of signatures.

2. Corrections to certification affidavits may be completed after filing, including after filing deadlines, so long as they are before the Division completes counting.

Even accepting that the Division was permitted to allow the Sponsors to correct certification affidavits after the filing of the petition, the Plaintiffs nonetheless argue that, in the instant case, doing so violated two statutory deadlines.

The first deadline is the one-year filing deadline that begins after the Division issues petition booklets to sponsors. This deadline is codified at AS 15.45.140(a), which states that "[t]he sponsors must file the initiative petition within one year from the time the sponsors received notice from the lieutenant governor that the petitions were ready for delivery to them." The deadline is also found at 6 AAC 25.240(d), which states that "[t]he initiative committee or the committee's designee may file the petition at any time before the close of business on the 365th day after the date that notice is given to the initiative committee that the petition booklets are ready for initial distribution."

The second deadline is the deadline that corresponds to the start of the legislative session. This deadline controls when an initiative may be put on the

ballot for election. It is alluded to in the Alaska Constitution article XI, section 4.[100] The deadline is also found in AS 15.45.190, which states:

> The lieutenant governor shall direct the director to place the ballot title and proposition on the election ballot of the first statewide general, special, special primary, or primary election that is held after
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> (1) the petition has been filed;
> (2) a legislative session has convened and adjourned; and
> (3) a period of 120 days has expired since the adjournment of the legislative session.

Based on this statute, an initiative petition must be filed before the legislature convenes in order for it to be placed on the next subsequent election ballot.

The Plaintiffs argue that the Sponsors "filed" the 22AKHE initiative petition past the statutory deadlines because they did not return all the corrected petition booklets until after the legislature had convened and after the one-year filing deadline had passed. For this reason, they argue that the petition was untimely, and thus the initiative should be declared improperly filed, or, at the very least, that it cannot be placed on the November 2024 general election ballot.

The Sponsors submitted the 22AKHE initiative petition to the Division for filing on January 12, 2024. The Legislature convened on January 16. Beginning on January 18, the Division began returning individual petition booklets to the Sponsors to make corrections to the certification affidavits. On January 26, the Division returned the 60 petition booklets with the shared notary error. On February 7, the one-year filing deadline passed. The Sponsors returned the corrected booklets to the Division in batches, finally returning the last of the booklets (with the exception of four, which were never returned) by February 23.

[100] Alaska Const. art. XI, § 4 ("The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void.").

On March 8, the Division finished its review of the petition booklets and signatures therein.

a. The Division did not violate the "strict compliance" rule applicable to election filing deadlines.

In support of the Plaintiffs' argument, they cite longstanding Alaska Supreme Court authority holding that "election law filing deadlines are to be strictly enforced."[101] For example, in *Falke v. State*, the Supreme Court struck down a Division of Elections policy of allowing a candidate who was inside the election office door before the statutory filing deadline, and in the process of completing their paperwork to run for office, to complete their form after the deadline had passed.[102] Likewise, in *State v. Jeffery*, the Supreme Court required strict compliance by judges who declared their candidacy for retention after the filing deadline.[103] The Supreme Court contrasted its past jurisprudence regarding deadlines with "statutory or constitutional ambiguity"[104] to the "strict compliance standard" applicable to unambiguous election deadlines, and it held that there was no basis for allowing "substantial compliance" in the context of judicial retention elections.[105]

The Court is unconvinced by the Plaintiffs' argument that Sponsors did not strictly comply with the petition filing deadlines. The Sponsors submitted, i.e., "filed," the 22AKHE initiative petition with the Division on January 12, 2024, which was before the Legislature convened on January 16, and before the one-year deadline on February 7. Additionally, to the extent that the Division's post-filing curing process required resubmitting individual petition booklets, the Court is also

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[101] *Falke v. State*, 717 P.2d 369, 373 (Alaska 1986).
[102] *Id.* at 375-76.
[103] 170 P.3d 226, 228 (Alaska 2007)
[104] *See Silides v. Thomas*, 559 P.2d 80, 82 (Alaska 1977); *Div. of Elections v. Johnstone*, 669 P.2d 537, 542–45 (Alaska 1983).
[105] *Jeffery*, 170 P.3d at 234.

unconvinced that this practice requires strict compliance with the relevant statutory deadlines in the way the Plaintiffs suggest. As discussed above, AS 15.45.150, requires that the Division's review and counting process end 60 days after the Sponsors filed the petition. Because the exact statutory language allows corrections "*before the subscriptions are counted,*" and the Division's timeframe for the counting process has its own deadline, it is a reasonable interpretation of the statutory language that the corrections can occur in that 60-day window.

b. Past precedent, policy, and reason establish that the Sponsors complied with the filing deadlines as required by law.

In *Yute Air Alaska, Inc. v. McAlpine*, the Alaska Supreme Court considered a challenge to the validity of an initiative proposing changes to the statutes regulating air and motor carriers.[106] Part of the challenge was to the lieutenant governor's decision to place the initiative on the next election ballot following the convening and adjournment of the legislative session.[107] The Supreme Court adopted the decision of the superior court, which considered the question of whether "the subscribing signatures must be verified as those of qualified voters *before* the initiative can be deemed to have been properly filed."[108] The challenger, Yute Air, insisted that the Division had to finish verifying signatures before the legislature convened, arguing:

> The constitution clearly requires that an initiative petition must be signed by the specified number of qualified voters before it may be filed. It also requires that, before the initiative may be submitted to the voters, it must be filed, then a legislative session must be convened and adjourned, and then one hundred twenty days must pass. Thus, to give full effect to the provision requiring an initiative

[106] 698 P.2d 1173, 1175 (Alaska 1985).
[107] *Id.* at 1177-78.
[108] *Id.* at 1179 (emphasis in original).

> to lie before the legislature for a complete session after it is filed, its verification must perforce occur before the session convenes.[109]

The Supreme Court rejected this argument, explaining that "[b]oth logically and as a matter of practical experience, the legislature does not need an initiative petition to be verified before it considers the same subject. It suffices for all practical purposes that a facially valid initiative be filed."[110] Instead, it concluded "that actual filing of a facially valid initiative suffices to invoke th[e] safeguard" afforded by requiring the initiative to lie before a complete legislative session.[111] Put differently, the petition is deemed "filed" at the time of initial submission. Because AS 15.45.140 and AS 15.45.190 both require the petition to be "filed" (not "certified") by certain dates, the Division's processes to allow sponsors to cure defects and return a booklet "so long as it is received before the division completes its review of signatures," is supported by the plain meaning of the applicable statutes and by the reasoning in *Yute Air*.[112] Therefore, the Court concludes that the Division may accept corrections to certification affidavits after the deadline corresponding to the convening of the legislature and the one year deadline, and still put the 22AKHE initiative on the 2024 November general election ballot.

The Court's conclusion is further bolstered when it looks at the purpose of each of the cited deadlines. The purpose of the legislative deadline is to comply with the Alaska Constitution, which states that "[i]f, before the [initiative] election, substantially the same measure has been enacted, the petition is void."[113] This purpose is satisfied once a petition is accepted at the initial facial review

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[109] *Id.*
[110] *Id.*
[111] *Id.*
[112] Defendants' Notice of Exhibits for Oral Argument (May 24, 2024), at Exhibit 11, at 12.
[113] Alaska Const. art. XI, § 4. *See Meyer v. Alaskans for Better Elections*, 465 P.3d 477, 482 (Alaska 2020) (explaining that "the legislature's power to effectively terminate an initiative by

process. At that time, the legislature will know the petition's subject matter and the petition's approximate level of public support, i.e., enough support to get onto the next election ballot.[114] From there, the Legislature may decide whether to enact a similar measure, or let the question go to the vote of the people. Therefore, allowing corrections during the Division's review process will not frustrate the functional purpose of this deadline.

The purpose of the one-year deadline is less clear. The provision was not included in the original 1960 Alaska Election Code.[115] It was added to the Alaska Statutes in 1971.[116] No party in the instant case has pointed to legislative history or caselaw describing the reason for this deadline.[117] The most likely purpose is to promote efficient administration. The Division, the Sponsors, and the public (including the Plaintiffs) all share an interest in promptly circulating and reviewing 22AKHE. The Court cannot say that the Division's post-filing curing process violated the goal of efficient administration. On the contrary, the timeline in the instant case shows that the Division was able to review all the signatures with time to spare. The Division efficiently worked with the Sponsors to return individual petition booklets and get back corrections four days before the 60-day review deadline passed.

Moreover, the entire initiative petition process is distinguishable from the election cases concerning individual candidates like in *Falke* and *Jeffery*.

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passing 'substantially the same' legislation prior to an election" is a "check[] on the people's right to initiate laws").

[114] *See Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173, 1179 (Alaska 1985); *see also Citizens for Implementing Med. Marijuana v. Municipality of Anchorage*, 129 P.3d 898, 901 (Alaska 2006) ("The signature-gathering requirement ensures that only propositions with significant public support are included on the ballot.").

[115] *See* SLA 1960, ch. 83, § 9.14.

[116] *See* SLA 1971, ch. 128, § 1.

[117] The original version of Senate Bill 210 – the legislation that created the one year deadline – provided only 90 days to gather the necessary signatures. *Compare* S.B. 210, 7th Leg., 1st Sess. (Version A), *with* S.B. 210, 7th Leg., 1st Sess. (Version B). Senate Bill 210 was amended in the Alaska State House of Representatives to extend the deadline to one year. 1971 House Journal 1188-89.

Initiative petitions require far more time and effort than an individual candidate going to the Division's office to sign the paperwork to file for election. As a practical matter, a successful initiative petition requires getting hundreds of circulators to gather thousands of signatures from across the largest State in the Union.[118] The Court believes that by accepting the 22AKHE petition as facially valid before the mandatory deadlines, the Division could then also accept corrections to individual certification affidavits, up and until the 60-day deadline for reviewing signatures. Given the parties' stipulation that no new signatures were gathered after the cited deadlines, any other interpretation of the statutory deadlines would run afoul of the Alaska Supreme Court, because voters who *timely* sign a petition "have a right to participate in the initiative process and should not be disenfranchised because of the error of a circulator that had no impact upon them."[119]

B. There are material disputes of fact regarding the Plaintiffs' allegations that the Sponsors mishandled individual petition booklets.

The Sponsors cross-move for summary judgment on Counts I, II, V, VI, and VII of the Plaintiffs' Complaint. These counts include specific claims of how the Sponsors allegedly mishandled individual petition booklets. For example, these Counts address circulator conduct, like leaving booklets unattended, or exchanging booklets between circulators.

In the Sponsors' cross-motion, they argue that the Plaintiffs do not point to enough instances of circulator misconduct to support their requested relief. Put another way, the Sponsors explain that, based on the current evidence, the

[118] *Cf. Res. Dev. Council for Alaska, Inc. v. Vote Yes for Alaska's Fair Share*, 494 P.3d 541, 552-3 (Alaska 2021) (explaining how the vastness of Alaska's house districts makes gathering signatures difficult).
[119] *N. W. Cruiseship Ass'n of Alaska, Inc. v. State, Off. of Lieutenant Governor, Div. of Elections*, 145 P.3d 573, 582 (Alaska 2006).

Plaintiffs could not disqualify enough signatures to prevent 22AKHE from qualifying for the November 2024 general election ballot.

In response, the Plaintiffs provide an affidavit from an election expert, specializing in "petition signature gathering, and in signature and petition booklet verification."[120] The expert's affidavit states that, "based on [his] preliminary review of the over 40,000 signatures that were filed by the Sponsors of 22AKHE, there are a sufficient number of irregularities, and sufficient indicia of fraudulent activity, that could disqualify 22AKHE from the ballot."[121] He further states that his expert report was forthcoming. At oral argument, the Plaintiffs stated that the expert report, once completed, would conclusively establish whether there were sufficient irregularities to proceed with such a challenge. Additionally, at oral argument, the Plaintiffs made an oral motion for a continuance under Rule 56(f) to finish completing discovery.

Although the Plaintiffs' expert affidavit is very brief, the Court does not find that it is too conclusory to be considered.[122] The Court finds that the expert report is likely to include additional material facts relevant to the dispute over the remaining counts. Additionally, the Court GRANTS the Plaintiffs' oral motion for a Rule 56(f) continuance.[123] Therefore, the Sponsors' Cross-Motion for Summary Judgment on Counts I, II, V, VI, and VII is DENIED, without prejudice.[124]

[120] Affidavit of John "Jay" Costa, Jr. (May 22, 2024), at 1.
[121] *Id.* at 2.
[122] *Contra Societe Fin., LLC v. MJ Corp.*, 542 P.3d 1159, 1172 (Alaska 2024).
[123] At oral argument, neither the Division nor the Sponsors asserted opposition to the Plaintiffs' oral motion.
[124] The Court has requested supplemental briefing on whether the appropriate relief would be disqualification of specific petition booklets, specific pages, or specific signatures. If appropriate, the Court will readdress the Sponsors' cross-motion for summary judgment on the remaining counts.

V. Conclusion

As a matter of law, the Division acted within its authority in allowing the Sponsors to make corrections to the certification affidavits on individual petition booklets after they were filed, but before the Division completed counting signatures. Additionally, the Division complied with all mandatory deadlines in placing the 22AKHE initiative on the November 2024 general election ballot. The Court thus DENIES the Plaintiffs' Motion for Summary Judgment on Counts III and IV, and GRANTS the Division and Sponsor's Cross-Motions for Summary Judgment on those counts.

As to Counts I, II, V, VI, and VII, there remain outstanding disputes of material fact, and thus the Court DENIES the Sponsors' Cross-Motion for Summary Judgment, without prejudice, and GRANTS the Plaintiffs' oral motion for a Rule 56(f) continuance.

IT IS SO ORDERED.

DATED this 7 day of June, 2024, at Anchorage, Alaska.

Christina Rankin
Superior Court Judge

I certify that on 6/7/24
a copy of the above was emailed
via Case Parties (unless noted otherwise below)
to each of the following at their address of record:
S Gottstein, J Lindemuth,
S Kendall, T Flynn, L Harrison
K Clarkson
C Fernthiel, Judicial Assistant