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\*\*\*EMERGENCY\*\*\*

IN THE SUPREME COURT OF THE STATE OF ALASKA

EMERGENCY - 1 AM 8:5  
CLERK APPELLATE COURT

KEVIN MEYER, LIEUTENANT )  
GOVERNOR OF THE STATE OF )  
ALASKA and the STATE OF ALASKA, )  
DIVISION OF ELECTIONS, )  
 )  
Appellants, )  
 )  
v. )  
 )  
ALASKANS FOR BETTER )  
ELECTIONS, )  
 )  
Appellee. )

Supreme Court No. S-17629

Trial Court Case No. 3AN-19-09704 CI

\*\*\*EMERGENCY\*\*\*

MOTION TO EXPEDITE APPEAL

Under Appellate Rule 504, Lieutenant Governor Kevin Meyer and the Alaska Division of Elections (collectively, “the State”) move the Court to expedite consideration of this appeal, which is a challenge to a superior court decision ordering certification of an initiative that the State believes is invalid.

The appellee initiative sponsors are now gathering signatures in support of their initiative, so each day that passes will increase their investment in the current version of the measure. But the State’s appeal will ask this Court to disapprove their initiative by overturning decades-old unworkable precedents that apply the same broad single-subject rule both to bills enacted by the Legislature and to bills enacted through the initiative process. The State seeks extremely expedited consideration of this appeal so

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that this Court can consider the State's arguments on their merits, rather than feeling constrained by the sponsors' mounting reliance interests, which will increase every day.

A decision on this emergency motion is needed by **close of business on November 1, 2019** because the State requests a schedule that would require appellate briefing and argument preparation to begin immediately.

The State respectfully requests full-court consideration if the assigned justice is inclined to deny this motion. Appellate Rule 503(h)(2)(B) allows the State to receive full-court reconsideration of an individual justice decision, which it intends to do if this motion is denied by an individual justice. Given the State's desire to expedite this case for the reasons detailed below, the State respectfully requests full-court consideration without the delay engendered by this additional step. Appellate Rule 503(g) allows the individual justice considering a motion to refer it to the full court.

The grounds in support of this emergency motion were not submitted to the trial court because this is a motion to expedite an appeal, which the trial court cannot do.

### **BACKGROUND**

In July 2019, Alaskans for Better Elections filed initiative application 19AKBE with the Division of Elections.<sup>1</sup> The bill proposed by the initiative would make three major changes to Alaska law: (1) replacing the party primary system with an open

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<sup>1</sup> See Appendix A at 1-3.

nonpartisan primary; (2) establishing ranked-choice voting in the general election; and (3) adding new disclosure and disclaimer requirements to campaign finance law.<sup>2</sup>

After a careful legal review of 19AKBE, Attorney General Kevin Clarkson recommended that the Lieutenant Governor decline to certify the initiative for signature gathering because the proposed bill contains more than one subject in violation of the single-subject requirement in AS 15.45.080 and Article II, Section 13 of the Alaska Constitution.<sup>3</sup> Although the sponsors argued that the three reforms in 19AKBE fall under the single subject of “better elections,” the Attorney General observed that the initiative would make two independent and fundamental changes to Alaska’s system of democratic elections alongside unrelated changes to its campaign finance laws. On August 30, Lieutenant Governor Meyer denied certification.<sup>4</sup>

After the sponsors filed suit, the superior court reversed the Lieutenant Governor’s decision, relying on a series of cases from the 1970s and 1980s that applied an extraordinarily broad interpretation of the single-subject rule that permitted subjects as generalized as “state taxation,”<sup>5</sup> “land,”<sup>6</sup> and “criminal law.”<sup>7</sup> The court ordered the State to distribute petition booklets to the sponsors so that they could begin collecting

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<sup>2</sup> *Id.*

<sup>3</sup> State of Alaska, Dep’t of Law, Op. Att’y Gen., 2019 WL 4239852 (August 29, 2019).

<sup>4</sup> See Appendix A at 1-3.

<sup>5</sup> *North Slope Borough v. Sohio Petroleum Corp.*, 585 P.2d 534, 546 (Alaska 1978).

<sup>6</sup> *State v. First National Bank of Anchorage*, 660 P.2d 406, 415 (Alaska 1982).

<sup>7</sup> *Galbraith v. State*, 693 P.2d 880, 886 (Alaska App. 1985).

signatures in support of 19AKBE.<sup>8</sup> The State sought a stay, but the superior court denied it,<sup>9</sup> so the sponsors now have the booklets and can start to collect signatures.

### ARGUMENT

In the past, this Court has been reluctant to reconsider its single-subject jurisprudence in the initiative context once sponsors have invested the extensive time and effort necessary to gather the signatures to get their measure on the ballot. For example, in *Yute Air Alaska, Inc. v. McAlpine*, this Court narrowly rejected a single-subject challenge to an initiative—despite explicitly expressing reservations about its precedent—citing as a key reason the fact that “the sponsors of the initiative have relied on our precedents in preparing the present proposition and undertaking the considerable expense and time and effort needed to place it on the ballot.”<sup>10</sup>

Here, the sponsors of 19AKBE have not yet gathered the signatures necessary to place it on the ballot, and thus do not yet have the reliance interests of the sponsors in *Yute Air*. But now that the sponsors have the petition booklets and can begin to collect signatures, each day that passes will increase their reliance.

And absent the sort of expedited consideration that the State now requests, initiative sponsors will likely always have incurred the kind of reliance discussed in *Yute Air* by the time this Court considers an initiative appeal. Because the Court’s precedents apply a single-subject standard that is so broad as to be “almost

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<sup>8</sup> Appendix A at 12.

<sup>9</sup> Appendix B.

<sup>10</sup> *Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173, 1181 (Alaska 1985).

meaningless,”<sup>11</sup> any litigant hoping to restore some teeth to it must come before this Court in the position of an appellant, challenging a ruling that an initiative meets the requirements of the single-subject rule. That means that either the Lieutenant Governor has certified the initiative and it is being challenged by others or, as here, the superior court has overturned a decision denying certification. In both scenarios, the sponsors will be out collecting signatures by the time the case reaches this Court, increasing their reliance with every day that goes by, and effectively preventing the Court from ever reconsidering a jurisprudence that has reduced the single-subject rule to “a farce.”<sup>12</sup>

Because the State believes that the Court’s single-subject jurisprudence is based on a decision that was originally erroneous and that more good than harm will come from overturning the existing precedents, it urges the Court to review this case on an expedited basis so that it can evaluate the State’s arguments on their merits, rather than feeling constrained by what will eventually become the sponsors’ substantial reliance on those precedents if review is delayed.

Extremely expedited review will also benefit the sponsors in the event that this Court ultimately agrees with the State that 19AKBE contains more than one subject. The sooner the Court reaches such a decision, the sooner the sponsors can stop gathering signatures in support of an invalid initiative and instead direct their efforts toward their desired reforms by pursuing multiple separate, single-subject initiatives.

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<sup>11</sup> *Id.* at 1182 (Justice Moore, dissenting).

<sup>12</sup> *Id.*

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**CONTACT INFORMATION OF COUNSEL**

As required by Appellate Rule 504(c) for emergency motions, the telephone numbers and addresses of counsel are as follows:

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**REQUESTED SCHEDULE**

The State requests that the Court expedite this appeal and adopt the following schedule for briefing and argument:

- Opening brief: November 6,
- Responsive brief: November 11 (service/filing by email given holiday),
- Reply brief: November 12,
- Oral argument: November 14.


In the alternative, the State requests whatever expedited schedule the Court can provide that will resolve this appeal as quickly as possible.

CONCLUSION

For these reasons, the State requests that the Court expedite this appeal.

DATED November 1, 2019.

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

ALASKANS FOR BETTER )  
ELECTIONS, )  
Plaintiff, )  
 )  
vs. )  
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KEVIN MEYER, LIEUTENANT )  
GOVERNOR OF THE STATE OF )  
ALASKA and STATE OF ALASKA, )  
DIVISION OF ELECTIONS, )  
Defendants. )

Case No. 3AN-19-09704 CI

**ORDER GRANTING PLAINTIFF’S CROSS-MOTION FOR  
SUMMARY JUDGMENT AND DENYING DEFENDANTS’  
MOTION FOR SUMMARY JUDGMENT**

Plaintiff and Defendants both filed motions for summary judgment, agreeing that there are no disputed facts and that the sole legal issue is whether the Alaska’s Better Elections Initiative (“19AKBE”) violates the single-subject rule articulated in Article II, section 13 of the Alaska Constitution and AS 15.45.040. Oral argument on the motions was held on October 21, 2019. Having considered the cross-motions, oppositions, and oral argument, the Court grants Plaintiff’s cross-motion for summary judgment and denies Defendants’ motion for summary judgment.

**I. Background**

Plaintiff Alaskans for Better Elections (“ABE”) is a ballot initiative committee challenging the Lieutenant Governor’s refusal to certify the initiative for the ballot. The



Lieutenant Governor denied certification because he determined that the initiative violated the single-subject requirement of AS 15.45.040. Plaintiff filed a Complaint for Declaratory and Injunctive Relief against Lieutenant Governor Keven Meyer and the State of Alaska, Division of Elections (collectively, "Lieutenant Governor") seeking a declaration that the Lieutenant Governor's determination that 19AKBE addresses more than one subject in violation of the Alaska Constitution is incorrect as a matter of law and that 19AKBE is in the proper form. ABE further seeks an order that 19AKBE be certified and that the Lieutenant Governor must distribute petition signature booklets immediately.

ABE filed the initiative petition with the Division of Elections on July 3, 2019.

19AKBE is an initiative to:

PROHIBIT THE USE OF DARK MONEY BY INDEPENDENT EXPENDITURE GROUPS WORKING TO INFLUENCE CANDIDATE ELECTIONS IN ALASKA AND REQUIRE ADDITIONAL DISCLOSURES BY THESE GROUPS; ESTABLISH A NONPARTISAN AND OPEN TOP FOUR PRIMARY ELECTION SYSTEM; CHANGE APPOINTMENT PROCEDURES FOR CERTAIN ELECTION BOARDS AND WATCHERS AND THE ALASKA PUBLIC OFFICES COMMISSION; ESTABLISH A RANKED-CHOICE GENERAL ELECTION SYSTEM; SUPPORT AN AMENDMENT TO THE UNITED STATES CONSTITUTION TO ALLOW CITIZENS TO REGULATE MONEY IN ELECTIONS; REPEAL SPECIAL RUNOFF ELECTIONS; REQUIRE CERTAIN NOTICES IN ELECTION PAMPHLETS AND POLLING PLACES; AND AMEND THE DEFINITION OF POLITICAL PARTY.

There are 74 sections to the initiative.<sup>1</sup> All but one amends Title 15, the Alaska Election Code. One section, section 71, seeks to amend AS 39.50.020(b) to delete a cross-reference to Title 15.

On August 29, 2019, the Attorney General issued an opinion that 19AKBE violates the single-subject rule because it covers “at least two, if not three, discrete and important subjects,” namely “(1) the elimination of the party primary system and the establishment of an entirely new nonpartisan primary; (2) a new ranked-choice voting process that amends how candidates in the general election are elected and how votes are counted; and (3) additional campaign finance disclosure and disclaimer requirements.”<sup>2</sup> On August 30, 2019, the Lieutenant Governor denied certification of the initiative application under AS 15.45.080, based on the August 29, 2019 Attorney General opinion recommending denial of certification.<sup>3</sup> On September 5, 2019, ABE filed this action.

## II. Summary Judgment Standard

Summary judgment is warranted where “there is no genuine issue as to any material fact” and “the moving party is entitled to judgment as a matter of law.”<sup>4</sup> Under Alaska Civil Rule 56, the non-moving party is only required to show “that a genuine issue of material fact exists to be litigated”<sup>5</sup> and that “the party could produce admissible

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<sup>1</sup> Pl.’s Mot. for Summ. J., Ex. A.

<sup>2</sup> Pl.’s Mot. for Summ. J., Ex. B.

<sup>3</sup> Pl.’s Mot. for Summ. J., Ex. C.

<sup>4</sup> Alaska R. Civ. P. 56(c).

<sup>5</sup> *Christensen v. Alaska Sales & Service, Inc.*, 335 P.3d 514, 519 (Alaska 2014) (internal quotations omitted).

evidence that reasonably would demonstrate to the court that a triable issue of fact exists.”<sup>6</sup> All reasonable inferences must be drawn in favor of the non-moving party,<sup>7</sup> and facts must be viewed in the light most favorable to the non-prevailing party.<sup>8</sup> Here, both parties agree that there is no dispute of material fact.

### III. Discussion

ABE argues that the Lieutenant Governor’s decision, based on the Attorney General’s opinion recommending rejection of 19AKBE, misapplied the single-subject rule as established by Article II, section 13 of the Alaska Constitution. ABE argues that it is entitled to summary judgment and an order directing certification of the ballot initiative and release of petition signature booklets. The Lieutenant Governor argues that 19AKBE makes three separate changes to Alaska law in violation of the single-subject rule and asks for summary judgment to uphold the Lieutenant Governor’s denial of certification.

Article II, section 13 of the Alaska Constitution provides that “[e]very bill shall be confined to one subject.”<sup>9</sup> This single-subject rule also applies to bills proposed for adoption by the people via the ballot initiative process.<sup>10</sup> Over 50 years ago, the Alaska Supreme Court first addressed the purpose of the single-subject rule: “to prevent the

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<sup>6</sup> *Burnett v. Covell*, 191 P.3d 985, 991 (Alaska 2008).

<sup>7</sup> *Charles v. Interior Reg’l Hous. Auth.*, 55 P.3d 57, 59 (Alaska 2002).

<sup>8</sup> *Lewis v. State, Dep’t of Corr.*, 139 P.3d 1266, 1268-69 (Alaska 2006).

<sup>9</sup> AK Const. Art. II, § 13. *See also* AS 15.45.040 (proposed bills “shall be confined to one subject”).

<sup>10</sup> AK Const. Art. XI, § 1; AS 15.45.080 (requiring lieutenant governor to deny certification where “proposed bill to be initiated is not confined to one subject”).

inclusion of incongruous and unrelated matters in the same bill in order to get support for it which the several subjects might not separately command, and to guard against inadvertence, stealth and fraud in legislation.”<sup>11</sup> In the context of the ballot initiative process, the single-subject rule is intended to protect “the voters’ ability to effectively exercise their right to vote by requiring that different proposals be voted on separately.”<sup>12</sup>

There is longstanding precedent that courts should construe the single-subject provision “with considerable breadth.”<sup>13</sup> The rationale for a broad construction of the single-subject provision is that “[o]therwise statutes might be restricted unduly in scope and permissible subject matter, thereby multiplying and complicating the number of necessary enactment and their interrelationships.”<sup>14</sup>

The Alaska Supreme Court consistently has applied the same test when considering whether a bill violates the Alaska Constitution’s single-subject rule:

“All that is necessary is that [the] act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.”<sup>15</sup>

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<sup>11</sup> *Suber v. Alaska State Bond Comm.*, 414 P.2d 546, 557 (Alaska 1966).

<sup>12</sup> *Croft v. Parnell*, 236 P.3d 369, 372 (Alaska 2010).

<sup>13</sup> *Gellert v. State*, 522 P.2d 1120, 1122 (Alaska 1974).

<sup>14</sup> *Id.*

<sup>15</sup> *Croft*, 236 P.3d at 373 (quoting *Gellert*, 522 P.2d at 1123).

In applying this test, the court “disregard[s] mere verbal inaccuracies, resolve[s] doubts in favor of validity,” and strike[s] down challenged proposals only when the violation is ‘substantial and plain.’”<sup>16</sup>

Most recently, in *Croft v. Parnell*, the Alaska Supreme Court applied the single-subject test to an initiative which proposed a new oil production tax and a new “clean elections” program.<sup>17</sup> The court concluded that the initiative violated the single-subject rule because there was an insufficient connection between the two provisions of the initiative.<sup>18</sup> The court did not announce a new test to be applied when reviewing challenges to initiatives based on the single-subject rule. Instead, for the first time, the court concluded that there was a violation of the single-subject rule. But the court applied the same test that has been applied in seven prior cases addressing the single-subject rule. In other words, the outcome was different from the past cases, but the analysis remained the same.

The Alaska Supreme Court, in every case prior to *Croft*, when faced with a challenge to a bill or initiative for violating the single-subject rule, ruled that each bill or initiative “related to a broader, single subject” and thus did not violate the single-subject rule.<sup>19</sup> For example, in *Evans ex rel. Kutch v. State*, the Alaska

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<sup>16</sup> *Id.* (quoting *Gellert*, 522 P.2d at 1122).

<sup>17</sup> *Id.* at 371.

<sup>18</sup> *Id.* at 374.

<sup>19</sup> *Id.* at 372 (footnote 8 collecting cases).

Supreme Court addressed a challenge to the 1997 tort reform legislation.<sup>20</sup> The legislation included the following different provisions:

caps on noneconomic and punitive damages, a requirement that half of all punitive damages awards be paid into the state treasury, a ten-year 'statute of repose,' a modified tolling procedure for the statute of limitations as applied to minors, comparative allocation of fault between parties and non-parties, a revised offer of judgment procedure, and partial immunity for hospitals from vicarious liability for some physicians' actions.<sup>21</sup>

The Alaska Supreme Court applied the same test to determine whether the legislation embraced a "single general subject," and concluded that "[e]ven though the provisions of [the legislation] concern different matters, they are all within the single subject of 'civil actions.'"<sup>22</sup> The court pointed to prior decisions where the court concluded that broad legislation fit within one general subject "such as 'land' or 'the criminal law.'"<sup>23</sup>

In addition, the Alaska Supreme Court, relying on the explicit language in the Alaska Constitution that "the law-making powers assigned to the legislature may be exercised by the people through the initiative," has made clear that the same test applies to both legislation and initiatives.<sup>24</sup> When faced with the question of whether to overrule its prior line of cases analyzing the single-subject

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<sup>20</sup> *Evans ex rel. Kutch v. State*, 56 P.3d 1046 (Alaska 2002).

<sup>21</sup> *Id.* at 1048.

<sup>22</sup> *Id.* at 1069-70.

<sup>23</sup> *Id.* at 1069.

<sup>24</sup> *Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173, 1181 (Alaska 1985) (quoting AK Const. Art. XII, § 11).

rule, the Alaska Supreme Court concluded that “[a] one subject rule for initiatives which is more restrictive than the rule for legislative action is not permitted.”<sup>25</sup>

In *Craft*, the Alaska Supreme Court concluded not only that the two provisions did not relate to a single subject matter, but also that the proposed initiative “directly implicates one of the main purposes of the single-subject rule – the prevention of log-rolling.”<sup>26</sup> The court characterized log-rolling as “appealing to different constituencies by including distinct provisions calculated to obtain sufficient votes to pass a measure.”<sup>27</sup> Again, the court did not announce a new definition of log-rolling. Instead, it pointed to the definition provided by the Alaska Supreme Court in *Gellert v. State* in 1974: “deliberately inserting in one bill several dissimilar or incongruous subjects in order to secure the necessary support for passage of the measure.”<sup>28</sup> The court concluded that the initiative implicated log-rolling for two reasons: (1) “coupling the approval of a new oil production tax with approval of a program to publicly fund elections deprives the voters of an opportunity to send a clear message on each subject encompassed by the Sponsors’ initiative,” and (2) the directive that the legislature transfer funds left over from public elections to the Permanent Fund Dividend (PFD), when the PFD was “entirely unrelated to the purpose of the clean elections programs,” “runs

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<sup>25</sup> *Id.*

<sup>26</sup> *Craft*, 236 P.3d at 374.

<sup>27</sup> *Id.*

<sup>28</sup> *Gellert*, 522 P.2d at 1122.

the risk of garnering support for the clean elections program from voters who are otherwise indifferent – or even unsupportive – of publicly funded campaigns.”<sup>29</sup>

Here, the provisions of 19AKBE satisfy the test of relating to a single subject matter: election reform. Whether the provisions could have been written or offered as three separate initiatives is not the question before the Court or the standard to be applied in this case. Similarly, whether it is wise or unwise to adopt the proposed initiative is not a question before the Court. The sole legal question is whether the proposed initiative embraces one general subject. The answer is yes.

All of the substantive provisions of the proposed initiative seek to revise Title 15, the Alaska Election Code. All of the sections of the proposed initiative relate to each other and are germane to election reform. The proposed initiative includes revisions to both primary and general elections. Those provisions clearly relate to how Alaskans vote and select candidates for office. In addition, the proposed initiative includes revisions regarding campaign finance disclosure requirements. Those provisions seek to amend portions of the statutes which are already contained within the Alaska Election Code. The fact that the law in place now already links the topics in the same title (Title 15) reflects that there is a logical connection between campaign finance disclosures and voting. That

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<sup>29</sup> *Croft*, 236 P.3d at 374.



connection is not diminished by the fact that different departments administer those laws. The legislature has determined previously that voters are entitled to some level of information regarding campaign contributions. ABE asserts that the proposed initiative would provide voters with additional information regarding campaign contributions and that such information is of even more importance when viewed with the other provisions of the proposed initiative such as nonpartisan elections. To the extent that provisions of the proposed initiative address additional campaign finance disclosure and disclaimer requirements, those provisions relate to the general subject matter of election reform. Because the primary election, general election, campaign finance, and all other provisions of the proposed initiative clearly relate to the general subject of election reform, there is no violation of the single-subject rule.

The longstanding precedent applying the single-subject rule does not support reading the *Croft* decision as narrowing the single-subject rule. In *Croft*, the provisions of the proposed initiative lacked a connection to each other.<sup>30</sup> The facts of this case are distinguishable from those in *Croft*. Here, there is a connection between the provisions addressing election reform. In *Evans*, the legislation at issue was much broader in scope and included many more provisions on different topics than the provisions at issue in 19AKBE. Yet in *Evans*, the

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<sup>30</sup> *Croft*, 236 P.3d at 374.

Alaska Supreme Court concluded that the different matters fell within the single subject of “civil actions.”<sup>31</sup> Similarly, here, the provisions of the proposed initiative relate to each other sufficiently to satisfy the single-subject rule.

The implication regarding log-rolling that was at issue in the *Croft* decision does not exist here. In *Croft*, the Alaska Supreme Court pointed out the different constituencies that may be appealed to with the proposed initiative together with the unrelated provision of offering the chance of increased PFD payments.<sup>32</sup> There is no similar unrelated provision in the proposed initiative here. Nor do any of the provisions appear to appeal to different constituencies. 19AKBE does not include dissimilar, incongruous, or unrelated matters in its provisions. The Court can discern no practical challenge to the proposed initiative on this ground. For example, the fact that one constituency may support modifications to campaign finance disclosure requirements but not support modifications to the primary election process does not warrant a conclusion that the single-subject rule is violated based on log-rolling. Looking at the language of 19AKBE, there is no indication that the provisions are targeted to different constituencies or that any of the provisions were calculated to obtain sufficient votes to pass the proposed

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<sup>31</sup> *Evans*, 56 P.3d at 1070.

<sup>32</sup> *Croft*, 236 P.3d at 374.

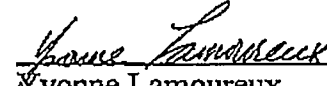
initiative by attaching something of popularity “likely to carry along the enactment of whatever state law is attached for the ride.”<sup>33</sup>

#### IV. Conclusion

For the foregoing reasons, Plaintiff’s cross-motion for summary judgment is granted and Defendant’s motion for summary judgment is denied. The Court orders that 19AKBE does not violate the single-subject rule in the Alaska Constitution and should accordingly be certified, and the Defendants must distribute petition signature booklets immediately by order of this Court.

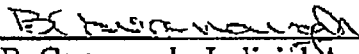
A proposed judgment together with any motion for attorney’s fees must be filed within 10 days.

DATED at Anchorage, Alaska this 28<sup>th</sup> day of October 2019.

  
\_\_\_\_\_  
Yvonne Lamoureux  
Superior Court Judge

I certify that on 10-28-19 the above was emailed to the parties of record:

J. Lindemuth  
S. Kendall  
C. Mills  
M. Paton-Walsh

  
\_\_\_\_\_  
B. Cavanaugh, Judicial Assistant

<sup>33</sup> *Yute Air*, 698 P.2d at 1189 (Moore, J., dissenting).

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKANS FOR BETTER )  
 ELECTIONS, )  
                           Plaintiff, )  
   ) )  
 vs. )  
   ) )  
 KEVIN MEYER, LIEUTENANT )  
 GOVERNOR OF THE STATE OF )  
 ALASKA and STATE OF ALASKA, )  
 DIVISION OF ELECTIONS, )  
   Defendants. )

Case No. 3AN-19-09704 CI

**ORDER DENYING DEFENDANTS' MOTION FOR STAY PENDING APPEAL**

On October 28, 2019, Defendants filed a motion for stay of the Order Granting Plaintiff's Cross-Motion for Summary Judgment and Denying Defendants' Motion for Summary Judgment, together with the related orders that 19AKBE should be certified and Defendants must distribute petition signature booklets immediately. Having reviewed the motion and opposition, the Court denies the request for a stay pending appeal.

Trial courts have discretion to grant a stay pending appeal.<sup>1</sup> The parties agree that the legal standard applicable to Defendants' request for a stay of the October 28, 2019 Order is a "heightened standard of a 'clear showing of probable success on the merits.'"<sup>2</sup>

<sup>1</sup> Alaska R. Civ. P. 62.

<sup>2</sup> *State, Div. of Elections v. Metcalfe*, 110 P.3d 976, 978 (Alaska 2005) (quoting *State v. Klui Kaah Native Vill. of Copper Ctr.*, 831 P.2d 1270, 1272 n.4 (Alaska 1992)).

It is appropriate to apply this standard to the request for a stay because the irreparable harm Plaintiff faces if a stay is granted cannot be adequately protected by the posting of a bond.<sup>3</sup> The posting of a bond fails to protect the time that Plaintiff will lose to gather signatures by January 20, 2020 in an attempt to place 19AKBE on the November 2020 ballot.

Defendants assert that they are likely to succeed on the merits on appeal because 19AKBE violates the single-subject rule and the Alaska Supreme Court will be in a position to overrule its precedent. As set forth in the October 28, 2019 Order, it is this Court's opinion that 19AKBE does not violate the single-subject rule based on application of the test utilized in eight prior Alaska Supreme Court decisions. To the extent that Defendants argue that the Alaska Supreme Court is likely to overrule its precedent, the Court notes that the Alaska Supreme Court previously considered this exact question and declined to overrule the prior cases.<sup>4</sup> In *Yute Air Alaska, Inc. v. McAlpine*, the Alaska Supreme Court provided three reasons why it would not overrule its precedent interpreting the single-subject rule: (1) "[I]t is not at all clear that there are workable stricter standards;" (2) "[T]he sponsors of the initiative have relied on our precedents in preparing the present proposition and undertaking the considerable expense and time and effort needed to place it on the ballot;" and (3) "[A]n initiative is an act of

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<sup>3</sup> See *Alsworth v. Seybert*, 323 P.3d 47, 54-55 (Alaska 2014).

<sup>4</sup> *Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173, 1180-81 (Alaska 1985).

direct democracy guaranteed by our constitution.”<sup>5</sup> The Alaska Supreme Court has had two opportunities since the *Yute Air* decision to overrule its precedent and instead has consistently applied the same test. The 2010 *Croft* decision acknowledged that the Alaska Supreme Court has “consistently articulated the substance of the test to reflect” a broad construction of the rule.<sup>6</sup> The Alaska Supreme Court pointed out that “[i]n each of the seven cases in which this court has addressed a single-subject challenge, we upheld the challenged bill or initiative by determining that all provisions related to a single general subject, theme, or purpose.”<sup>7</sup>

The Alaska Supreme Court has not addressed the single-subject rule since the 2010 *Croft* decision. But based on the existing caselaw regarding the obligation to follow precedent<sup>8</sup> and the standard applicable to requests to overrule precedent, Defendants have not made a clear showing of probable success on the merits in this case. The Alaska Supreme Court has indicated that it “will overrule a prior decision only when ‘clearly convinced that the rule was originally erroneous or is no longer sound because of changed conditions, and that more good than harm would result from a departure from

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<sup>5</sup> *Id.*

<sup>6</sup> *Croft v. Parnell*, 236 P.3d 369, 373 (Alaska 2010).

<sup>7</sup> *Id.*

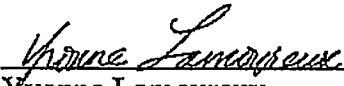
<sup>8</sup> “The doctrine of precedent is a common law doctrine under which courts are bound by prior decisions in their consideration of new cases. Precedent is a judge-made rule designed to constrain judicial decisionmaking by requiring that prior decisions with similar relevant facts be followed or, if they are not followed, that the reasons for departing from the prior rule be explained. Two types of stare decisis have been identified: horizontal stare decisis and vertical stare decisis. Horizontal stare decisis binds the issuing court to its own prior decisions. Vertical stare decisis requires that lower courts of lower rank follow decisions of higher courts. Vertical stare decisis has a stronger effect, in that lower courts generally cannot overrule decisions of higher courts, whereas a court may, given adequate reasons to do so, overrule itself.” *Alaska Public Interest Research Group v. State*, 167 P.3d 27, 43-44 (Alaska 2007).

precedent.”<sup>9</sup> The Alaska Supreme Court further explained that “[a] decision may prove to be originally erroneous if the rule announced proves to be unworkable in practice.”<sup>10</sup>

Here, it appears that the single-subject rule announced is workable in practice. The *Craft* decision itself is an example of the rule working in practice. In addition, the Court is unaware of changed conditions to overcome the rule of stare decisis.


Because Defendants do not satisfy the heightened standard of a clear showing of probable success on the merits, the Court denies the Motion for Stay Pending Appeal.

DATED at Anchorage, Alaska this 30<sup>th</sup> day of October 2019.

  
\_\_\_\_\_  
Yvonne Lamoureux  
Superior Court Judge

I certify that on 10-30-19 the above was emailed to the parties of record:

J. Lindemuth  
S. Kendall  
C. Mills  
M. Paton-Walsh

  
\_\_\_\_\_  
B. Cavanaugh, Judicial Assistant

---

<sup>9</sup> *Pratt & Whitney Canada, Inc. v. Sheehan*, 852 P.2d 1173, 1176 (Alaska 1993).

<sup>10</sup> *Id.*

anc.law.ecf@alaska.gov

**IN THE SUPREME COURT OF THE STATE OF ALASKA**

2019 NOV -1 AM 8:5

CLERK OF APPELLATE COURT

KEVIN MEYER, LIEUTENANT )  
GOVERNOR OF THE STATE OF )  
ALASKA and the STATE OF ALASKA, )  
DIVISION OF ELECTIONS, )

Appellants, )

v. )

ALASKANS FOR BETTER )  
ELECTIONS, )

Supreme Court No. S- 17629

Appellee. )

Trial Court Case No. **3AN-19-09704 CI**

**AFFIDAVIT OF COUNSEL IN SUPPORT OF  
EMERGENCY MOTION TO EXPEDITE APPEAL**

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

I, Margaret Paton Walsh, being first duly sworn, depose and state that:

1. I am one of the Assistant Attorneys General responsible for the above-captioned appeal.

2. On the afternoon of October 31, 2019, I called Scott Kendall and Jahna Lindemuth, counsel for Alaskans for Better Elections, to inform them of the State's intention to file its Emergency Motion to Expedite Appeal.

3. Mr. Kendall and Ms. Lindemuth indicated that they did not oppose an expedited schedule in principle but felt that the requested schedule was possibly too

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OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
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aggressive and wanted an opportunity to respond after consultation with their clients.

M. A. Paton Walsh

Margaret Paton Walsh

SUBSCRIBED AND SWORN TO before me on this 1st day of November 2019.



Virginia K. Bozeman

Notary Public, State of Alaska

My commission expires: with office

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**IN THE SUPREME COURT OF THE STATE OF ALASKA**

2019 NOV -1 AM 8:5  
ALASKA APPELLATE COURT

KEVIN MEYER, LIEUTENANT )  
GOVERNOR OF THE STATE OF )  
ALASKA and the STATE OF ALASKA, )  
DIVISION OF ELECTIONS, )

Appellants, )

v. )

ALASKANS FOR BETTER )  
ELECTIONS, )

Supreme Court No. S-17629

Appellee. )

Trial Court Case No. **3AN-19-09704 CI**

**[PROPOSED] ORDER ON MOTION TO EXPEDITE APPEAL**

The Court GRANTS the State's Emergency Motion to Expedite Appeal. The schedule for consideration of this appeal will be as follows:

- Opening brief: November 6,
- Responsive brief: November 11 (service/filing by email given holiday),
- Reply brief: November 12,
- Oral argument: November 14.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Clerk of Appellate Courts

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IN THE SUPREME COURT OF THE STATE OF ALASKA

KEVIN MEYER, LIEUTENANT )  
GOVERNOR OF THE STATE OF )  
ALASKA and the STATE OF ALASKA, )  
DIVISION OF ELECTIONS, )

Appellants, )

v. )

ALASKANS FOR BETTER )  
ELECTIONS, )

Appellee. )

2019 NOV -1 AM 8:5  
SUPREME COURT

Supreme Court No. S- 17629


Trial Court Case No. 3AN-19-09704 CI

CERTIFICATE OF SERVICE

I hereby certify, that on this date true and correct copies of the **Docketing Statement A, Notice of Appeal, Statement of Points on Appeal, Emergency Motion to Expedite Appeal, Affidavit of Counsel in Support of Emergency Motion to Expedite Appeal, [Proposed] Order on Motion to Expedite Appeal, and this Certificate of Service** were served via U.S. Mail on the following:

Holmes Weddle & Barcott, P.C.  
Scott M. Kendall  
Jahna M. Lindemuth  
701 West 8th Avenue, Suite 700  
Anchorage, AK 99501

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OFFICE OF THE ATTORNEY GENERAL  
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 11/1/19  
Virginia K. Bozeman Date  
Law Office Assistant II

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**IN THE SUPREME COURT OF THE STATE OF ALASKA**

KEVIN MEYER, LIEUTENANT )  
GOVERNOR OF THE STATE OF )  
ALASKA and the STATE OF ALASKA, )  
DIVISION OF ELECTIONS, )

Appellants, )

v. )

ALASKANS FOR BETTER )  
ELECTIONS, )

Appellee. )

2019 NOV -1 AM 8:51  
CLERK APPELLATE COURT

Supreme Court No. S-\_\_\_\_\_


Trial Court Case No. **3AN-19-09704 CI**

**NOTICE OF APPEAL**

Kevin Meyer, Lieutenant Governor of Alaska, and the Alaska Division of Elections file this appeal from the superior court's order dated October 28, 2019, granting summary judgment in favor of Alaskans for Better Elections. The superior court's summary judgment order disposes all claims and issues (other than attorney's fees and costs) and a formal final judgment is expected to be forthcoming soon. The filing of this appeal cannot wait for issuance of the formal final judgment for the reasons explained in the State's separate Motion to Expedite Appeal.

DATED November 1, 2019.

KEVIN G. CLARKSON  
ATTORNEY GENERAL

By:   
Margaret Paton Walsh (0411074)  
Laura Fox (0905015)  
Assistant Attorneys General

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**IN THE SUPREME COURT OF THE STATE OF ALASKA**

KEVIN MEYER, LIEUTENANT )  
GOVERNOR OF THE STATE OF )  
ALASKA and the STATE OF ALASKA, )  
DIVISION OF ELECTIONS, )

Appellants, )

v. )

ALASKANS FOR BETTER )  
ELECTIONS, )

Appellee. )

2019 NOV -1 AM 8:57  
STATE SUPREME COURT  
CLERK

Supreme Court No. S-\_\_\_\_\_


Trial Court Case No. 3AN-19-09704 CI

**STATEMENT OF POINTS ON APPEAL**

The superior court erred in concluding that proposed ballot initiative 19AKBE does not violate the single-subject requirement in AS 15.45.080 and Article II, Section 13 of the Alaska Constitution.

DATED November 1, 2019.

KEVIN G. CLARKSON  
ATTORNEY GENERAL

By:   
Margaret Paton Walsh (0411074)  
Laura Fox (0905015)  
Assistant Attorneys General

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
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# IN THE SUPREME COURT OF THE STATE OF ALASKA

## DOCKETING STATEMENT A

For Use in Appeals Under Appellate Rule 204 and 218

(for court system use)

2019 NOV -1 AM 8:51

CLERK APPELLATE COURT

No. S-17629

**INSTRUCTIONS FOR MULTIPLE PARTIES OR ATTORNEYS:** If there are multiple parties or attorneys, repeat the appropriate box. This may be done on a separate page. Please clearly indicate which attorney represents which party.

### 1. TYPE OF APPEAL

a. <input checked="" type="checkbox"/> General Civil Rule Appeal (App. Rule 204)	b. <input type="checkbox"/> Appeal in Child Custody Case (App. Rule 218)
---	---

### 2. PARTY FILING APPEAL (Appellant)

a. Name Kevin Meyer and Alaska Division of Elections	b. Status in the Trial Court <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant
c. Party Mailing Address (not attorney's address) (see attached)	<input type="checkbox"/> Other. Specify: _____
City _____ State _____ Zip Code _____	d. Telephone (see attached)

### 3. APPELLANT'S ATTORNEY

a. Name Margaret Paton Walsh and Laura Fox	b. Bar Number 0411074 and 0905015
c. Attorney Mailing Address 1031 W. 4th Avenue, Suite 200	d. Telephone 907-269-5275
City _____ State _____ Zip Code _____	e. Fax 907-276-3697
Anchorage AK 99501	f. Firm/Agency Alaska Department of Law

### 4. PARTY APPEALED AGAINST (Appellee) [All parties in the trial court when the final order/judgment were entered are appellees and must be listed if they did not file a notice of appeal. AR 204(b)[1] & (g).]

a. Name Alaskans for Better Elections	b. Status in the Trial Court <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
c. Party Mailing Address c/o Scott Kendall, 701 West 8th Avenue, Suite 700	<input type="checkbox"/> Other. Specify: _____
City _____ State _____ Zip Code _____	d. Telephone 907-274-0666
Anchorage AK 99501	

### 5. APPELLEE'S ATTORNEY

a. Name Scott Kendall and Jahna Lindemuth	b. Bar Number 0405019 and 9711068
c. Attorney Mailing Address 701 West 8th Avenue, Suite 700	d. Telephone 907-274-0666
City _____ State _____ Zip Code _____	e. Fax 907-277-4657
Anchorage AK 99501	f. Firm/Agency Holmes Weddle & Barcott

### 6. SUPERIOR COURT PROCEEDING

a. Case No. 3AN-19-09704 CI	b. Superior Court Judge The Honorable Yvonne Lamoureux	c. Date Judgment Distributed 10/28/2019
d. Post-Judgment Motions: List all post-judgment motions that affect time for filing appeal. See Appellate Rule 204(a)(3).		
DATE OF FILING		DATE ORDER DISTRIBUTED
Month	Day	Year
Type of Post-Judgment Motion		

### 7. CONSTITUTIONAL ISSUES

Is the constitutionality of a state statute or regulation at issue in this appeal?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If yes, cite statute or regulation: _____		

**8. FINALITY OF JUDGMENT OR ORDER BEING APPEALED**

- a.  The judgment or order being appealed is final and disposes of ALL claims by ALL parties. (The judgment or order is final under City and Borough of Juneau v. Thiboudeau 595 P.2d 626 (AK 1979).)
- b.  The judgment or order being appealed does not dispose of all claims by all parties but is final under Civil Rule 54(b). (The trial court's Civil Rule 54(b) order must be attached.)
- c.  The judgment or order being appealed is not final. The authority for this appeal is \_\_\_\_\_  
Final judgment is forthcoming and appeal cannot wait as described in Emergency Motion to Expedite

**9. ATTACHMENTS**

The following items are submitted with this form (except that cross-appellants need not submit item a.):

- a.  A copy of the final order or judgment from which the appeal is taken.
- b.  A statement of points on appeal.
- c.  A \$250 filing fee or  a motion to appeal at public expense (financial statement affidavit form must be included).
  - a motion to waive filing fee (if basis for motion is inability to pay, financial statement affidavit form must be included).
  - an application for exemption from filing fee under AS 9.19.010.
  - no filing fee is required because appellant is  represented by court-appointed counsel, and AS 9.19.010 does not apply.
    - the state or an agency thereof.
    - an employee appealing denial of benefits under AS 23.20 (Employment Security Act)
- d. A \$750 cost bond or deposit or
  - a copy of a superior court order approving appellant's supersedeas bond or a copy of appellant's motion to the superior court for approval of a supersedeas bond.
  - a motion to waive cost bond (if basis for motion is inability to pay, financial statement affidavit form must be included).
  - a motion to appeal at public expense (financial statement affidavit form must be included.)
  - no cost bond is required because appellant is  represented by court-appointed counsel.
    - a state agency, municipality, or state or municipal officer.
    - an employee appealing denial of compensation by Alaska Workers' Compensation Board or denial of benefits under AS 23.20 (Employment Security Act).
- e. Designation of transcript  submitted  not submitted (no transcript being requested)  motion to extend submitted

11/11/2015  
Date

M.A. Pabo LLC  
Signature of Appellant or Appellant's Attorney

**CERTIFICATE OF SERVICE**

I certify that on \_\_\_\_\_ a copy of the notice of appeal, this docketing statement, and all attachments (except filing fee and cost bond) were

mailed	delivered	to All Parties (listed)
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____

Signature: \_\_\_\_\_

**FILING INSTRUCTIONS**

File original docketing statement and notice of appeal with all attachments listed in #9 and ONE copy of ALL except filing fee and cost bond.

**Addresses of appellants:**

Kevin Meyer  
Lieutenant Governor  
P.O. Box 110015  
Juneau, AK 99811  
(907) 465-3520

State of Alaska, Division of Elections  
P.O. Box 110017  
Juneau, AK 99811  
(907) 465-4611