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

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| LA QUEN NÁAY ELIZABETH MEDICINE CROW, AMBER LEE, and KEVIN MCGEE,<br><br>Appellants,<br><br>vs.<br><br>DIRECTOR CAROL BEECHER, in her official capacity, LT. GOVERNOR NANCY DAHLSTROM, in her official capacity, and the STATE OF ALASKA, DIVISION OF ELECTIONS,<br><br>Appellees,<br><br>vs.<br><br>DR. ARTHUR MATHIAS, PHILLIP IZON, and JAMIE R. DONLEY,<br><br>Intervenor Appellees. | **Supreme Court No. S-19182**<br>Trial Court Case No. 3AN-24-05615CI |

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE
THE HONORABLE CHRISTINA RANKIN

# APPELLANTS' OPENING BRIEF

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### AS 15.45.120. Manner of signing and withdrawing name from petition.

Any qualified voter may subscribe to the petition by printing the voter's name, a numerical identifier, and an address, by signing the voter's name, and by dating the signature. A person who has signed the initiative petition may withdraw the person's name only by giving written notice to the lieutenant governor before the date the petition is filed.

### AS 15.45.130. Certification of circulator.

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 subscriptions on petitions not properly certified at the time of filing or corrected before the subscriptions are counted. 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.

**AS 15.45.140. Filing of Petition.**

(a) The 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 petition may be filed with the lieutenant governor only if it meets all of the following requirements: it is signed by qualified voters

(1) equal in number to 10 percent of those who voted in the preceding general election;

(2) resident in at least three-fourths of the house districts of the state; and

(3) who, in each of the house districts described in (2) of this subsection, are equal in number to at least seven percent of those who voted in the preceding general election in the house district.

(b) If the petition is not filed within the one-year period provided for in (a) of this section, the petition has no force or effect.

**AS 15.45.150. Review of petition.**

Within not more than 60 days of the date the petition was filed, the lieutenant governor shall review the petition and shall notify the initiative committee whether the petition was properly or improperly filed, and at which election the proposition shall be placed on the ballot.

**AS 15.45.190. Placing proposition on ballot.**

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

(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.

**REGULATION**

**6 AAC 25.240. Initiative, referendum, and recall petitions.**

(a) Upon certification of the application for a petition, the director will prepare petition booklets for circulation by petition circulators in the general manner prescribed by AS 15.45.090, 15.45.320, or 15.45.560. The director will prepare and have printed sequentially numbered official petition booklets as determined by the director to allow full circulation throughout the state or throughout the senate or house district that will be affected. The booklets will be sent, or otherwise made available for delivery, to a member of the initiative, referendum, or recall committee or the committee's designee for distribution to circulators. The committee or designee may request additional booklets. Upon the director's approval of the request, additional sequentially numbered booklets will be printed by the director and made available to committee or designee, or printed by the committee or designee in a format approved by the director. The committee or designee must pay the cost of printing additional booklets in excess of the initial booklets. If the committee or designee elects to have additional booklets printed, the first booklet from each additional printing shall be submitted to the director.

(b) Each subscriber to the petition shall provide

(1) the subscriber's printed name;

(2) a numerical identifier that can be verified against the voter's record for that subscriber;

(3) the subscriber's signature or mark;

(4) the date of the subscriber's signature or mark; and

(5) the subscriber's address.

(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.

(d) The 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 referendum committee or the committee's designee may file the petition at any time before the close of business on the 90th day after the adjournment of the legislative session at which the act was passed. The recall committee or the committee's designee may file the petition at any time before the close of business on a date that is at least 180 days before

the termination of the term of office of the state public official subject to recall. If the deadline for filing an initiative or recall petition falls on a weekend or state holiday, the deadline is the close of business on the next regular business day for the division.

(e) The petition must be filed in person, by mail, or other shipping method at any office of the division.

(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.

(g) The signatures contained in a petition booklet filed under (c) of this section will not be counted in determining the sufficiency of the petition if the person who circulated the petition did not complete the certification affidavit for the booklet as required by AS 15.45.130, 15.45.360, or 15.45.600.

(h) An individual signature in a petition booklet will not be counted in determining the sufficiency of the petition if the signer

(1) does not provide an address;

(2) does not sign or make a mark;

(3) does not provide a numerical identifier;

(4) unknowingly signs the petition more than one time; any additional signature will not be counted; or

(5) does not date the individual's signature.

(i) Repealed 2/28/2014.

(j) Repealed 5/14/2006.

(k) Communication with the director shall be limited to the committee. A request for information must be made in writing.

(l) Repealed 2/10/2018.

## PARTIES

Appellants are La Quen Náay Elizabeth Medicine Crow, Amber Lee, and Kevin McGee (collectively "Appellants"). Appellees are Director Carol Beecher, in her official capacity, lieutenant governor Nancy Dahlstrom, in her official capacity, and the State of Alaska, Division of Elections (collectively "the Division"). Intervenor Appellees are Dr. Arthur Mathias, Phillip Izon II, and Jamie R. Donley (collectively "the Sponsors").

## ISSUES PRESENTED

1. *Enforcement of Election Filing Deadlines*. A ballot initiative petition with enough certified signatures must be filed on or before certain applicable statutory deadlines. Did the superior court err in failing to enforce these statutory deadlines for the Sponsors' initiative to eliminate open primaries and repeal ranked-choice voting ("RCV"), designated 22AKHE?

2. *Replacement Certifications*. By statute and regulation, the Division cannot accept for filing petition booklets that are not certified by the circulator. Did the superior court err in interpreting AS 15.45.130 to allow the Sponsors to submit new certifications for over 60 booklets that were not properly certified at the time the petition was filed, or by the relevant statutory deadlines?

## JURISDICTION

The superior court issued an order on summary judgment on June 7, 2024. [Exc. 283-313] The Court entered Final Judgment on July 24, 2024, [Exc. 314-315] after issuing findings of fact and conclusions of law on July 19, 2024. [R. 733-827] This Court has jurisdiction to decide this appeal under AS 22.05.010.

## STATEMENT OF THE CASE

This case concerns the filing of 22AKHE with the Division, [*See* Exc. 1-37] a proposed ballot initiative that would, if enacted, eliminate open primary elections and repeal RCV in Alaska.[1] [*See* Exc. 287] Before turning to the specific stipulated and uncontested facts at issue here, it is useful to understand the relevant constitutional, statutory, and regulatory framework for the filing of ballot initiatives generally.

### I. The Applicable Constitutional, Statutory, And Regulatory Provisions

#### A. Constitutional provisions

Under article XI, section 1 of the Alaska Constitution, "[t]he people may propose and enact laws by . . . initiative[.]"[2] The Constitution establishes signature requirements for initiatives,[3] which if met allow for initiatives to be filed with the Division and placed "on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing."[4] If the legislature enacts "substantially the same measure," the Constitution provides that "the petition is void," and the initiative is removed from the ballot.[5]

#### B. Statutory provisions

The legislature enacted additional statutory requirements for initiatives, contained within AS 15.45, consistent with the powers granted in the Alaska Constitution. This

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1 *See Kohlhaas v. State*, 518 P.3d 1095, 1100-1102 (Alaska 2022).

2 *See* Alaska Const. art. XI, § 1.

3 *See* Alaska Const. art. XI, § 3.

4 *See* Alaska Const. art. XI, § 4.

5 *See id.*

includes: (1) application requirements;[6] (2) initiative sponsor requirements;[7] (3) how the lieutenant governor is to review the application;[8] (4) the lieutenant governor's preparation of the petition for circulation;[9] (5) requirements for petition circulators;[10] (6) requirements for petition signatures;[11] and (7) the ability for a signer to withdraw their name from a petition "before the date the petition is filed."[12]

Alaska Statute 15.45.130 also provides that each signature petition booklet *must* be certified by affidavit by the circulator for that booklet as to specific required information designed to prevent election fraud.[13] If a petition booklet is to be counted, the circulator's

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6 *See* AS 15.45.030.

7 *See* AS 15.45.060.

8 *See* AS 15.45.070-.080.

9 *See* AS 15.45.090.

10 *See* AS 15.45.105-.110.

11 *See* AS 15.45.120.

12 *See id.*

13 *See* AS 15.45.130 (requiring "(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").

affidavit must be authenticated by a licensed notary;[14] if a notary is unavailable, a petition booklet must then be self-certified. [*See* R. 306] And as is expressly stated in AS 15.45.130, "the lieutenant governor may not count subscriptions on petitions not properly certified at the time of filing or corrected before the subscriptions are counted."[15] The lieutenant governor then "review[s] the petition and shall notify the initiative committee whether the petition was properly or improperly filed" within 60 days.[16]

To give the legislature an opportunity to act on the subject of an initiative petition,[17] AS 15.45.190 provides that a ballot measure shall be placed on the next statewide election after: "(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."[18] In practice, this means that any petition filed after the legislature has convened cannot be placed on the ballot that same calendar year.

Finally, AS 15.45.140 sets forth additional filing requirements relating to both the necessary signature thresholds and a second applicable deadline for filing: "The sponsors must file the initiative petition within one year from the time the sponsors received notice

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14 *See id.* ("Before being filed, each petition shall be certified by an affidavit by the person who personally circulated the petition.").

15 *See id.*

16 *See* AS 15.45.150; *see also* AS 15.45.160.

17 *See* Alaska Const. art. XI, § 4 ("If, before the election, substantially the same measure has been enacted, the petition is void.").

18 *See* AS 15.45.190 (emphasis added).

from the lieutenant governor that the petitions were ready for delivery to them."[19] The consequences for missing this one-year deadline are specific and grave: "If the petition is not filed within the one-year period provided for in (a) of this section, the petition has no force or effect."[20]

### C. Regulatory provisions

The Division has adopted regulations consistent with the above-mentioned statutes to provide additional detail on the process for filing and accepting an initiative petition. The Division's regulation in 6 AAC 25.240 outlines the steps required to lawfully submit a signature petition in support of a ballot initiative.

6 AAC 25.240(c) provides that "[a]ll 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."[21] When sponsors submit a petition to the Division, they are required to remain at the Division while Division staff conduct a visual review of whether their petition has enough facially-valid signatures to meet minimum thresholds.[22]

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19 *See* AS 15.45.140(a).

20 *See* AS 15.45.140(b).

21 *See* 6 AAC 25.240(c) (emphasis added); *see also Res. Dev. Council for Alaska, Inc. v. Vote Yes for Alaska's Fair Share*, 494 P.3d 541, 544 (Alaska 2021) ("The signatures collected in the petition booklets are submitted 'as a single instrument' called the petition." (quoting 6 AAC 25.240(c)). The Division's "single instrument" requirement has been part of this regulation since it was originally enacted in 1987, and has remained throughout multiple subsequent amendments.

22 *See* 6 AAC 25.240(f). In this particular case, the Division recorded accepting only 641 petition booklets out of the 655 submitted in this instance. [*See* Exc. 132]

A petition that "on its face" does not have enough signatures in certified booklets to meet the minimum statewide signature threshold will be found "to have a patent defect" under 6 AAC 25.240(f).[23] And 6 AAC 25.240(f) specifically describes the process the Division must follow when it detects "a patent defect"; the Division must either inform the sponsors that they may retrieve the *entire petition* (meaning "all petition booklets") to resubmit the *entire petition* again, as a single instrument, before the deadline (and after curing the defect),[24] *or* the petition "will be certified as insufficient" if it was filed on the last day of the one-year deadline.[25] Finally, 6 AAC 25.240(g) provides that "signatures contained in a petition booklet" where a circulator "did not complete the certification affidavit" "will not be counted."[26]

The Division failed to follow this process for 22AKHE.

## II. Factual Background: The Sponsors' Filing Of 22AKHE

The Sponsors filed a ballot measure application for what would later be designated as 22AKHE on November 23, 2022. [Exc. 119] The Division certified the application on January 20, 2023, and issued petition booklets to the Sponsors on February 8, 2023. [Exc. 119]

After nearly a year of collecting signatures, the Sponsors filed the petition with the Division on January 12, 2024. [Exc. 121] Sponsor Mr. Izon signed a "Receipt of Initiative,

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23 *See* 6 AAC 25.240(f).

24 *See* 6 AAC 25.240(f)(2).

25 *See* 6 AAC 25.240(f)(1); *see also* 6 AAC 25.240(d).

26 *See* 6 AAC 25.240(g).

Referendum, or Recall Petition Signature Booklets," confirming that he was submitting 655 petition booklets; the Division signed the same document acknowledging their acceptance of 641 booklets.[27] [Exc. 132] The filing deadline for the petition to appear on the ballot for the November 2024 election was January 15, 2024,[28] because the Alaska legislature convened on January 16, 2024. [Exc. 126]

Beginning on January 18, 2024, and continuing for several weeks thereafter, the Division informed the Sponsors of various fatal defects discovered while counting signatures in the Sponsors' filed petition booklets. [*See* Exc. 122-125, 133-135] The Division allowed the Sponsors to physically retrieve the individual defective booklets and cure those defects. [Exc. 126]

In addition to allowing the Sponsors to add dates and locations to some notarizations, the Division's curing process also included allowing the Sponsors "to retrieve, correct, and return . . . 60 booklets with certificates that were not notarized by a commissioned notary." [Exc. 123; *see also* Exc. 136] The defect for these 60 booklets was that an individual purported to notarize the booklets, but the Division determined that she was not actually a notary at the time of notarization after noticing that she had provided

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[27] The Division later indicated that it may have only accepted 640 petition booklets. [*See* R. 1930-1931] This possible discrepancy in the number of petition booklets that were actually accepted by the Division is not material. [*Cf.* R. 790 (noting the existence of two petition booklets labeled as exhibit 2597 during trial)]

[28] *See* AS 15.45.190(2). However, given the holiday weekend, the Sponsors actually filed their petition on the last business day before this deadline.

different dates on petitions for when her (claimed) notary commission expired.[29] [Exc. 123] Part of the Division's curing process included allowing individual circulators to fill out replacement certifications that were attached to the back of petition booklets. [*See* Exc. 136 ("The original circulators must either have the booklets re-notarized by an active notary on a ***new*** certification affidavit, or the circulators can complete and date the self-certification section on the existing certification affidavits." (emphasis added))]

In total, the Division released 64 petition booklets back into the Sponsors' custody to be certified while continuing to count signatures in the other, non-defective petition booklets. [Exc. 125] All of these instances of releasing booklets back into the Sponsors' custody occurred after the start of the 2024 legislative session — January 16, 2024, the first relevant statutory deadline — the deadline to appear on that year's ballot.[30] [Exc. 122-126; *see also* Exc. 137-139]

The second statutory deadline — the one-year deadline for the Sponsors to file the petition under AS 15.45.140 — was February 7, 2024.[31] [Exc. 126] After allegedly "curing" the certification defects, the Sponsors began returning the defective booklets on February 12, 2024, and continued returning these booklets through February 23, 2024. [*See* Exc. 137-139] The Sponsors ultimately returned 62 of the 64 booklets they retrieved from

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[29] This individual was not unknown to the Sponsors; she was actually an employee of one of the Sponsors *and* a contracted employee with the signature petition campaign. [*See* R. 544-545; *see also* Exc. 18]

[30] *See* AS 15.45.190(2).

[31] Any petition filed after that date would, by statute, have "no force or effect." *See* AS 15.45.140(b).

the Division.[32] [Exc. 125] And even though all of these booklets were provided to the Division after both deadlines,[33] [*See* Exc. 122-126, 137-139] the Division counted the signatures in those 62 booklets towards determining the validity of the 22AKHE petition. [Exc. 125]

The Division completed its entire review of the 22AKHE petition booklets on March 8, 2024, and notified the Sponsors that the petition had an adequate number signatures and was properly filed. [Exc. 126] The Division also informed the Sponsors that the initiative would appear on the general election ballot on November 5, 2024, unless there was a special election or the legislature adjourned on or before April 22, 2024.[34] [Exc. 126]

As to the booklets the Sponsors had submitted on January 12 that lacked the necessary certification as of that date, the parties stipulated that the Division could not count them in the condition they were originally filed. [Exc. 122-125, 133-139] The parties also stipulated that if the signatures in the 62 booklets that the Sponsors "cured" and returned to the Division while the signature review was underway are invalidated, the Division could not certify the petition for 22AKHE. [Exc. 126] This is because there would only be sufficient signatures in 26 out of 40 house districts, rather than the 30 required by the applicable laws and the Alaska Constitution.[35] [Exc. 126, 140]

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[32] Of these 62 returned petition booklets, four were for corrections other than those related to the person who was not a commissioned notary. [*See* Exc. 139]

[33] *See* AS 15.45.140(b).

[34] Since this initial notification, the parties agree that 22AKHE remains qualified for the general election ballot on November 5, 2024. [*See* Exc. 315]

[35] *See* Alaska Const. art. XI, § 3; AS 15.45.140 (a)(2).

## III. Procedural History

On April 2, 2024, Appellants filed a complaint against the Division seeking injunctive and declaratory relief concerning irregularities in the signature gathering campaign for 22AKHE and its qualification for the statewide ballot. [Exc. 1-37; *see also* Exc. 38-113 (exhibits to complaint)] The Sponsors intervened without objection later that month. [*See* R. 251-252] The superior court approved an expedited briefing and decision schedule to allow resolution of these claims and any appeals before the Division's September 3 deadline to finalize the general election ballot. [*See* Exc. 117-118, 129]

Appellants moved for summary judgment that the Division violated its own statutes and regulations when it certified initiative petition 22AKHE as "properly filed," even though the petition did not actually have enough valid signatures to meet the statutory requirements until after all of the mandatory petition filing deadlines had passed. [Exc. 144-168; *see also* Exc. 169-171 (appendices)] The Division opposed Appellants' motion and cross-moved for partial summary judgment. [Exc. 172-198] The Sponsors separately opposed Appellants' motion, joined the Division's cross-motion for partial summary judgment, and cross-moved for summary judgment on the additional issue of whether misconduct of petition circulators could result in the disqualification of 22AKHE. [Exc. 199-226] Appellants filed a combined reply and opposition to the Division's and Sponsors' cross-motions for summary judgment, [Exc. 227-259; *see also* Exc. 260-282] consistent with a stipulation by the parties.[36] [R. 209-210]

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[36] The Sponsors also filed a reply in support of their cross-motion. [*See* R. 1433-1454]

After oral argument on the competing motions for summary judgment, the superior court ruled in favor of the Division and against Appellants related to the statutory filing deadlines. [Exc. 283-313] The superior court found that the Division acted within its authority when it allowed circulators to redo the certification affidavits for individual defective petition booklets after the Sponsors had filed those booklets, even though this occurred after the statutory deadlines and during the Division's counting of signatures. [Exc. 313; *see* Exc. 283-313] Although the superior court also denied the Sponsors' cross-motion for summary judgment regarding circulator misconduct, [*See* Exc. 313] the deadline issues comprise the only points raised in this appeal.

The superior court held a five-day trial on June 24-26 and July 2-3, 2024. [R. 738] This trial primarily concerned whether illegal signature-gathering activity conducted by petition circulators invalidated enough signatures to disqualify 22AKHE under AS 15.45.140(a)(1)-(3). [*See* R. 736-737]

The superior court issued its Findings of Facts and Conclusions of Law on July 19, 2024. [*See* R. 733-827] The court found that "non-compliant signature gathering by circulators for 22AKHE" required disqualification of thousands of signatures. [R. 810; *see also* R. 814-821, 824-825] This non-compliant circulator activity included numerous circulators who "falsely" and "improperly" signed circulator affidavits for petition booklets that had been circulated by someone else, [*See* R. 814-817, 819] or for booklets that were "improperly left unattended at businesses and other locations." [R. 816-817; *see* R. 817-818] The court also found additional circulator misconduct and anomalies, including that: (1) the invocation of the Fifth Amendment by two circulators "equated to a failure to

reaffirm the authenticity of their certification affidavits"; [R. 821; *see* R. 820-821] (2) that the Sponsors' employee in charge of Anchorage signature gathering "knew or should have known that she falsely signed her certification . . . by indicating that she was not paid for gathering signatures"; [R. 824-825; *see* R. 771] and (3) one of the Sponsors (Mr. Izon) failed to: (a) "provide 'comprehensive training' to circulators of 22AKHE petition booklets, which led to some non-compliant signature gathering"; and (b) "take immediate action" in stopping unattended booklets from being circulated or advertised at businesses. [R. 810]

Despite the superior court's extensive findings [R. 733-827] — which required disqualification of dozens of petition booklets and thousands of signatures [*See* R. 826-827] — 22AKHE still had sufficient signatures to qualify for the ballot. [*See* R. 2083-2085] The court entered final judgment in favor of the Division and the Sponsors on July 24, 2024, [Exc. 314-315] and Appellants appealed the next day.[37] This Court granted an unopposed emergency request to expedite the appeal,[38] because the deadline for the Division to print the 2024 general election ballots is September 3, 2024. [Exc. 117-118]

## SUMMARY OF ARGUMENT

The statutory scheme for ballot initiatives requires that a complete petition with the requisite number of certified signatures be filed with the Division on or before the applicable statutory deadlines, and that it be filed as a "single instrument." Under

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37 *See* Notice of Appeal and Statement of Points on Appeal (July 25, 2024).

38 *See* Order (July 26, 2024).

AS 15.45.190, a complete petition for 22AKHE needed to be filed by the time the legislature convened on January 16, 2024, to be placed on the ballot for 2024 election. And under AS 15.45.140, a complete petition needed to be filed by February 7, 2024, to be placed on the ballot in *any* election. The superior court erred by failing to enforce these statutory deadlines.

By statute and regulation, the Division cannot accept for filing booklets that are not certified by the circulator. The Division's own regulation, 6 AAC 25.240(g), provides that "signatures contained in a petition booklet" where a circulator "did not complete the certification affidavit" "will not be counted."[39] The superior court erred in interpreting AS 15.45.130 to allow the Sponsors to submit entirely new certifications for booklets that were not certified either at the time the petition was filed or before the statutory deadlines. There is a substantive purpose for requiring circulators to certify under oath that all the requirements in AS 15.45.130 have been met. As a matter of law, the lack of valid certifications was not a mere technicality that could be corrected after filing the petition, let alone after the statutory deadlines had passed and the Division's counting of signatures had begun.

[39] *See* 6 AAC 25.240(g).

## ARGUMENT

### I. Standard Of Review

This Court "review[s] summary judgment rulings de novo."[40] Applying its "independent judgment" to interpret statutory provisions, this Court "adopt[s] the 'rule of law that is most persuasive in light of precedent, reason, and policy.'"[41] "When interpreting a statute, courts look to the plain meaning of the statute, the legislative purpose, and the intent of the statute."[42] This Court has also elaborated on another key principle of statutory construction relevant here: "[w]hen a statute . . . is part of a larger framework or regulatory scheme, [it] must be interpreted in light of the other portions of the regulatory whole."[43] And when this Court "engage[s] in statutory construction, [it] must, whenever possible, interpret each part or section of a statute with every other part or section, so as to create a harmonious whole,"[44] and "[t]wo potentially conflicting statutes . . . must be interpreted 'with a view toward reconciling conflict[.]'"[45]

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40 *Wielechowski v. State*, 403 P.3d 1141, 1146 (Alaska 2017) (quoting *Seybert v. Alsworth*, 367 P.3d 32, 36 (Alaska 2016)).

41 *Id.* (quoting *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 90 (Alaska 2016)).

42 *Premera Blue Cross v. State*, 171 P.3d 1110, 1115 (Alaska 2007) (citing *W. Star Trucking v. Big Iron Equip.*, 101 P.3d 1047, 1050 (Alaska 2004)).

43 *Guerin v. State*, 537 P.3d 770, 778 (Alaska 2023) (alterations in original) (quoting *Alaska Ass'n of Naturopathic Physicians v. State*, 414 P.3d 630, 636 (Alaska 2018)).

44 *Id.* at 779 (quoting *State v. Progressive Cas. Ins. Co.*, 165 P.3d 624, 629 (Alaska 2007)).

45 *Id.* (second alteration in original) (quoting *Allen v. Alaska Oil & Gas Conservation Comm'n*, 147 P.3d 664, 668 (Alaska 2006)).

Finally, the rules of statutory interpretation also apply to this Court's interpretation of a regulation.[46] Once validly adopted, regulations have the force of law and must be followed by all parties, including the agency that promulgated it.[47]

## II. The Superior Court Erred By Not Applying The Statutory Filing Deadlines For Ballot Initiatives.

### A. The Sponsors did not meet either of the clear and unambiguous petition filing deadlines.

There are two clear statutory deadlines that the Sponsors had to meet for 22AKHE to appear on the ballot. First, under AS 15.45.190(2), the petition needed to be filed before the legislature convened, which was January 16, 2024.[48] [Exc. 126] Second, under AS 15.45.140(b), the Sponsors had until February 7, 2024 — one year from when they had notice that the petition was ready for delivery to them — to file a petition that met the statutory requirements.[49] [Exc. 126] These deadlines are clearly set forth by statute;

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46 *In re Tea ex rel. A.T.*, 278 P.3d 1262, 1265 (Alaska 2012) ("When a regulation's interpretation is challenged, we apply the same standards that we apply to statutory interpretation." (citing *Romann v. State*, 991 P.2d 186, 191 (Alaska 1999))).

47 *See Stosh's I/M v. Fairbanks N. Star Borough*, 12 P.3d 1180, 1185 (Alaska 2000); K. DAVIS, ADMINISTRATIVE LAW TREATISE § 5.03 at 252 (Supp. 1970) ("Regulations will have the force of law if the statute has granted authority to the administrator to issue them.").

48 *See* AS 15.45.190(2).

49 *See* AS 15.45.140(b).

nothing about them is ambiguous.[50] And "it is [also] 'well established, both in Alaska and other jurisdictions, that election law filing deadlines are to be strictly enforced.'"[51]

It is undisputed that the Sponsors did not file a petition with a sufficient number of certified signatures before the convening of the 2024 legislative session. [Exc. 122-126] The parties agree that, when 22AKHE was filed with the Division, there were improper certifications for 64 petition booklets that prevented the counting of any signatures in those booklets. [*See* Exc. 122-126] This necessarily means that, as filed on January 12, 2024, 22AKHE could not be placed on the ballot for the November 2024 election as a matter of law under AS 15.145.190.[52]

The Sponsors' failure to meet this first statutory deadline was not necessarily fatal to 22AKHE as whole. It just means that 22AKHE was not filed with the Division in time for the initiative to be placed on the November 2024 general election ballot.[53] However, because the Sponsors *also* failed to timely file a complete petition within the one-year

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50 *See* AS 15.45.190 ("The lieutenant governor shall direct the director to place the ballot title and proposition on the election ballot of the first statewide . . . election that is held after . . . (2) a legislative session has convened and adjourned[.]"); AS 15.45.140(b) ("If the petition is not filed within the one-year period provided for in (a) of this section, the petition has no force or effect.").

51 *See State v. Jeffery*, 170 P.3d 226, 234 (Alaska 2007) (quoting *Falke v. State*, 717 P.2d 369, 373 (Alaska 1978)); *see also Guerin*, 537 P.3d at 779 ("We affirm that election 'deadlines are mandatory, and therefore substantial compliance is not sufficient[.]'" (quoting *State v. Marshall*, 633 P.2d 227, 235 (Alaska 1981)).

52 *See* AS 15.45.190(2).

53 *See* AS 15.45.190 ("The lieutenant governor shall direct the director to place the ballot title and proposition on the election ballot of the first statewide . . . election that is held after . . . (2) a legislative session has convened and adjourned[.]").

deadline contained in AS 15.45.140, it means that 22AKHE cannot go before the voters in *any* election.[54]

Alaska Statute 15.45.140(a) provides that "[t]he sponsors [of a ballot measure] *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."[55] And under AS 15.45.140(b), "[i]f the petition is not filed within the one-year period provided for in (a) of this section, the petition has no force or effect."[56]

The parties agree that the one-year deadline for 22AKHE was February 7, 2024. [Exc. 126] The parties also agree that the Sponsors had not filed a sufficient number of qualified signatures in certified petition booklets with the Division by that date. [Exc. 126, 140; *see also* Exc. 122-124, 137-139] Therefore, if the statutory deadlines in AS 15.45.140 and AS 15.45.190 are enforced, 22AKHE must not only be removed from the 2024 general election ballot,[57] but also cannot be placed on *any* ballot absent the filing of a new petition.[58]

**B. Petition filing deadlines must be enforced.**

When confronted with these statutes, the superior court distinguished the deadlines for filing an initiative from other types of election filing deadlines. [Exc. 307-311] But this

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54 *See* AS 15.45.140.

55 *See* AS 15.45.140(a) (emphasis added).

56 *See* AS 15.45.140(b). This one-year deadline is also found in 6 AAC 25.240(d).

57 *See* AS 15.45.190(2).

58 *See* AS 15.45.140(b).

Court has made it clear that *all* "election law filing deadlines are to be strictly enforced,"[59] and this Court need not muddy the waters by creating an exception to relax filing deadlines solely in the context of ballot initiatives.

This Court has a long history of requiring strict compliance with election-related filing deadlines.[60] In *Falke v. State*, this Court affirmed that it "is well established, both in Alaska and other jurisdictions, that *election law filing deadlines are to be strictly enforced*."[61] In that case, this Court held that a potential candidate who was inside the Division's offices prior to a noon deadline, but who actually finished filing the required paperwork ten minutes after that deadline, was disqualified from appearing on the ballot, despite the Division attempting to qualify them.[62]

Similarly, in *State v. Jeffery*, this Court elaborated that "[b]ecause filing dates are mandatory, 'substantial compliance is *not* sufficient, absent substantial confusion or impossibility.'"[63] In *Jeffery*, this Court held that the August 1 filing deadlines in AS 15.35.070 and AS 15.35.110 for judges seeking retention "require strict compliance."[64]

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[59] *See Jeffery*, 170 P.3d at 234 (quoting *Falke*, 717 P.2d at 373); *see also Guerin*, 537 P.3d at 779, 782.

[60] *See, e.g.*, *Guerin*, 537 P.3d at 779, 782; *Jeffery*, 170 P.3d at 234-36; *Falke*, 717 P.2d at 370-76.

[61] *Falke*, 717 P.2d at 373 (emphasis added) (citations omitted).

[62] *Id.* at 370-76; *see also Marshall*, 633 P.2d at 228-29, 235-37 (voiding the results of an election because the person elected failed to file their financial disclosures by the applicable deadline).

[63] *Jeffery*, 170 P.3d at 234 (internal quotation omitted) (emphasis added) (quoting *Marshall*, 633 P.2d at 235).

[64] *Id.* at 233; *see also* AS 15.35.070 ("Each judge seeking retention in office shall file with the director a declaration of candidacy for retention no later than August 1 before the

The *Jeffery* Court explained that those the deadlines "cannot reasonably be considered ambiguous or impossible to comply with," and that "[t]here is no ambiguity in the [statutes'] clear language."[65] This Court pointed to letters sent by the Division conveying its understanding of the August 1 deadline,[66] and found that that the "communications are inconsistent with any notion that the statutes or the procedures were ambiguous or confusing" when strictly enforcing the statutory deadline.[67]

Just like in *Falke* and *Jeffery*, the statutorily-mandated filing deadlines for ballot initiatives are similarly unambiguous and require strict compliance. The clear language of AS 15.45.140 imposes a one-year deadline for the filing of a ballot initiative,[68] the Sponsors were notified of this deadline, [Exc. 131] and the Sponsors have never claimed "substantial confusion or impossibility."[69] And, just like in *Jeffery*, the Division clearly communicated these deadlines in guidance provided to the Sponsors when they received their petitions. [Exc. 131; *see* Exc. 49] There was no ambiguity; deadlines matter, and the Sponsors simply failed to timely file 22AKHE with the Division. [*See* Exc. 122-126]

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general election at which approval or rejection is requisite."); AS 15.35.110 ("Each district judge seeking retention in office shall file with the director a declaration of candidacy for retention no later than August 1 before the general election at which approval or rejection is requisite.").

65 *Jeffery*, 170 P.3d at 234.

66 *Id.* at 234-35.

67 *Id.* at 235.

68 *See* AS 15.45.140.

69 *See Jeffery*, 170 P.3d at 234 (internal quotation omitted) (quoting *Marshall*, 633 P.2d at 235).

Indeed, as recently as last year in *Guerin v State*, this Court reiterated that the Division must strictly enforce all of Alaska's election law deadlines whenever those "statutorily mandated election deadlines [are] written in the statute."[70] In *Guerin*, this Court considered two election-related statutory deadlines found in Title 15 relating to candidate withdrawals.[71] And after interpreting those statutes, this Court "remind[ed] the Division that [all] election 'deadlines are *mandatory*, and therefore substantial compliance is not sufficient.'"[72] The Division's strict and correct application of the candidate *replacement* deadline in *Guerin* resulted in voters not being able to choose from the candidate who placed fifth in the special primary election during the special general election.[73] But this Court also explained that — even though the issue was not raised on appeal — the candidate *withdrawal* deadline was not strictly enforced by the Division, and the withdrawn candidate's name actually *should* have appeared on the special general election ballot.[74] Consistent with *Guerin*, the Division should have applied the statutorily mandated deadlines for ballot initiatives and concluded that 22AKHE was not timely filed.

Simply enforcing the mandatory election filing deadlines here would hardly be an outlier. Not only would it be consistent with this Court's prior decisions, but it would also

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70 *See Guerin*, 537 P.3d at 782.

71 *See id.*; *see also* AS 15.25.055; AS 15.25.100.

72 *See Guerin*, 537 P.3d at 782 (emphasis added) (quoting *Marshall*, 633 P.2d at 235); *see also id.* at 782 ("[T]he Division . . . must apply all statutorily mandated election deadlines as written in the statute.").

73 *See id.* at 777-81.

74 *See id.* at 782.

be consistent with decisions from numerous other jurisdictions applying strict enforcement of deadlines to ballot initiatives.[75] For example, in *Meyer v. Knudson*, the Montana

[75] *See, e.g.*, *Idahoans for Open Primaries v. Labrador*, 533 P.3d 1262, 1287 (Idaho 2023) ("Idaho Code . . . establishes a statutory deadline for collecting signatures for an initiative. . . . While the statutes provide a method for challenging the ballot titles, it did not provide an extension of time in the event of a successful challenge. Petitioners have thus failed to establish that the necessary conditions exist" "to extend the deadline to obtain signatures[.]"); *Meyer v. Knudsen*, 510 P.3d 1246, 1251 (Mont. 2022) ("We . . . decline Petitioner's request to extend his deadline for collecting and submitting signatures to qualify . . . for the ballot. The statutory deadlines that govern petition submission are abundantly clear, and the statutory scheme provides and accounts for ample time for matters like the legal sufficiency review and challenge. . . . Petitioner could have avoided the challenge of his present compressed timeline by simply preparing his proposed ballot initiative much sooner than he did, and the avoidable time-crunch he may now face is an insufficient ground for this Court to override numerous explicit statutory deadlines."); *Ohio Renal Ass'n v. Kidney Dialysis Patient Prot. Amend. Comm.*, 111 N.E.3d 1139, 1145 (Ohio 2018) ("[Ohio law] plainly requires the invalidation of the singular 'petition'—a clear reference to the entire petition rather than to separate part-petitions. . . . [I]n other statutory provisions, the General Assembly has distinguished between a 'petition' and the individual 'part-petitions' or 'petition papers' that constitute a petition. When, as here, statutory language is clear and has a definite meaning, we may not resort to rules of statutory interpretation; we must simply apply the unambiguous statute as written. That rule applies with particular force in this election case, in which 'strict compliance' with the law is required unless the statutory provision at issue expressly states that substantial compliance is acceptable." (quotation omitted)); *In re Guzzardi*, 99 A.3d 381, 386 (Pa. 2014) ("We agree with the Supreme Courts of Connecticut and Michigan that the judiciary should act with restraint, in the election arena, subordinate to express statutory directives. . . . [T]he . . . General Assembly may require such practices and procedures as it may deem necessary to the orderly, fair, and efficient administration of public elections . . . . At least where the Legislature has attached specific consequences to particular actions or omissions, . . . courts may not mitigate the legislatively prescribed outcome through recourse to equity."); *Finkel v. Twp. Comm. of Twp. of Hopewell*, 84 A.3d 263, 276 (N.J. Super. Ct. App. Div. 2013) ("We do not find the enforcement of the [statutory] deadline . . . would unduly 'deprive voters of their franchise or . . . render an election void for technical reasons.' . . . [A]dherence to the 81-day deadline actually protects the citizenry and promotes the opportunity for voters to respond effectively to a proposed referendum." (third alteration in original) (quotation omitted)); *Barnes v. Wong*, 39 Cal. Rptr. 2d 417, 421 (Cal. Ct. App. 1995) ("Cases specifically dealing with statutory deadlines for election filings that are couched in language requiring documents to be filed 'not less' than or 'not later' than a

Supreme Court addressed whether the statutory deadlines for filing an initiative should be extended after the initiative had been declared legally insufficient to qualify for the ballot.[76] The *Meyer* Court rejected the initiative proponent's argument, and held that "[t]he statutory deadlines that govern petition submission are abundantly clear, and the statutory scheme provides and accounts for ample time[.]"[77] That Court recognized that the proponent "could have avoided the challenge of his present compressed timeline by simply preparing his proposed ballot initiative much sooner than he did, and the avoidable time-crunch . . . is an insufficient ground for this Court to override numerous explicit statutory deadlines."[78] Here, too, the Sponsors had nearly a year to complete their petition and could have easily complied with the deadlines by choosing to file 22AKHE at an earlier date.[79]

The Division's own regulations also make it clear that these deadlines are meant to be mandatory. 6 AAC 25.240(d) restates and reinforces the statutory one-year deadline.[80] 6 AAC 25.240(c) provides that "*[a]ll* 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

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given number of days before a designated time have insisted on strict compliance with the deadlines." (citations omitted)).

76 *See Meyer*, 510 P.3d at 1251.

77 *Id.*

78 *Id.*

79 *See* AS 15.45.140; AS 15.45.190.

80 *See* 6 AAC 25.240(d); *see also* AS 15.45.140.

included in the submission."[81] And under 6 AAC 25.240(f), if the Division discovers a defect, the Division is to inform the sponsors that they may retrieve the *entire petition* ("all petition booklets") to resubmit the *entire petition* again before the deadline — as a single instrument — after curing the defect.[82] But if this defect is discovered on the last possible filing day, the petition will simply "be certified as insufficient" with no opportunity for correction.[83] This part of the regulation clearly acknowledges the applicability of the statutory deadline, and the required outcome when it is not met.

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[81] *See* 6 AAC 25.240(c) (emphasis added); *see also Res. Dev. Council of Alaska*, 494 P.3d at 543.

[82] 6 AAC 25.240(f) provides, in full:

> 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.

[83] 6 AAC 25.240(f)(1). The superior court considered versions of the Division's handbook when deciding to not strictly comply with initiative filing deadlines. [*See* Exc. 301-302] But the Division lacks the discretion to ignore, reinterpret, or change this "regulatory whole" through some internal policy. *See Guerin*, 537 P.3d at 778 (quoting *Alaska Ass'n of Naturopathic Physicians*, 414 P.3d at 636)). Even *if* such a change were allowed by the relevant statutes — which it does not — the Division would need to go through formal Administrative Procedure Act rulemaking to change this regulation if it so desired. *See Stefano v. State*, 539 P.3d 497, 503 (Alaska 2023) ("The first time an agency adopts a commonsense interpretation of a statute, rulemaking may not be required. But when an agency 'alters its previous interpretation' in a way that is inconsistent, then

The plain language of the Division's regulation makes it crystal clear that a defective initiative petition cannot be cured after the one-year deadline under any circumstances.[84] All of the statutory and regulatory timelines, deadlines, and requirements governing the circulation of initiative petition booklets and the filing of the single instrument petition are part of a "regulatory whole" that courts must enforce.[85] And because the Division has *no* discretion or authority to unilaterally suspend or ignore the statutory filing deadlines under either AS 15.45.190 or AS 15.45.140, the Division must follow and enforce the deadlines in its own regulations and statutes.[86] Enforcement of these statutes requires disqualification here, since it is undisputed that the Sponsors did not re-submit their petition booklets before the applicable deadlines.[87] [*See* Exc. 122-126, 137-139]

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rulemaking is required." (quoting *Chevron U.S.A., Inc. v. State*, 387 P.3d 25, 37 (Alaska 2016))). As noted by this Court, an agency cannot relax or change a regulation without formal rulemaking, because an agency cannot have "'unfettered discretion to vary the requirements of its regulations at whim,' which 'invites the possibility that state actions may be motivated by animosity, favoritism, or other improper influences.'" *See id.* at 502 (quoting *Jerrel v. State*, 999 P.2d 138, 144 (Alaska 2000)).

84 *See* 6 AAC 25.240(d). The rules of statutory interpretation apply to this Court's interpretation of a regulation. *In re Tea*, 278 P.3d at 1265 ("When a regulation's interpretation is challenged, we apply the same standards that we apply to statutory interpretation." (citing *Romann*, 991 P.2d at 191)).

85 *See Guerin*, 537 P.3d at 778 (quoting *Alaska Ass'n of Naturopathic Physicians*, 414 P.3d at 636)).

86 *See Stosh's I/M*, 12 P.3d at 1185.

87 *See* AS 15.45.140; AS 15.45.190.

Compliance with ballot initiative deadlines is also necessary to ensure consistency with the "regulatory whole" of other statutes and regulations governing ballot initiatives.[88] For example, AS 15.45.120 permits a person who signed an initiative petition to withdraw their name from the petition.[89] But this can occur "only by giving written notice to the lieutenant governor ***before*** the date the petition is filed."[90] In other words, the Division must treat a filed petition as being in a lockbox — i.e., completed when it is filed as a single instrument that cannot be supplemented or changed after filing — and one that requires the Division to count a person's signature even if they explicitly request to withdraw their name after the petition is filed.[91] And as is explained below, the Division's actions here in allowing a piecemeal "curing" process of a legally-insufficient petition *after* it was filed and *after* the strict statutory deadlines passed is therefore inconsistent with the laws governing ballot initiatives as a whole.

The Division cannot approve a filed petition that lacked enough certified signatures by the applicable deadlines. And at both critical statutory deadlines here — the convening of the legislature, and the one-year deadline — it is undisputed that the Division did not have in its possession enough certified signatures for 22AKHE to qualify for the ballot. [*See* Exc. 122-126] Accordingly, this Court should REVERSE the superior court's

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88 *See Guerin*, 537 P.3d at 778 (quoting *Alaska Ass'n of Naturopathic Physicians*, 414 P.3d at 636).

89 *See* AS 15.45.120.

90 *See id.* (emphasis added).

91 *See id.*

determination that 22AKHE was timely filed to appear on either the November 2024 general election ballot, or any ballot at all.

## III. The Superior Court Erred By Determining That Certifications Could Be Redone After Statutory Deadlines.

### A. The plain language of AS 15.45.130 did not permit the Division to allow the Sponsors to submit replacement certifications for petition booklets while other signatures were being counted.

Alaska Statute 15.45.130 provides that "the lieutenant governor may not count subscriptions on petitions not properly certified at the time of filing *or corrected before the subscriptions are counted*."[92] The superior court erred when it relied on the second part of this sentence to permit the Sponsors to completely replace certifications for dozens of petition booklets after the statutory deadlines had already passed. [*See* Exc. 292-311]

By its plain language, AS 15.45.130 permits the "correct[ion]" of initiative petition booklets so long as it is done "before the subscriptions are counted."[93] But in trying to construe the statute in a way that favors what the Division did here, the superior court changed the meaning of this phrase to mean "before the Division *completes counting*." [Exc. 305 (emphasis added)] This interpretation was error, and fundamentally alters the plain language of the statute.

If the legislature intended that certifications could be altered or supplemented up until the Division's signature counting was complete — that is, until the very last signature was counted — that language would be apparent in the statute. Instead, AS 15.45.130

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92 AS 15.45.130 (emphasis added).

93 *Id.*

provides that any corrections must occur "before the subscriptions are counted;"[94] i.e., before any counting *begins*. Under this interpretation, if a sponsor submits a petition 60 days before the deadline and it is accepted for filing, but notices a week later that certain booklets lack proper certifications, the sponsor can correct the booklets if the Division has not yet started the counting process. But if counting has begun, it is too late for a "do-over" even though the statutory deadlines have not passed; the Division's role after filing is simply to determine "whether the petition was properly or improperly filed."[95] If counting has not yet begun, the Division can return the entire petition as required by the single instrument rule, allowing the sponsors to refile before the statutory deadlines.[96]

This interpretation is not only plain and logical on its face, but it is also much more consistent with the existence of the statutory deadlines that are also found in Article 1 of AS 15.45.[97] Importantly, Article 1 of AS 15.45. says *nothing* about suspending or modifying the statutory filing deadlines during counting of signatures, and those deadlines must therefore be enforced.[98] Once the signature verification process begins, the Division cannot be permitted to return individual booklets piecemeal for "correction," let alone allow completely missing or invalid certifications to be redone. All the Division is

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94 *Id.*

95 *See* AS 15.45.150; *see also* AS 15.45.160.

96 AS 15.45.150; *see* 6 AAC 25.240(c); *see also Res. Dev. Council of Alaska*, 494 P.3d at 543.

97 *See* AS 15.45.140; AS 15.45.150; AS 15.45.190.

98 *See Guerin*, 537 P.3d at 779, 782; *Jeffery*, 170 P.3d at 234-36; *Falke*, 717 P.2d at 370-76; *see also* AS 15.45.140; AS 15.45.190.

permitted to do at this stage is decide "whether the petition was properly or improperly filed."[99]

Critically, regardless of *when* corrections may be made under AS 15.45.130, the superior court erred by holding that this language permitted the Division to allow sponsors to "correct[]" 60 petition booklets that *completely* lacked proper certifications.[100] Even *if* AS 15.45.130 enables the Division to allow technical *corrections* to the certifications — such as adding missing dates or locations[101] — it should not be interpreted to allow the Division to permit the complete replacement of (i.e., entirely new) certifications *after* all of the applicable deadlines. Simply put, "correction" means fixing; it cannot mean or permit the replacement or addition of brand-new certifications to booklets that lacked valid certifications upon filing.

In this case, the Division's curing process allowed the Sponsors "to retrieve, correct, and return . . . 60 booklets with certificates that were not notarized by a commissioned notary."[102] [Exc. 123; *see also* Exc. 136] It is undisputed that the applicable statutes require

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99 *See* AS 15.45.150.

100 *See* AS 15.45.130. Only 58 of these 60 booklets were returned to the Division by the Sponsors. [*See* Exc. 125, 138]

101 For example, 22AKHE petition booklets 4, 470, 579, and 954 were returned because they lacked either the date or location where the booklet was notarized. [*See* Exc. 122-123, 139]

102 The defect for these 60 booklets was that an individual purported to notarize the booklets, but the Division determined that she was not actually a notary at the time of notarization. [Exc. 123] This individual was actually an employee of one of the Sponsors *and* a contracted employee with the signature petition campaign. [*See* R. 544-545; *see also* Exc. 18]

that petition booklets be certified *before* filing them with the Division.[103] [*See* Exc. 123-126] Moreover, 6 AAC 25.240(g) provides that "signatures contained in a petition booklet" where a circulator "did not complete the certification affidavit" "will not be counted."[104]

The parties not only stipulated that the booklets the Sponsors had submitted on January 12 lacked the necessary certifications as of that date, but that the Division could not count them in the condition they were filed. [Exc. 122-125, 133-139] The plain language of AS 15.45.130 (and AS 15.45.150) does not allow for the wholesale replacement of certifications without regard to the applicable statutory filing deadlines.

### B. The legislative history surrounding ballot initiative deadlines also supports Appellants' interpretation of AS 15.45.130.

In addition to the plain language interpretation of AS 15.45.130, the legislative history surrounding the addition of the "or corrected" language found in AS 15.45.130 also does not support the superior court's interpretation allowing replacement certifications.

The "or corrected" language in AS 15.45.130 was added through the enactment of House Bill 94 ("HB 94") in 2005, along with other changes to Alaska's election laws.[105] In testimony about HB 94 before the House State Affairs Committee, a representative had

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103 *See* AS 15.45.130 ("***Before being filed***, each petition shall be certified by an affidavit by the person who personally circulated the petition." (emphasis added)).

104 6 AAC 25.240(g) ("The signatures contained in a petition booklet filed under (c) of this section will not be counted in determining the sufficiency of the petition if the person who circulated the petition did not complete the certification affidavit for the booklet as required by AS 15.45.130[.]").

105 *See* ch. 2, § 36, FSSLA 2005.

proposed an amendment that would have prohibited all paid signature gathering.[106] After the Division's then-Director Laura Glaiser explained that the representative's proposed amendment should also apply to initiatives (i.e., AS 15.45.130) for consistency, she then explained how the certification requirements for initiatives would work if HB 94 were enacted:

> Should [an initiative sponsor] . . . 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 and sponsors] 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 . . . invalidated.[107]

The Division's contemporaneous interpretation of the amended statutory framework — which included the "or corrected" language in AS 15.45.130 — confirms that initiative petitions that are filed with the Division at the last minute without proper certifications will be rejected, whereas earlier-filed petitions could still be corrected.[108] And submitting

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106 The version of HB 94 that ultimately passed included a $1 per signature limit; that limit was recently determined to be unconstitutional by this Court. *See Res. Dev. Council of Alaska*, 494 P.3d at 545-46, 548-53.

107 *See* Hearing on HB 94 Before the H. State Affairs Comm., 24th Leg., 1st Sess. 09:22:53-09:24:25 (Mar. 25, 2005) (emphasis added), *available at* https://www.akleg.gov/basis/Meeting/Detail?Meeting=HSTA%202005-03-15%2008:00:00 (testimony of Laura Glaiser, Dir. of the Division).

108 *See* AS 15.45.150.

booklets purportedly "notarized" by someone who is not a notary — which is what happened here — is equivalent to submitting booklets that are not notarized at all.

Appellants' interpretation of "or corrected before the subscriptions are counted" to include only technical fixes to a certification (and not full-blown replacements) is also supported by the legislature's decision to repeal AS 15.45.170 in 1998.[109] That statute previously allowed sponsors of ballot initiatives to "amend and correct" their petition "within 30 days" by submitting additional and newly-certified booklets;[110] this ability to submit a supplemental petition still exists in the context of recalls and referenda.[111] By repealing this statute, the legislature confirmed that sponsors of ballot initiatives can no longer "amend and correct" their petitions after the statutory deadlines. Even if "technical" corrections are permitted by AS 15.45.130, substantive amendments to supplement a filed initiative petition are no longer allowed.

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109 *See* former AS 15.45.170 (1997), *repealed by* 1998 SLA, ch. 80, § 7.

110 *See* former AS 15.45.170 (1997) ("Submission of supplementary petition: 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."). Even when supplementary initiative petitions were permitted under AS 15.45.170, they were not available for every initiative in every instance. According to a prior Alaska Attorney General Opinion, only latent defects — e.g., qualified signatures in petition booklets — could be supplemented, whereas patent defects required rejection. STATE OF ALASKA, ATT'Y GEN. OP., 1984 WL 60987 (Feb. 1, 1984) [hereinafter ATT'Y GEN. OP.] ("[Former] AS 15.45.170 authorizes a supplementary petition, but that privilege is afforded only when a petition, believed to contain a sufficient number of signatures of qualified voters, is later found to contain signatures of [those] who are not qualified voters; in such a case, the [latent] defect of numbers may be cured. However, where the defect is patent, the petition may not be accepted for filing." (emphasis in original)).

111 *See* AS 15.45.400; AS 15.45.640.

One of the reasons the legislature repealed AS 15.45.170 in 1998 was to ensure that the legislature would have a reasonable opportunity to consider and void any filed ballot initiative.[112] [*See* Exc. 171] Allowing the replacement of improperly-certified petition booklets would run contrary to the legislature's choice to remove the option of filing supplemental petition booklets after filing.[113] The superior court's interpretation, effectively allowing the resurrection of otherwise uncertified signatures after the filing deadline, not only defies the plain language of the applicable statutes and regulations, it runs directly contrary to the legislature's intent of requiring a sufficient number of certified signatures by the filing deadline. [*See* Exc. 170-171]

In sum, the limited legislative history supports a reading of AS 15.45.130 that substantive amendments to petition booklets after filing and after the statutory deadlines have passed cannot be allowed.

### C. False or missing petition booklet certifications are not technical deficiencies.

In allowing replacement certifications for the 60 booklets that had been "notarized" by someone who was not a notary, the superior court erred by treating the complete lack of a certification as a mere technical deficiency that could be corrected after filing and after the statutory deadlines had passed.[114] [*See* Exc. 292-311] In the context of ballot initiatives,

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112 *See* Alaska Const. art. XI, § 4 ("If, before the election, substantially the same measure has been enacted, the petition is void.").

113 The repeal of AS 15.45.170 further cemented the strict enforcement of filing deadlines. [*See* Exc. 170 ("Simply put, you either got 'em, or you don[]'t!!!")]

114 Only 58 of these 60 booklets were returned to the Division by the Sponsors. [*See* Exc. 125, 138]

this Court has held that only for "*technical* deficiencies or failure to comply with the exact *procedural* requirements" will this Court "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.'"[115] But the certification requirements for petition signatures are not mere technical requirements; they are substantive, and they have real world implications.

Alaska Statute 15.45.130 requires that each signature petition booklet *must* be certified by affidavit by the circulator for that booklet as to certain required information.[116] By statute, "[w]hen a document is required by law to be notarized, the person who executes the document shall sign and swear to or affirm it before an officer authorized by law to take the person's oath or affirmation[,] and the officer shall certify on the document that it was signed and sworn to or affirmed before the officer."[117] AS 44.50 prescribes the requirements and governs the actions of notaries, and AS 44.50.062 prohibits a notary from undertaking certain acts, including violating Alaska law in his or her performance as a notary.[118] A notary can be disciplined and held liable to persons injured by the notary's misconduct or neglect.[119]

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115 *See N.W. Cruiseship Ass'n of Alaska, Inc. v. State*, 145 P.3d 573, 577 (Alaska 2006) (alteration in original) (emphasis added) (quoting *Boucher v. Engstrom*, 528 P.2d 456, 462 (Alaska 1974)).

116 *See* AS 15.45.130.

117 *See* AS 09.63.030(a).

118 *See* AS 44.50.062(1).

119 *See* AS 44.50.068; AS 44.50.160.

The superior court improperly discounted the need for an official notarization, noting that circulators could have "self-certified" their petitions. [*See* Exc. 303] Alaska law does permit a self-certification to replace a notarization, but those certifications must also state that "I certify under penalty of perjury that the foregoing is true."[120] False certifications can be criminally prosecuted under Alaska law.[121] Additionally, the superior court ignored the fact that the disputed booklets *had not been* self-certified by the deadline, and simply leaped to the conclusion that the omission of a lawful certification was harmless because they *could have been*.

*N.W. Cruiseship Ass'n of Alaska, Inc. v. State* is instructive here in determining what constitutes a technical violation for booklet certifications.[122] In *N.W. Cruiseship*, this Court explained that a circulator "[n]eglecting to include *the place* of execution in a self-certification is a technical violation."[123] This Court reasoned that "the purpose of certification is to require circulators to swear to the truthfulness of their affidavits," and that this purpose was achieved when the circulators "swear that they had stated the truth by signing under penalty of perjury."[124] In that context, this Court explained that the lack

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120 *See* AS 09.63.020(a).

121 *See* AS 09.63.020(b). A person who "intentionally makes a false affidavit, swears falsely, or falsely affirms under an oath required by this title [Title 15]" commits voter misconduct in the first degree, a class C felony. *See* AS 15.56.040(a)(3); AS 15.56.040. And a person who makes a false sworn statement which they do not believe to be true commits perjury, a class B felony. *See* AS 11.56.200.

122 *See N.W. Cruiseship Ass'n of Alaska*, 145 P.3d at 577-79.

123 *See id.* at 577 (emphasis added).

124 *See id.* (emphasis omitted).

of the place of execution "does not reduce the force of that assertion."[125] This Court then held that petition booklets should not have been rejected "[b]ecause the failure to provide a place of execution is a technical deficiency that does not impede the purpose of the certification requirement."[126]

What constitutes a technical deficiency becomes clear in the context of this Court's holding in *N.W. Cruiseship*. A technical deficiency must mean a minor, correctible error as part of a document that does not undermine the document's essential validity.[127] The clerical error of omitting the location of a self-notarization fell into this definition.[128] So too would correcting a scrivener's error for an obviously misdated notarization. [*See* Exc. 122 ("[T]he notary . . . had written a date of December 4, 2024.")] Both of these types of technical deficiencies could be rectified without impacting the core validity of the document.

Conversely, 60 defective booklets at issue here did not merely lack a place of execution or other "technical deficiency" that could be corrected without affecting the validity of the document. The booklets had not been certified because *the person signing the certification was not a commissioned notary at all*. [Exc. 123] It was because of this improper certification that all of the certifications had to be replaced entirely; it was not a small, technical deficiency that could otherwise cure the booklets. Thus, unlike the

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125 *See id.*

126 *See id.*

127 *See id.*

128 *See id.*

booklets in *N.W. Cruiseship*, the booklets here were not properly sworn to before either of the statutory filing deadlines. [*See* Exc. 122-126] This constitutes a substantive violation that "impede[s] the purpose of the certification requirement."[129]

The findings the superior court made at trial as to the misconduct of certain circulators reinforce the importance of the petition certification requirements. The court determined that numerous circulators "falsely" and "improperly" signed circulator affidavits for booklets that were circulated by someone else,[130] [*See* R. 814-817, 819] and concluded that many booklets were "improperly left unattended at businesses and other locations." [R. 816-817; *see* R. 817-818] The court also found additional circulator misconduct and anomalies, including that the invocation of the Fifth Amendment by two circulators "equated to a failure to reaffirm the authenticity of their certification affidavits," [R. 821; *see* R. 820-821] and that the Sponsors' employee in charge of signature gathering in Anchorage "knew or should have known that she falsely signed her certification . . . by indicating that she was not paid for gathering signatures." [R. 824-825; *see* R. 771]

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129 *See id.*

130 The court also found that: (1) "Mr. Coulter admitted to falsely signing the circulator affidavit" for a booklet circulated by Mr. Hughes; [R. 814] (2) Ms. Wessels "claim[ed] she did everything 'right'" even though she "admit[ed]" to sharing her booklets with her husband; [R. 814] (3) "Mr. Hughes *should have* known that the certification affidavit was untrue when he signed it" because it was circulated by Ms. Smith; [R. 816 (emphasis in original)] (4) "Mr. Ransum made 'an honest confession' that he falsely signed a sworn circulator affidavit" for a booklet circulated by Ms. Sullivan; [R. 816]; (5) "Mr. Jepsen admitted to falsely certifying the circulator affidavit" for a booklet circulated by Ms. Cusack; [R. 816] (6) Ms. Stewart "failed to reaffirm her certification" of booklets that she said "she allowed others . . . to gather signatures in"; [R. 817] and (7) Mr. Coulter certified a booklet knowing that he had given the booklet to a friend for the friend and his family to sign. [R. 819]

Proper notarization or self-certification of circulator affidavits serves to verify the authenticity of the signatures contained within the petition. It is a critical procedural safeguard to prevent fraud, ensure that the legal requirements of signature gathering have been met, and maintain the integrity of the entire electoral process.[131] This purpose is not readily achieved when there is invalid authentication of the circulator affidavit. The requirement of having a properly certified circulator affidavit can hardly be seen as a mere "technical deficiency;" it is a critical component of the entire initiative process, and a wholesale replacement of that vital step cannot constitute a minor "correct[ion]."

### D. The improperly-certified petition booklets were patently defective, and therefore should not have been counted towards qualification.

Finally, in reaching its incorrect interpretation of AS 15.45.130, the superior court also erred in its interpretation of the term "patent defect" that is found in 6 AAC 25.240. That regulation requires the Division to return an entire petition under the single instrument rule if a "patent defect" is found before the one-year statutory deadline, or the rejection of the petition outright if it is filed on or too close to the deadline for the sponsors to refile.[132]

According to the superior court, if the Division somehow fails to notice an error upon its initial review, it can simply be corrected later, so long as the Division's counting of all of the signatures in the filed petition has not yet been completed. [*See* Exc. 294] This cannot be the case. Under the superior court's illogical interpretation, an initiative sponsor

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131 *See* AS 09.63.020; AS 44.50.068; AS 44.50.160; *see also* AS 11.56.040; AS 11.56.200.

132 *See* 6 AAC 25.240(f).

who files a petition with *fraudulent* notarizations on or before the filing deadline will get up to 60 additional days to fix their fraud and submit new certifications, whereas a sponsor who honestly failed to certify petition booklets at all would have their petition rejected outright. This interpretation would also give sponsors even *more* leeway to supplement their filed petitions than had been permitted prior to the repeal of AS 15.45.170.[133]

The superior court's interpretation of 6 AAC 25.240 renders the statutory deadlines found in AS 15.45.140 and AS 15.45.190 so flexible as to be meaningless, since it allows the Division to accept and count uncertified signatures in the Division's sole discretion. The Division should not have "'unfettered discretion to vary the requirements of its regulations at whim,' which 'invites the possibility that state actions may be motivated by animosity, favoritism, or other improper influences.'"[134] Yet a sponsor who files a petition with no notarizations at all will have their petition rejected entirely — with no suspension of the filing deadlines and no "curing" opportunity — because the petition will have a "patent defect."[135] This approach is completely arbitrary; indeed it actually *encourages* the filing of petitions with fraudulent certifications that may be able to "hoodwink" the Division on the day of filing.

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133 *See* ATT'Y GEN. OP., 1984 WL 60987 ("[Former] AS 15.45.170 authorizes a supplementary petition, but that privilege is afforded only when a petition, believed to contain a sufficient number of signatures of qualified voters, is later found to contain signatures of [those] who are not qualified voters . . . . [W]here the defect is patent, the petition may not be accepted for filing." (emphasis in original)).

134 *See Stefano*, 539 P.3d at 502 (quoting *Jerrel*, 999 P.2d at 144).

135 *See* 6 AAC 25.240(f) (stating that when a facially insufficient petition is filed prior to the filing deadline, "all petition booklets" must be returned for "resubmission," and that this subsequent filing must be completed before the one-year deadline).

Not only did the superior court improperly interpret the term "patent defect," it failed to recognize that the 60 booklets that were "notarized" by someone who was not a notary actually contained a "patent defect" on the day they were filed. The term "patent defect" is not defined in statute, but the language of 6 AAC 25.240(f) suggests that such a defect is evident "on [the] face" of the petition.[136] Here, the Division discovered the improper notarization "when the Division *noticed* this person provided different dates for the expiration of her commission on different booklets." [Exc. 123 (emphasis added)] But it is undisputed that these dates for expiration are written on the face of the booklets themselves, and therefore *are* patent defects that were always visible to the Division from nothing more than a review of the booklets. [Exc. 123; *see* R. 306] And as a prior Attorney General opinion has explained, "where the defect is patent, the petition may not be accepted for filing."[137]

The fact that the Division failed to notice this patent defect upon its initial review of the petition on January 12 does not change the analysis. Although the secondary finding that the false notary's commission had expired in 2022 required the Division look up the claimed notary, the Division still detected this defect from this individual's inconsistent dating of the notarizations, defects which were clearly observable on the face of the booklets when they were filed. [Exc. 123] Because the 60 booklets were "notarized" by someone who was not a notary, this was a "patent defect" that required the Division to

136 *See* 6 AAC 25.240(f).

137 *See* ATT'Y GEN. OP., 1984 WL 60987 (emphasis omitted).

reject the petition and return it to the Sponsors for correction and resubmission "by the [one-year] deadline specified in [6 AAC 25.240(d)]."[138]

Significantly, the Division later conceded that a booklet not notarized by a commissioned notary could not be counted after the statutory deadlines passed. [*See* Exc. 125] After returning over 60 booklets to the Sponsors, "the Division discovered one more booklet, booklet 1, which was similarly not notarized by a commissioned notary." [Exc. 125] Rather than return the additional booklet to the Sponsors for post-deadline curing, the Division actually did what was statutorily required: "The Division did not accept any of the signatures in this booklet."[139] [Exc. 125] This occurrence represents the danger inherent in the Division's demonstrated inconsistency in applying the applicable statutes and regulations, which is the same type of conduct that concerned this Court in *Guerin*.[140] When agencies such as the Division effectively alter or amend statutory deadlines and regulatory processes, they not only contravene the legislative intent clearly set forth in the statute, but also disrupt the balance of procedural fairness designed to protect the integrity of the electoral process.

Regardless of whether the lack of a valid certification qualified as a patent defect under 6 AAC 25.240(f), the superior court's decision to allow the piecemeal "correction" of petition booklets after the statutory deadlines — rather than simply determine that "the

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138 6 AAC 25.240(f)(2).

139 *See* AS 15.45.130.

140 *See Guerin*, 537 P.3d at 782.

petition was . . . improperly filed"[141] — cannot be correct. A "patent defect" cannot only be limited to those defects that Division staff just so happened to notice upon its initial review of the entire petition; such a subjective standard would render the term meaningless.

Because the complete lack of a valid certification in violation of AS 15.45.130 is not a mere technicality, but a substantive requirement, the Division could not count booklets that lacked a proper certification upon filing. Alaska Statute 15.45.130 cannot be interpreted to allow the addition of missing certifications after mandatory statutory deadlines have expired. This Court should REVERSE the superior court's determination that the Division's piecemeal "correction" process was lawful, and conclude that 22AKHE is not qualified for the ballot.

## CONCLUSION

This Court should REVERSE and declare that 22AKHE is disqualified.

RESPECTFULLY SUBMITTED at Anchorage, Alaska this 5th day of August, 2024.

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141 AS 15.45.150.