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Attorneys for Plaintiff Randall Kowalke

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

RANDALL KOWALKE,)
)
)
 Plaintiff,)
)
 vs.)
)
 DAVID EASTMAN, STATE OF)
 ALASKA, DIVISION OF ELECTIONS,)
 and GAIL FENUMIAI in her official)
 capacity as Director of Elections)
)
 Defendant.)
 _____)

Case No. 3AN-22-07404 CI

**PLAINTIFF'S MEMORANDUM IN RESPONSE TO COURT'S 9/21/2022
REQUEST**

Plaintiff provides this information in response to the Court's September 21, 2022 Order requesting information on whether it would be feasible for the Division to delay certification of the House District 27 results until after trial, and when those results would ultimately need to be certified.

The Division’s Election Calendar¹ sets a target date to certify the General Election by November 29, 2022, and then provides a five day window to receive an application for a recount. According to the Division’s calendar, November 29 is a tentative target date to certify the election, though not a requirement.

The Division’s required deadlines to certify elections are dictated by the Alaska Constitution. Article III, section 4 of the Alaska Constitution requires that the Governor and Lieutenant Governor be sworn into office “beginning at noon on the first Monday in December” following the election. This is reflected in the Division’s Election Calendar and thus requires that the Governor be sworn in on December 5, 2022 this year.

By contrast, the Constitution does not require State Legislators to begin their terms until the fourth Monday of January following the election.² This constitutionally set date is subject to change if otherwise provided by law; Alaska Statute 24.05.080 did change the required date for legislators to begin their term, changing the start date to “the third Tuesday in January.” For this election season the third Tuesday in January falls on January 17, 2023.

Based on the fact that the gubernatorial race does not need to be certified until three days prior to the swearing-in date (to allow for the required three days to apply for a recount,) it would suggest that legislative races also do not need to be certified until five days prior to legislators being sworn in on January 17 (because candidates in

¹ Available at <https://www.elections.alaska.gov/calendar/>.

² Alaska Constitution, Art. II, § 3.

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legislative races are provided five days to apply for a recount). This means the House District 27 race does not need to be certified until January 12, 2023.

Mr. Kowalke does not have expertise on the operation of the rank choice voting system to speak to how delay of certification of House District 27 would impact the certification of the other races.

DATED this 22nd day of September, 2022

NORTHERN JUSTICE PROJECT, LLC
Attorneys for Plaintiff

By: /s/ Savannah Fletcher

James J. Davis, Jr., AK Bar No. 9412140
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CERTIFICATE OF SERVICE

I hereby certify that on this date a true and correct copy of the foregoing document were served via EMAIL at or before 8:30 am on:

Lael Harrison and Thomas Flynn
State of Alaska, Department of Law
Lael.harrison@alaska.gov
Thomas.flynn@alaska.gov
Courtesy copy emailed to: nomi.saxton@alaska.gov

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s/Savannah Fletcher
Signature

September 22, 2022
Date