EMERGENCY
Thomas Hannam
435 S. Knik Street
Wasilla, AK 99654
(907) 775-1880

Ronda Marcy
P.O. Box 3771
Palmer, Alaska 99645
(907) 376-2232 – Phone
(907) 376-0530 - Fax

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MATANUSKA-SUSITNA BOROUGH
BOROUGH ATTORNEY'S OFFICE

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

Thomas Hannam and Ronda Marcy, Plaintiffs, v. Matanuska-Susitna Borough; Barry Orzalli; Ted Franke; Christopher R. Miller; Robert Hanner; Stephen D. Guisinger; Paul Riley; Paul Steiner; Dennis Hotchkiss; Bob Lee; Philip Markwardt; Rudy Poglitsh; Timothy R. Sergie; Daniel Hamm; Sally Pollen; and Larry DeVilbiss. Defendants.	Case No. 3PA-16-1952 CI

Expedited Complaint for Declaratory Judgment and for Injunctive Relief

COMES NOW Thomas Hannam, and Ronda Marcy, Plaintiffs in the above styled and numbered cause, proceeding without the assistance of counsel,[1] and brings this Expedited Complaint for Declaratory Judgment and for Injunctive Relief, to challenge an actual controversy that exists between the Plaintiffs and the Defendants. This complaint is supported by affidavit, and separate motion for expedited consideration, with affidavit.

[1] Under their constitutional and statutory right to self-representation, AS 22.20.040(a), Appearance. (a) An action or proceeding may be prosecuted or defended by a party in person or by attorney.

Plaintiffs seek an expedited Declaratory Judgment that the proposed zoning initiative, "Proposition No. B-1 on the Ballot, Ordinance Serial No. 15-088, Matanuska-Susitna Borough", scheduled to be voted on October 4, 2016, bypasses the mandatory Alaska Statutes; usurping undelegated municipality powers; deprives the Matanuska-Susitna Borough 'a municipality' of a power which state law specifically allows (and mandates) that it perform; exceeds the Matanuska-Susitna Borough's own legislative zoning powers; that it is unconstitutional, and unenforceable as a matter of law

The proposed zoning initiative is invalid, where it bypasses mandatory planning commission review of land use ordinances, and would thwart the state legislature's delegation of land use authority to the municipal assembly.[2]

The Matanuska-Susitna Borough Clerk, Lonnie R. McKechnie, was "objectively unreasonable" to permit the proposed zoning initiative to be placed on the Ballot, when the Supreme Court of Alaska provided written notice, in a case under her name, that "zoning by initiative is invalid."[3]

The Matanuska-Susitna Borough attorney, Nicholas Spiropoulos, was objectively unreasonable to recommend to the Clerk that the proposed zoning initiative could be placed on the Ballot, when the Supreme Court of Alaska provided written notice that "zoning by initiative is invalid,"[4] and counsel knew, or by due diligence should have

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[2] See, e.g., Kaiser Hawaii Kai Dev. Co. v. City & County of Honolulu, 70 Haw. 480, 777 P.2d 244, 247 (1989) (holding that "[z]oning by initiative is inconsistent with the goal of long range comprehensive planning" and was not intended by legislature); Carmony v. McKechnie, 217 P.3d 818, 821 (Alaska 2009) (quoting Griswold v. City of Homer, 186 P.3d 558, 563 (Alaska 2008)) (internal quotation marks omitted).

[3] Carmony v. McKechnie, 217 P.3d 818, 821 (Alaska 2009) (quoting Griswold v. City of Homer, 186 P.3d 558, 563 (Alaska 2008)). We recently held that because of the statutorily required role of a planning commission, "zoning by initiative is invalid."

[4] Carmony v. McKechnie, 217 P.3d 818, 821 (Alaska 2009) (quoting Griswold v. City of Homer, 186 P.3d 558, 563 (Alaska 2008)). We recently held that because of the statutorily required role of a planning commission, "zoning by initiative is invalid."

known, that recommending that the proposed zoning initiative could be placed on the Ballot was contrary to the teachings of the Supreme Court of Alaska.[5]

A. Jurisdiction:

This Court has jurisdiction over this action pursuant to AS 22.10.020(g),[6] (the statute providing the Superior Court with General and Original Jurisdiction over all Declaratory Judgment actions), Alaska Civil Rule 57(a),[7] (Civil Rules for Declaratory Judgment actions) and AS 44.62.010-44.62.950 (the Administrative Procedures Act).

B. Venue:

Venue is appropriate in the Third Judicial District because the actual controversy between the Plaintiffs and the Defendants occurred in the Matanuska-Susitna Borough. The seat of the Matanuska-Susitna Borough Government is in Palmer, Alaska, and the Superior Court in Palmer is the appropriate court for the venue in this matter.

C. Parties:

Plaintiffs:

Plaintiff, Thomas Hannam, is a lifetime Alaskan, longtime resident and a property owner in the Matanuska-Susitna Borough.

Plaintiff, Ronda Marcy, is an Alaskan, a longtime resident and property owner in the Matanuska-Susitna Borough.

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[5] The legal contentions were not warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law, or for establishing new law, and the factual contentions do not have evidentiary support.

[6] AS 22.10.020(g). In case of an actual controversy in the state, the superior court, upon the filing of an appropriate pleading, may declare the rights and legal relations of an interested party seeking the declaration, whether or not further relief is or could be sought. The declaration has the force and effect of a final judgment or decree and is reviewable as such. Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against an adverse party whose rights have been determined by the judgment.

[7] Civil Rule 57(a) provides, in part: "The procedure for obtaining a declaratory judgment pursuant to statute shall be in accordance with these rules.... The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate."

Defendants:

The Defendant Matanuska-Susitna Borough was created by Alaska Statutes and directed to create a planning commission,[8] and to comply with other statutory mandates concerning zoning.

The Defendants Barry Orzalli; Ted Franke; Christopher R. Miller; Robert Hanner; Stephen D. Guisinger; Paul Riley; Paul Steiner; Dennis Hotchkiss; Bob Lee; Philip Markwardt; Rudy Poglitsh; Timothy R. Sergie; Daniel Hamm; Sally Pollen; and Larry DeVilbiss, Initiative Sponsors, signed as residents of the Matanuska-Susitna Borough.

D. Legal Background of the Case of Actual Controversy:

Ballot Measure 2,[9] as an initiated state statute, was voted in November 4, 2014, and signed into law by Lt. Governor Mead Treadwell. Lt. Gov. Byron Mallott signed Alaska's first commercial marijuana regulations into law on Friday January 22, 2016.

As a result of the successful vote on Ballot Measure 2, and the new statute that authorized marijuana businesses, Plaintiff Thomas Hannam purchased additional property, developed the property for marijuana businesses, advertised availability of his property, and building, and obtained potential agreements committed to the use his property for marijuana businesses.

As a result of the successful vote on Ballot Measure 2, and the new statute that authorized marijuana businesses, Plaintiff Ronda Marcy invested in developing some of her property for marijuana businesses, by purchasing and moving three commercial greenhouses to her property, clearing land, constructing separate gravel pads, and

[8] AS 29.40.010(a) ("areawide basis"); AS 29.40.020(a) ("borough shall establish a planning commission"); AS 29.40.020(b)(1) (requiring planning commission to prepare and submit a "proposed comprehensive plan . . . for the systematic and organized development of the borough").

[9] This bill would tax and regulate the production, sale, and use of marijuana in Alaska.

erecting the three commercial greenhouses on steel reinforced concrete footings, and by beginning her application for a marijuana business license.

Defendant Matanuska-Susitna Borough established a Marijuana Advisory Board, that held public hearings and made recommendations to the Assembly. The Planning Commission also made recommendations to the Assembly. Many public hearings were held on developing land use permits and taxes for the marijuana business applications.

The Defendants Barry Orzalli; Ted Franke; Christopher R. Miller; Robert Hanner; Stephen D. Guisinger; Paul Riley; Paul Steiner; Dennis Hotchkiss; Bob Lee; Philip Markwardt; Rudy Poglitsh; Timothy R. Sergie; Daniel Hamm; Sally Pollen; and Larry DeVilbiss all sponsored an Initiative, the proposed zoning ordinance, Ordinance Serial No. 15-088, Matanuska-Susitna Borough Proposition No. B-1 on the October 4, 2016 Ballot.

Defendant Larry DeVilbiss, and other sponsors, attended some Public Hearings and urged the Assembly to declare a moratorium on considering marijuana business permits in Matanuska-Susitna Borough until after the vote on the Initiative, Ordinance Serial No. 15-088, Matanuska-Susitna Borough Proposition No. B-1, on October 4, 2016 Ballot.

Plaintiffs, explained to the Assembly that the proposed zoning initiative violated mandatory Alaska statutes, and the Alaska and Federal Constitution, usurped powers statutorily reserved to the Borough, and the unconstitutional proposed zoning initiative and any moratorium based on the proposed zoning initiative, violated mandatory Alaska statutes, and was unconstitutional, and could result in a takings action for knowingly and intentionally violating constitutional and statutory rights, and they could each be found

personally liable. Each member of the Assembly was then served with a written copy of the documents, to provide each of them with personal knowledge of the laws prohibiting their actions.

Notwithstanding the written notice served on each member of the Assembly, the Assembly imposed the moratorium,[10] until after the vote on October 4, 2016. One of the Assembly Members, Kowalke, even stated publicly at the hearing that he was doing this as a present for his friend.

The Matanuska-Susitna Borough moratorium, based on the proposed zoning initiative[11] caused the Alaska Marijuana Control Board to table all of the applications for marijuana licenses, for locations in the Matanuska-Susitna Borough, until after the vote on October 4, 2016, or until the moratorium is lifted.

This created the case of actual controversy between Plaintiffs and Defendants, and caused the Plaintiffs damage to the exercise of their personal property rights, and resulted in a takings action in violation of the Constitution.

The Defendants Barry Orzalli; Ted Franke; Christopher R. Miller; Robert Hanner; Stephen D. Guisinger; Paul Riley; Paul Steiner; Dennis Hotchkiss; Bob Lee; Philip Markwardt; Rudy Poglitsh; Timothy R. Sergie; Daniel Hamm; Sally Pollen; and Larry DeVilbiss all knew at the time they sponsored the zoning initiative, or by due diligence should have known, that "zoning by initiative was invalid", for proposing zoning in the Matanuska-Susitna Borough. Plaintiffs explained to Larry Devilbiss, and other sponsors, during the public hearings, and after the hearings, why the zoning initiative was invalid,

[10] Ordinance Serial No. 16-046.

[11] Ordinance Serial No. 15-088, Matanuska-Susitna Borough Proposition No. B-1, on October 4, 2016 Ballot.

that it violated existing mandatory Alaska statutes, and the Constitution, and amounted to a takings action, in violation of Plaintiffs' constitutional rights, and statutory rights.

The Defendant Matanuska-Susitna Borough, through the Assembly, knew at the time they declared the moratorium, based on the unconstitutional zoning initiative, or by due diligence should have known, that zoning by initiative was invalid for proposing any zoning in the Matanuska-Susitna Borough.

An actual controversy exists between the Plaintiffs and the Defendants, and the Plaintiffs have an interest in protecting and exercising the rights provided to them under the Alaska Constitution and Statutes. Plaintiffs have standing to bring this action, and to vindicate the knowing and intentional violation of their constitutional and statutory rights.

E. Plaintiffs seek Declaratory Judgment and Injunctive Relief:

AS 22.10.020(g), encompasses considerations of standing, mootness, and ripeness. Plaintiffs have standing, the issues are not moot, and they are ripe for adjudication. With respect to ripeness, in *Brause*[12], the Court held ("the more practical formulation is said to be: that ultimately the issue of

> "[R]ipeness turns on 'the fitness of the issues for judicial decision' and 'the hardship to the parties of withholding court consideration.' "

As Plaintiffs explain, there is a compelling reason for a declaratory judgment to be issued in this case, and for an injunction to be granted to remove the proposed zoning initiative from the Ballot before the vote.

Plaintiffs seek a Declaratory Judgment, declaring that the proposed measure would not be enforceable as a matter of law, where the proposed zoning initiative has bypassed the mandatory planning commission's review of land use ordinances and

[12] Brause v. State of Alaska, 21 P.3d 357, 359 (Alaska 2001).

would thwart the state legislature's delegation of land use authority to the municipal assembly.[13]

Plaintiffs seek a Declaratory Judgment, declaring that the proposed measure usurps undelegated powers from the Matanuska-Susitna Borough's proposed taxation, where the proposed tax has already been placed on the ballot,[14] and would also prohibit the Matanuska-Susitna Borough from receiving the appropriation of funds already dedicated to the Matanuska-Susitna Borough.[15]

Plaintiffs seek an injunction to prevent the zoning initiative[16] from being placed before the voters, to have the zoning initiative removed from the Ballot, and to prevent any votes from being counted on the zoning initiative, until after this matter is resolved.

F. Preelection Review of the Initiative

Generally, judicial review of the constitutionality of an initiative is unavailable until after it has been enacted by the voters, "since an opinion on a law not yet enacted is necessarily advisory."[17] However, "there are two exceptions to this rule: first, where the initiative is challenged on the basis that it does not comply with the State's constitutional

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[13] See, e.g., Kaiser Hawaii Kai Dev. Co. v. City & County of Honolulu, 70 Haw. 480, 777 P.2d 244, 247 (1989) (holding that "[z]oning by initiative is inconsistent with the goal of long range comprehensive planning" and was not intended by legislature); Carmony v. McKechnie, 217 P.3d 818, 821 (Alaska 2009) (quoting Griswold v. City of Homer, 186 P.3d 558, 563 (Alaska 2008)) (internal quotation marks omitted).

[14] Proposition No. B-5, Areawide Sales Tax of Five Percent (5%) on Marijuana and Marijuana Products With a Limited Exemption for Sales Tax Paid to a City. Ordinance Serial No. 16-085 and IM No. 16-125 (Areawide Proposition).

[15] Sec. 17.38.200. Marijuana establishment registrations.
(c) Upon receiving an application or renewal application for a marijuana establishment, the board shall immediately forward a copy of each application and half of the registration application fee to the local regulatory authority for the local government in which the applicant desires to operate the marijuana establishment, unless the local government has not designated a local regulatory authority pursuant to AS 17.38.210(c).

[16] Initiative Ordinance Serial No. 15-088, the Matanuska-Susitna Borough Proposition No. B-1 "Prohibiting Marijuana Establishments Except Those Involving Industrial Hemp in the Area Outside of the Cities".

[17] Kohlhaas v. State, Office of Lieutenant Governor, 147 P.3d 714, 717 (Alaska 2006) (Kohlhaas I). "The phrase 'unless clearly inapplicable' was included in the Alaska Constitution so that the initiative would not replace the legislature where the legislature's power serves as a check on other branches of government, such as legislative power to define courts' jurisdiction or override judicial rules." (internal quotation marks omitted).

and statutory provisions regulating initiatives, and second, where the initiative is challenged as clearly unconstitutional or clearly unlawful."[18]

Plaintiffs assert that in this case both exceptions apply to the proposed zoning initiative. Procedural requirements for placing the zoning initiative on the ballot were not met and the subject matter is not appropriate for direct legislation under constitutional or statutory limits on the initiative power.

The proposed zoning initiative is constitutionally and statutorily invalid. The power to initiate cannot exceed the power to legislate.

In Carmony v. McKechnie,[19] the Alaska Supreme Court, in holding the "Superior Court Did Not Err in Holding that the Proposal Was Unenforceable as a Matter of Law," stated, as follows:

> In rejecting the application, the borough clerk stated that the proposal could not be certified under AS 29.26.110(a)(4) because it was unenforceable as a matter of law:
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> [T]he ordinance proposed conflicts with Borough Code, Alaska Statute, and the Alaska State Constitution, as it appears to supercede and circumvent these laws in regard to the administrative processes for the passage of ordinances; referendum laws with the automatic [e]ffect of referendum elections for questions of planning, platting, and land use regulations ...; and mandates regarding the Borough's duty to provide for platting, planning, and land use regulations.... [T]his proposed ordinance frustrates the execution of the aforementioned provisions ... and therefore, it is preempted by the superior authority.
>
> Judge Kristiansen agreed that the proposed measure was unenforceable as a matter of law, holding that "initiatives cannot be used to deprive a municipality of a power which state law specifically allows (and mandates) that it perform."
>
> Alaska law restricts initiatives to matters that "would be enforceable as a matter of law."[20] We have held that "the subject of the initiative must constitute such

[18] Carmony v. McKechnie, 217 P.3d 818, 819-20 (Alaska 2009).

[19] Carmony v. McKechnie, 217 P.3d 818, (Alaska 2009); and See also Griswold v. City of Homer, 186 P.3d 558, 563 (Alaska 2008))

[20] AS 29.26.110(a)(4).

legislation as the legislative body to which it is directed has the power to enact."[21] As noted above, we ordinarily will not review a proposed initiative prior to its approval by voters.[22] However, we do so here because a question is raised whether the initiative violates "explicit constitutional prohibitions" or whether the proposed initiative "is in clear conflict with a state statute."[23]

The Court went on to say, that the court held in *Griswold v. City of Homer*[24] that "zoning by initiative is invalid."[25] This was because the "[t]he power to initiate cannot exceed the power to legislate."[26] That is, the people could not enact a measure by initiative that was beyond the power of the borough assembly.[27] Under Alaska statutes, boroughs (or cities exercising power delegated by their borough) must establish a planning commission that prepares a comprehensive land use plan.[28] The planning commission is required to review, recommend, and administer measures "necessary to implement" that plan, and the local legislature is required to adopt land use provisions "[i]n accordance with" and "to implement" the comprehensive plan.[29] If it bypasses these procedures, zoning by initiative "exceeds the scope of the legislative power granted by the [state] legislature" to the local legislature and is thus unenforceable as a matter of law.[30]

The court also held that *Griswold,* decided after the present case was appealed to this court, is applicable in that case. That proposed initiative would enact sweeping changes to present and future land use ordinances, including zoning, by imposing

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[21] Municipality of Anchorage v. Frohne, 568 P.2d 3, 8 (Alaska 1977). See also Griswold v. City of Homer, 186 P.3d 558, 560 (Alaska 2008) ("The power to initiate cannot exceed the power to legislate.").
[22] See Whitson v. Anchorage, 608 P.2d 759, 762 (Alaska 1980).
[23] Id.
[24] 186 P.3d 558 (Alaska 2008).
[25] Id. at 563.
[26] Id. at 560.
[27] *See* Municipality of Anchorage v. Frohne, 568 P.2d 3, 8 (Alaska 1977) ("[T]he subject of the initiative must constitute such legislation as the legislative body to which it is directed has the power to enact.").
[28] See Griswold, 186 P.3d at 560–64 (discussing AS 29.40.010–.040).
[29] Id. at 561–62 (quoting AS 29.40.040).
[30] Id. at 563.

termination dates without any involvement by the planning commission or any consideration of consistency with the comprehensive plan. It would also impose termination dates on future amendments to the comprehensive plan without any planning commission input. It is thus clearly barred by our holding in *Griswold.*

Plaintiffs believe that the teachings of the Supreme Court in Griswold v. City of Homer,[31] Carmony v. McKechnie,[32] and Municipality of Anchorage v. Frohne,[33] have made it abundantly clear, that zoning by initiative is invalid.

As the Supreme Court held, "initiatives cannot be used to deprive a municipality of a power which state law specifically mandates that it perform."

The present case involves a general law municipality with "legislative powers conferred by law."[34] That law specifically confers the land use regulatory power upon the borough assembly.[35] Furthermore, it cannot be said that the state legislature anticipated when it delegated such land use authority to the borough assembly that the borough would submit every land use ordinance enacted by that assembly to referendum by the voters. To the contrary, such an arrangement subverts state policy goals. State law says that a borough assembly is required to enact a plan for the "systematic and organized development of the borough."[36] Such plans are to be "a compilation of policy statements, goals, standards, and maps for guiding the physical,

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[31] 186 P.3d 558 (Alaska 2008).
[32] Carmony v. McKechnie, 217 P.3d 818, (Alaska 2009); and See also Griswold v. City of Homer, 186 P.3d 558, 563 (Alaska 2008))
[33] *See* Municipality of Anchorage v. Frohne, 568 P.2d 3, 8 (Alaska 1977) ("[T]he subject of the initiative must constitute such legislation as the legislative body to which it is directed has the power to enact.").
[34] Id. at 310 (quoting AS 29.04.020).
[35] *See* AS 29.40.010–.040.
[36] AS 29.40.020(b)(1); AS 29.40.030(b).

social, and economic development, both public and private," of the borough.[37] It is plain from this statutory language that the legislature's policy goals included marking the land use planning and regulation process with certainty, continuity, consistency, and comprehensiveness.

The state legislature did not intend such a piecemeal, uncertain process when it mandated that borough assemblies enact comprehensive plans for "the systematic and organized development of the borough."[38] The will of the people, as expressed through the legislature, would be thwarted by the proposed initiative.

In Alliance of Concerned Taxpayers, Inc. v. Kenai Peninsula Borough, for example, the court reaffirmed that the right to legislate by municipal initiative derived from AS 29.26.100, not the Alaska Constitution.[39] Article XI of the Alaska Constitution provides a right of initiative and referendum regarding state law, whereas AS 29.26.100 reserves to the residents of municipalities the right of local initiative and referendum.[40]

The proposed zoning Initiative creates a constitutional challenge to part of AS 17.38.210(a).[41] Plaintiffs argue from the premise that the Alaska Constitution does not permit constitutional amendments to be enacted by initiative. As the Alaska Supreme Court recognized soon after statehood in *Starr v. Hagglund,*

> [Article XIII of the Alaska Constitution] provides two methods of amending the constitution: (1) by a constitutional convention, followed by ratification of the proposed amendment by the people, and (2) by a proposal that has obtained a

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[37] AS 29.40.030(a).

[38] AS 29.40.020(b)(1); AS 29.40.030(b).

[39] 273 P.3d at 1139 (citing Carmony v. McKechnie, 217 P.3d 818, 823–24 (Alaska 2009); Griswold v. City of Homer, 186 P.3d 558, 563 (Alaska 2008)).

[40] Carmony v. McKechnie, 217 P.3d 818, 820 (Alaska 2009); Griswold v. City of Homer, 186 P.3d 558, 563 (Alaska 2008).

[41] See Section H, beginning on page 15 herein.

two- thirds vote of each house of the legislature, and is adopted by the people by majority vote at a statewide election.[42]

As the court further recognized in *Starr,* article XIII necessarily limits the scope of the initiative process: "The initiative may be used only to enact laws, and not for the purpose of constitutional amendment."[43]

The zoning initiative,[44] on the Ballot for vote on October 4, 2016, would appear to require an amendment to the Alaska Constitution, and/or a repeal of existing mandatory Alaska Statutes. The proposed zoning initiative, standing in position of the Matanuska-Susitna Borough, seeks to do, through a vote of the people, what the Matanuska-Susitna Borough itself is statutorily prohibited from doing.

G. Invalid Exercise of Matanuska-Susitna Borough's Legislative Authority.

To decide whether Matanuska-Susitna Borough voters could invoke the initiative process to amend the Matanuska-Susitna Borough's zoning code the Court must determine the extent of the Borough's zoning power and the explicit and implicit limitations on that power. The Matanuska-Susitna Borough's zoning power flows from Alaska statutes providing for planning, platting, and land use regulation by local governments.

Alaska Statute 29.40.010 requires first and second class boroughs to provide for "planning, platting, and land use regulation on an areawide basis."[45] If a city within a

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[42] Starr v. Hagglund, 374 P.2d 316, 317 n. 2 (Alaska 1962).

[43] Id.; see also State v. Lewis, 559 P.2d 630, 639 (Alaska 1977) ("The Alaska Constitution may not be amended by popular vote alone, without prior action by either the legislature or a constitutional convention."). Notably, article XI, section 1 empowers voters to "enact laws by the initiative" (emphasis added); no similar provision extends the initiative power to include constitutional amendments.

[44] Ordinance Serial No. 15-088, Matanuska-Susitna Borough Proposition No. B-1, for election October 4, 2016.

[45] AS 29.40.010 provides:

(a) A first or second class borough shall provide for planning, platting, and land use regulation on an areawide basis.

borough consents by ordinance, the borough assembly may delegate any of its land use regulation powers to the city.[46] Alaska Statute 29.40.020(a) provides that the borough "shall establish a planning commission" and AS 29.40.020(b) provides that the planning commission "shall prepare and submit a proposed comprehensive plan in accordance with AS 29.40.030. . . ."[47] Section .030 describes "a comprehensive plan" as "a compilation of policy statements, goals, standards, and maps for guiding the physical, social, and economic development, both private and public, of the first or second class borough."[48]

These statutes require "areawide" planning and creation of a comprehensive plan "for the systematic and organized development" of the community, and they

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(b) If a city in a borough consents by ordinance, the assembly may by ordinance delegate any of its powers and duties under this chapter to the city. The assembly may by ordinance, without first obtaining consent of the city, revoke any power or duty delegated under this section.

[46] AS 29.40.010(b).

[47] AS 29.40.020 provides:

(a) Each first and second class borough shall establish a planning commission consisting of five residents unless a greater number is required by ordinance. Commission membership shall be apportioned so that the number of members from home rule and first class cities reflects the proportion of borough population residing in home rule and first class cities located in the borough. A member shall be appointed by the borough mayor for a term of three years subject to confirmation by the assembly, except that a member from a home rule or first class city shall be selected from a list of recommendations submitted by the council. . . .

(b) In addition to the duties prescribed by ordinance, the planning commission shall

(1) prepare and submit to the assembly a proposed comprehensive plan in accordance with AS 29.40.030 for the systematic and organized development of the borough;

(2) review, recommend, and administer measures necessary to implement the comprehensive plan, including measures provided under AS 29.40.040.

[48] AS 29.40.030 provides:

(a) The comprehensive plan is a compilation of policy statements, goals, standards, and maps for guiding the physical, social, and economic development, both private and public, of the first or second class borough, and may include, but is not limited to, the following:

(1) statements of policies, goals, and standards;

(2) a land use plan;

(3) a community facilities plan;

(4) a transportation plan; and

(5) recommendations for implementation of the comprehensive plan.

(b) With the recommendations of the planning commission, the assembly shall adopt by ordinance a comprehensive plan. The assembly shall, after receiving the recommendations of the planning commission, periodically undertake an overall review of the comprehensive plan and update the plan as necessary.

implicitly recognize the importance of the planning commission and the comprehensive plan to the process of regulating land use.[49]

A planning commission has statutory responsibilities beyond drafting the comprehensive plan. Per AS 29.40.020(b)(2), the commission must also "review, recommend, and administer measures necessary to implement the comprehensive plan, including measures provided under AS 29.40.040."[50] Because "zoning regulations" are one of the "measures provided under AS 29.40.040,"[51] subsection .020(b)(2) requires the planning commission to "review, recommend, and administer" zoning regulations "necessary to implement the comprehensive plan." The assembly by ordinance "shall adopt or amend" land use provisions "[i]n accordance with a comprehensive plan" and "in order to implement the comprehensive plan."[52] The statutes therefore expressly require that the planning commission have an active role in creating a comprehensive plan for "systematic and organized" local development, reviewing and recommending zoning regulations, and adopting measures "necessary to implement the comprehensive plan."[53] The statutes implicitly recognize that the planning commission plays an important part in the formation and amendment of local

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[49] AS 29.40.010(a) ("areawide basis"); AS 29.40.020(a) ("borough shall establish a planning commission"); AS 29.40.020(b)(1) (requiring planning commission to prepare and submit a "proposed comprehensive plan . . . for the systematic and organized development of the borough").

[50] AS 29.40.020(b)(2).

[51] AS 29.40.040(a)(1).

[52] AS 29.40.040(a). AS 29.40.040 provides in pertinent part:
(a) In accordance with a comprehensive plan adopted under AS 29.40.030 and in order to implement the plan, the assembly by ordinance shall adopt or amend provisions governing the use and occupancy of land that may include, but are not limited to,
(1) zoning regulations restricting the use of land and improvements by geographic districts;
(2) land use permit requirements designed to encourage or discourage specified uses and construction of specified structures, or to minimize unfavorable effects of uses and the construction of structures;
(3) measures to further the goals and objectives of the comprehensive plan.

[53] AS 29.40.020(b)(1), (2); AS 29.40.040(d)(1).

land use regulations by providing assistance to the borough (or city) to ensure that development proceeds in a "systematic and organized" manner.[54]

The relevant state statutes are clear. A borough cannot pass or amend a zoning ordinance without involving its planning commission in reviewing that ordinance.[55] This review includes considering whether a proposed ordinance is consistent with the comprehensive plan.[56] A borough assembly may eventually choose not to follow the recommendations of the planning commission, but the statutes preclude bypassing the planning commission altogether. (Emphasis added)

The people, standing in the place of the borough, cannot, through the initiative, bypass statutory mandates imposed on the Matanuska-Susitna Borough, who was obligated to establish a zoning commission, draft a comprehensive plan, and comply with state law governing planning and land use regulation, "the power to establish a planning commission to hear all requests for amendments to zoning codes."

This provision can be read as giving the planning commission the primary authority for initial consideration of zoning amendments. At the very least, this provision confirms the commission's role in considering proposed amendments to an existing zoning code that was itself adopted "[i]n accordance with a comprehensive plan . . . and in order to implement the plan. . .[57]

It is for this reason that the proposed "zoning by initiative is invalid", and why the proposed zoning initiative must be stricken, or removed from the Ballot. The people, through the initiative, or referendum process, do not have the power to pass piecemeal

[54] AS 29.40.020(b)(1).
[55] AS 29.40.020.
[56] AS 29.40.030(b), .020(b)(2), .040(a).
[57] AS 29.40.040(a).

zoning amendments without at least giving the Matanuska-Susitna Borough Planning Commission opportunity to review the proposals and make recommendations. Therefore, voters, who have no obligation to consider the views of the planning commission or be informed by its expertise, cannot use the initiative process to eliminate the planning commission's role in "areawide" land use planning and regulation, and thus potentially undermine the comprehensive plan for "systematic and organized" local development.[58]

Because this initiative is local, and not statewide, the power to initiate here was directly derived from AS 29.26.100,[59] not article XI, section 1 of Alaska's Constitution.[60]

Therefore, this court must conclude that zoning by initiative exceeds the scope of the legislative power granted by the legislature to the Matanuska-Susitna Borough.

The planning commission does more than simply give notice of hearings and allow the public to be heard on the subject of zoning ordinances. If a zoning amendment is proposed, the commission's role is to analyze the impact of the proposed changes in light of the Matanuska-Susitna Borough's development goals as stated in the comprehensive plan, and to suggest other changes that should accompany the proposed zoning amendment.[61] Even if the Matanuska-Susitna Borough chooses to disregard the recommendations of the planning commission, its decision has been informed by the planning commission's consideration of the potential social and

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[58] AS 29.40.010(a) ("areawide basis"); AS 29.40.020(a) ("borough shall establish a planning commission"); AS 29.40.020(b)(1) (requiring planning commission to prepare and submit a "proposed comprehensive plan . . . for the systematic and organized development of the borough").

[59] AS 29.26.100. Reservation of Powers. The powers of initiative and referendum are reserved to the residents of municipalities, except the powers do not extend to matters restricted by art. XI, Sec. 7 of the state constitution.

[60] AS 29.26.100 provides: "The powers of initiative and referendum are reserved to the residents of municipalities, except the powers do not extend to matters restricted by art. XI, § 7 of the state constitution."

[61] AS 29.40.040(a)(1); AS 29.40.020(b)(2).

regulatory costs and benefits of the proposed amendment. The Matanuska-Susitna Borough planning commission's role is not merely "procedural," but is substantive. Matanuska-Susitna Borough voters therefore could not bypass the commission by using the initiative power,[62] because zoning by initiative eliminates the planning commission's role both specified and implied in state statutes and borough ordinances.

Transamerica,[63] supports the views that the court should also express in this case. In Transamerica the Arizona Supreme Court adhered to a prior holding "that `zoning law is exempted from the initiative process,' in order to prevent private citizens from usurping the governing body's delegated power and from circumventing the notice and hearing requirements of the zoning statute."[64] The Arizona court noted that its holding in the case on which it relied was "in harmony with the law in the vast majority of other jurisdictions, which prohibits zoning by initiative."[65]

In the instant case, the Initiative seems to establish that the only purpose of the proposed ordinance is "to implement the will of the voters." It gives no indication that the sponsors of the Initiative were giving any independent consideration to the planning commission's recommendations or that it was considering the zoning amendment on its own merits in light of the comprehensive plan. The proposed measure is unenforceable as a matter of law, because "initiatives cannot be used to deprive a municipality of a power which state law specifically allows (and mandates) that it perform."

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[62] See, e.g., Kaiser Hawaii Kai Dev. Co. v. City & County of Honolulu, 70 Haw. 480, 777 P.2d 244, 247 (1989) (holding that "[z]oning by initiative is inconsistent with the goal of long range comprehensive planning" and was not intended by legislature); Carmony v. McKechnie, 217 P.3d 818, 821 (Alaska 2009) (quoting Griswold v. City of Homer, 186 P.3d 558, 563 (Alaska 2008)) (internal quotation marks omitted).

[63] Transamerica Title Ins. Co. v. City of Tucson, 157 Ariz. 346, 757 P.2d 1055, 1059 (1988) ("The power to zone is part of the police power and may be delegated by the State, but the subordinate governmental unit has no greater power than that which is delegated.").

[64] Id. at 1058.

[65] Id. at 1059.

Therefore, the zoning initiative,[66] is constitutionally and statutorily invalid. The power to initiate cannot exceed the power to legislate.[67]

The proposed zoning initiative is subject to pre-election judicial review because the Plaintiffs have shown that the zoning initiative[68] is clearly unconstitutional and clearly unlawful,"[69] and does not comply with the State's constitutional and statutory provisions regulating initiatives.

H. The Initiative creates a constitutional challenge to part of AS 17.38.210(a).

If the zoning initiative[70] is constitutionally and statutorily invalid,[71] where this zoning initiative impermissibly bypasses the Matanuska-Susitna Borough Planning Commission, and therefore exceeds the Matanuska-Susitna Borough's own legislative power, the portion of AS 17.38.210(a) that authorized area wide zoning by initiative is also unconstitutional, either as written, or at least as applied in this case.

That portion of AS 17.38.210(a) is either unconstitutional, or intended to imply a repeal of existing mandatory Alaska Statutes.[72] The Alaska Supreme Court has held, that while disfavored, it will consider whether newly enacted legislation should be

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[66] Initiative Ordinance Serial No. 15-088, the Matanuska-Susitna Borough Proposition No. B-1 "Prohibiting Marijuana Establishments Except Those Involving Industrial Hemp in the Area Outside of the Cities".

[67] Municipality of Anchorage v. Frohne, 568 P.2d 3, 8 (Alaska 1977) (citations omitted) ("[T]he subject of the initiative must constitute such legislation as the legislative body to which it is directed has the power to enact."); Carmony v. McKechnie, 217 P.3d 818, 821 (Alaska 2009) (quoting Griswold v. City of Homer, 186 P.3d 558, 563 (Alaska 2008)) (internal quotation marks omitted).

[68] Initiative Ordinance Serial No. 15-088, the Matanuska-Susitna Borough Proposition No. B-1 "Prohibiting Marijuana Establishments Except Those Involving Industrial Hemp in the Area Outside of the Cities".

[69] Carmony v. McKechnie, 217 P.3d 818, 819-20 (Alaska 2009).

[70] Initiative Ordinance Serial No. 15-088, the Matanuska-Susitna Borough Proposition No. B-1 "Prohibiting Marijuana Establishments Except Those Involving Industrial Hemp in the Area Outside of the Cities".

[71] See Section A, page 1-6 herein. Because the power to initiate cannot exceed the power to legislate.

[72] AS 29.40.010(a) ("areawide basis"); AS 29.40.020(a) ("borough shall establish a planning commission"); AS 29.40.020(b)(1) (requiring planning commission to prepare and submit a "proposed comprehensive plan . . . for the systematic and organized development of the borough").

interpreted to repeal existing law.[73] In determining whether to permit an implied repeal, courts focus on legislative intent.[74] *Generalia specialibus non derogant* ("the general does not detract from the specific").[75] Courts also construe statutes in a manner that avoids a finding of unconstitutionality.[76]

If it is found unconstitutional, then those five (5) words "or by a voter initiative" could be severed from the statute.[77] Or in the alternative, language could be added to require an initiative comply with the same statutory mandates imposed on Boroughs.

As the Supreme Court pointed out in Carmony,[78] the omission of the statutorily-mandated planning commission role is not the only reason the proposed initiative would be unenforceable as a matter of law. One of the limitations on a legislature is that it does not have the power "to divest itself and succeeding [legislatures] ... of powers vested in it by the general law for the benefit of its constituents; for this would be to repeal pro tanto the general law."[79]

Here, the proposed initiative would enact a comprehensive divestiture of the local legislature's statutorily-mandated role in zoning and land use planning. Such a

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[73] Allen v. Alaska Oil and Gas Conservation Comm'n, 147 P.3d 664, 668 n.17 (Alaska 2006).

[74] Id. at 668.

[75] Described in *The Vera Cruz*, (1884) 10 App. Cas. 59, as: "Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any evidence of a particular intention to do so." This means that if a later law and an earlier law are potentially—but not necessarily—in conflict, courts will adopt the reading that does not result in an implied repeal of the earlier statute. Lawmaking bodies usually need to be explicit if they intend to repeal an earlier law.

[76] State v. American Civil Liberties Union of Alaska, 204 P.3d 364, 373 (Alaska 2009).

[77] Sec. 01.10.030. Severability. Any law heretofore or hereafter enacted by the Alaska legislature which lacks a severability clause shall be construed as though it contained the clause in the following language: "If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application to other persons or circumstances shall not be affected thereby."

[78] Carmony v. McKechnie, 217 P.3d 818 (Alaska 2009) (quoting Griswold v. City of Homer, 186 P.3d 558, 563 (Alaska 2008)) (internal quotation marks omitted).

[79] Thompson v. Bd. of Trs. of City of Alameda, 144 Cal. 281, 77 P. 951, 952 (App.1904); see also 82 C.J.S. Statutes § 9 (2008).

divestiture would be beyond the legislature's power, so it is also beyond the power of the initiative or referendum.

I. Title and Body of the Initiative are Deceptive and Misleading.

The zoning Initiative's title and body are deceptive and misleading and likely to confuse voters who are both for and against the proposed Initiative, "Prohibiting Marijuana Establishments Except Those Involving Industrial Hemp in the Area Outside of the Cities." An initiative petition should present a straightforward, accurate, succinct and nonargumentative statement of the proposition in its title and in the body of the initiative. This initiative's description is anything but straightforward and accurate.

The title and the body of the Initiative appears to be intentionally deceptive and misleading and likely to confuse the voters that "Industrial Hemp" would not be affected by the initiative, if it passed, but this is not accurate under Alaska Statutes.

Based on the Alaska statutory definition of marijuana,[80] this Court must consider an axiom, that Industrial Hemp is included in the definition of marijuana, and would also be prohibited if the initiative passes, or the Initiative is not a single subject Initiative and would violate the constitutional prohibitions against more than one subject.[81] At the very least this Court must determine that the ballot title is "deceptive and misleading and not in a form which will produce a knowing and deliberate expression of voter choice."

Many voters do not read beyond the ballot measure title, and the ballot title "Prohibiting Marijuana Establishments Except Those Involving Industrial Hemp in the Area Outside of the Cities" is misleading, and consequently should be corrected or

[80] Sec. 17.38.900. Definitions. (7) "marijuana".

[81] In Alaska, the single-subject requirement may be treated as a procedural rule, reviewable only in preelection litigation. ALASKA STAT. § 15.45.040 (1982) specifies the "form" of an initiative bill: it must contain only one subject, which must be expressed in its title, and must contain an enacting clause.

removed from the 2016 election ballot. Specifically, the title "Prohibiting Marijuana Establishments Except Those Involving Industrial Hemp in the Area Outside of the Cities" might cause a voter who is either in favor or against adoption of the initiative measure, to cast a ballot opposing to their desires.

For example, a voter who believes the initiative is misguided, bad policy, pre-empted by state law, would hurt only commercial marijuana businesses and not hurt Industrial Hemp farmers, or simply believes that the Initiative would permit Industrial Hemp Farming, and is beneficial, could read the title . . . and erroneously cast a 'yes' vote because she or he favors Industrial Hemp Farming, and thus votes 'yes.' By the same token, a voter who is in favor of the initiative and reads the title . . . may erroneously cast a 'no' vote."

This Court has the power to prevent the use of a ballot not in conformity with the law and to compel officials to prepare and distribute proper ballots.

J. The zoning initiative violates Article X Section2 of the Alaska Constitution.

The zoning initiative would usurp undelegated powers from the Matanuska-Susitna Borough's proposed taxation powers, where the zoning initiative would prohibit the proposed tax that has already been placed on the ballot,[82] and would also prohibit the Matanuska-Susitna Borough from receiving the appropriation of funds already dedicated to the Matanuska-Susitna Borough.[83]

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[82] Proposition No. B-5, Areawide Sales Tax of Five Percent (5%) on Marijuana and Marijuana Products With a Limited Exemption for Sales Tax Paid to a City. Ordinance Serial No. 16-085 and IM No. 16-125 (Areawide Proposition).

[83] Sec. 17.38.200. Marijuana establishment registrations.

(c) Upon receiving an application or renewal application for a marijuana establishment, the board shall immediately forward a copy of each application and half of the registration application fee to the local regulatory authority for the local government in which the applicant desires to operate the marijuana establishment, unless the local government has not designated a local regulatory authority pursuant to AS 17.38.210(c).

In the Alaska Constitution, Article X Section 2 Local Government Powers, provides, "All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only."[84] (Emphasis added)

This section prohibits zoning initiatives that would interfere with, or usurp, the Borough's powers to impose taxes, collect taxes imposed, or the Borough's powers to receive appropriation of funds already dedicated to the Matanuska-Susitna Borough.

The zoning initiative, standing in the shoes of the Matanuska-Susitna Borough, seeks to do, through a vote of the people, what the Constitution of the State of Alaska and Alaska Statutes prohibit the Initiative and referendum from being used for:

> "The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation. The referendum shall not be applied to dedications of revenue, to appropriations, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health, or safety.[85]

Article X of the Alaska Constitution establishes the framework for local government in Alaska. Section 1 of the local government article states the following with respect to the purpose and construction of the constitutional provisions regarding local government: The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units. (Emphasis added).

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[84] See, State v. Alex, 646 P.2d 203 (Alaska. 1982) where the Supreme Court held, "In conclusion, then, we hold that the statute impermissibly delegates the taxing power to the regional associations, violating article X, section 2 of Alaska's constitution."

[85] Alaska Constitution, Article XI, Section 7; Alaska Statute Sec. 15.45.010. Provision and scope for use of the initiative. The law-making powers assigned to the legislature may be exercised by the people through the initiative. However, an initiative may not be proposed to dedicate revenue, to make or repeal appropriations, to create courts, to define the jurisdiction of courts or prescribe their rules, or to enact local or special legislation.

The Supreme Court has held that when the Initiative violates the constitutional restrictions on the initiative process it should have been rejected.[86] The unconstitutional zoning Initiative should not have been placed before the voters. An injunction should be granted directing that the proposed unconstitutional zoning ordinance be removed from the ballot.[87]

K. Unconstitutional takings and damage to the property rights of the Plaintiffs.

The sponsors of the unconstitutional zoning initiative, standing in the place of the Matanuska-Susitna Borough, caused a government takings and damage to the property rights of the Plaintiffs, in violation of the Alaska Constitution,[88] and in violation of the Constitution of the United States.[89]

The Defendant sponsors of the zoning initiative all knew that they were standing in place of the Matanuska-Susitna Borough, exercising the government powers of the Matanuska-Susitna Borough, in an attempt to create an area-wide zoning ordinance through the initiative process. The sponsors knew the purpose of the zoning initiative was to take away the personal property rights of every person in the Matanuska-Susitna Borough, including the Plaintiffs, to exercise their rights under the Alaska Constitution and Alaska Statutes to develop and use their own property for a commercial marijuana

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[86] Alaskans for Efficient Government, Inc. v. State, 153 P.3d 296 (Alaska 2007); and See, State v. Alex, 646 P.2d 203 (Alaska. 1982) where the Supreme Court held, "In conclusion, then, we hold that the statute impermissibly delegates the taxing power to the regional associations, violating article X, section 2 of Alaska's constitution." See also Whitson *v.* Anchorage, 608 P.2d 759 (Alaska 1980).

[87] Whitson *v.* Anchorage, 608 P.2d 759 (Alaska 1980).

[88] Article **I, § 18** of the Alaska Constitution states, "**Private property shall not be taken *or damaged* for public use without just compensation**" (emphasis added).

[89] Fifth Amendment, made applicable to the States through the Fourteenth Amendment. See, Chicago Burlington & Quincy Railroad Co. v. Chicago, 166 U.S. 226 (1897), where the justices unanimously held that the due process clause required state and local governments to give "just compensation" for taking private property for public purposes. Still, this decision did not connect the due process clause of the 14th Amendment to the Bill of Rights. According to the Supreme Court, "just compensation" was a right within the meaning of the due process clause itself.

business in the Matanuska-Susitna Borough. The Defendant sponsors of the zoning initiative caused, or contributed to, the unconstitutional takings and damage to the personal property rights of the Plaintiffs.

The Defendant Matanuska-Susitna Borough knew that zoning by initiative was invalid for proposing zoning in the Matanuska-Susitna Borough, that it violated existing mandatory Alaska statutes, and the Constitution,[90] and amounted to a takings action, in violation of Plaintiffs' constitutional rights, and damage to the personal property rights of the Plaintiffs by the Defendants.

The Defendant Matanuska-Susitna Borough, through the Assembly, knew at the time they declared the moratorium, based on the unconstitutional zoning initiative, or by due diligence should have known, that zoning by initiative was invalid for proposing any zoning in the Matanuska-Susitna Borough,[91] and the moratorium caused or contributed to a takings and damage to the personal property rights of the Plaintiffs, because of the intentional unconstitutional delay of many months, preventing Plaintiffs from exercising their own personal property rights to develop and use their own property for any type of commercial marijuana business in the Matanuska-Susitna Borough.

The Supreme Court of the United States has developed two "per se" rules for takings. First, when the government physically takes an interest in property, compensation is mandated whether taking all or just a part of an owner's interest.[92] Second, when a government action deprives the landowner of all economically viable

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[90] See, Section G. Invalid Exercise of Matanuska-Susitna Borough's Legislative Authority, page 8-13 herein.

[91] See, e.g., Kaiser Hawaii Kai Dev. Co. v. City & County of Honolulu, 70 Haw. 480, 777 P.2d 244, 247 (1989) (holding that "[z]oning by initiative is inconsistent with the goal of long range comprehensive planning" and was not intended by legislature); Carmony v. McKechnie, 217 P.3d 818, 821 (Alaska 2009) (quoting Griswold v. City of Homer, 186 P.3d 558, 563 (Alaska 2008)) (internal quotation marks omitted).

[92] Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 122 S.Ct. 1465, 1478-1479 (2002).

use of the land, a taking has occurred.[93] However, when a regulation prevents an owner from conducting certain activities without removing all viable use, a court must assess the purpose and the effect of the regulation. Using the "Penn Central Analysis," named for the case that established it, the court weighs the regulation's economic effect on the landowner, the extent to which the regulation interferes with reasonable investment-backed expectations, and the character of the government action.[94]

The Alaska Supreme Court explained in a case decided recently, in 2002,[95] in a pre-condemnation governmental activity,

> "We have never applied the case-specific analysis to a case involving pre-condemnation governmental activity.[96] We have applied it to date only to cases in which the government has, in its governmental capacity, allegedly restricted landowners from using their property or deprived them of the exclusive use of their property."[97]
> The court went on to say, "moreover, it is not clear how the case-specific factors we have identified might apply in such a case."[98] The fourth factor-the legitimacy of the interest advanced by "the regulation or land-use decision"-implicitly recognizes that <u>an ad hoc takings claim turns on an action having the purpose of affecting the landowner's property rights</u>." (But there was no indication the

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[93] Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992).

[94] Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 122 S.Ct. 1465, at 1475, citing Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978).

[95] Joseph M. Jackovich Revocable Trust v. State, Dept. of Transp., 54 P.3d 294, 2002 WL 31002501, Alaska, September 06, 2002 (NO. S-9686).

[96] The case-specific takings clause analysis originates in the Supreme Court's decisions. See, e.g., PruneYard Shopping Ctr. v. Robins, 447 U.S. 74, 83, 100 S.Ct. 2035, 64 L.Ed.2d 741 (1980) (identifying several factors to determine whether governmental action has gone beyond mere regulation, including "the character of the governmental action, its economic impact, and its interference with reasonable investment-backed expectations") (citation omitted); see also Penn Cent. Transp. Co. v. City of New York, 438 U.S. 104,124, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978) (explaining that courts must "engag[e] in ... essentially ad hoc, factual inquiries" to determine when "justice and fairness" require public as whole rather than small number of disproportionately burdened landowners bear costs of regulation).

[97] E.g., R & Y, Inc., 34 P.3d 289 (Alaska 2001) (where municipality imposed improvement setback restriction in wetland area); Balough v. Fairbanks N. Star Borough, 995 P.2d 245 (Alaska 2000) (where junkyard was no longer permissible use following rezoning); Cannone v. Noey, 867 P.2d 797 (Alaska 1994) (where state imposed restrictions on subdivision); Anchorage v. Sandberg, 861 P.2d 554 (Alaska 1993) (where municipality's decisions in opposing improvement district prevented landowner from creating improvement district); State, Dep't of Natural Res. v. Arctic Slope Reg'l Corp., 834 P.2d 134 (Alaska 1992) (where state law required well operators to disclose their drilling results to state, thus denying them exclusive use of their data).

[98] The factors are: "(1) the character of the governmental action; (2) its economic impact; (3) its interference with reasonable investment-backed expectations; and (4) the legitimacy of the interest advanced by the regulation or land-use decision." R & Y, 34 P.3d at 293.

actions in that case, attributed to the state, had any purpose of affecting or limiting the owners' rights or use of the affected properties. The complained-of actions were taken to give the owners and the community notice of the project's potential scope and progress.) (Emphasis added)

Plaintiffs have shown that the actions of the Defendants caused, or contributed to, unconstitutional takings and damage to the personal property rights of the Plaintiffs without just compensation.

As the Supreme Court stated in the 2002 case,[99]

> The fourth factor-the legitimacy of the interest advanced by "the regulation or land-use decision"- implicitly recognizes that an ad hoc takings claim turns on an action having the purpose of affecting the landowner's property rights. (Emphasis added)

But, unlike the 2002 case,[100] where in that case there was no indication that the actions attributed to the state had any purpose of affecting or limiting the owners' rights or use of the affected properties, in this case, the Plaintiffs have shown that was exactly the purpose of the Defendant sponsors of the zoning initiative, and exactly the purpose of the Defendant Matanuska-Susitna Borough, through the Assembly's moratorium, of affecting or limiting the owners' rights or use of the affected properties.

Plaintiffs have shown the illegitimacy of the zoning initiative, where it violated mandatory Alaska Statutes, and the Alaska Constitution, bypassing the mandatory planning commission review of land use ordinances and would thwart the state legislature's delegation of land use authority to the municipal assembly,[101] and would

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[99] Joseph M. Jackovich Revocable Trust v. State, Dept. of Transp., 54 P.3d 294, 2002 WL 31002501, Alaska, September 06, 2002 (NO. S-9686).

[100] Joseph M. Jackovich Revocable Trust v. State, Dept. of Transp., 54 P.3d 294, 2002 WL 31002501, Alaska, September 06, 2002 (NO. S-9686).

[101] See, e.g., Kaiser Hawaii Kai Dev. Co. v. City & County of Honolulu, 70 Haw. 480, 777 P.2d 244, 247 (1989) (holding that "[z]oning by initiative is inconsistent with the goal of long range comprehensive planning" and was not intended by legislature); Carmony v. McKechnie, 217 P.3d 818, 821 (Alaska 2009) (quoting Griswold v. City of Homer, 186 P.3d 558, 563 (Alaska 2008)) (internal quotation marks omitted).

not be enforceable as a matter of law, and the Defendant sponsor of that zoning initiative, standing in place of the Matanuska-Susitna Borough, caused a government takings and damage to the personal property rights of the Plaintiffs, for the public use, without just compensation.

Plaintiffs have shown the illegitimacy of the zoning initiative, that the Defendant Matanuska-Susitna Borough, through the Assembly, relied on to impose a moratorium intentionally affecting or limiting the Plaintiffs, the owners' rights or use of the affected properties, causing a government takings and damage to the personal property rights of the Plaintiffs without just compensation.

The zoning initiative clearly indicates the Defendant sponsors of the Initiative, were exercising the Matanuska-Susitna Borough's legislative zoning powers, in the place of the Matanuska-Susitna Borough government. Therefore, the intentional takings and damage of the personal property rights of the Plaintiffs was by the government, and since it was taken by, and for, the people, it was taken for public use, to prevent the Plaintiffs from using and developing their property for use of a marijuana business.

L. No ordinances or regulations prohibiting Marijuana Businesses at the time:

There were no ordinances or regulations prohibiting Marijuana Businesses, in the Matanuska-Susitna Borough, made pursuant to AS 17.38.210(b), at the time Plaintiffs invested in their properties and developed their properties for marijuana businesses.

Sec. 17.38.210. Local control.

(h) A local regulatory authority issuing a registration to an applicant shall do so within 90 days of receipt of the submitted or resubmitted application unless the local regulatory authority finds and notifies the applicant that the applicant is not in compliance with ordinances and regulations made pursuant to (b) of this section **in effect at the time the application is submitted to the local regulatory authority**. The local government shall notify the board if an annual

registration has been issued to the applicant. (Emphasis added)

> (b) A local government may enact ordinances or regulations not in conflict with this chapter or with regulations enacted pursuant to this chapter, governing the time, place, manner, and number of marijuana establishment operations. A local government may establish civil penalties for violation of an ordinance or regulation governing the time, place, and manner of a marijuana establishment that may operate in such local government.

The majority of legislatures require an express statement of retroactivity before an interpreter can construe a statute to apply to past conditions.[102]

Plaintiffs explained to the Matanuska-Susitna Borough Assembly during a public meeting, that new ordinances or regulations prohibiting Marijuana Businesses made pursuant to AS 17.38.210(b) could only be prospective, and could not have a retroactive effect.[103] This was in response to the Borough attorney's statement, during the public meeting, that they would establish an ordinance or regulation, make it a crime, make it retroactive, and put people in jail, to prevent them from exercising any "grandfathered in" rights. But it would not circumvent the "in effect at the time the of the application" mandate, or the "shall do so within 90 days of receipt of the submitted application..".

M. Alaska Statute did not authorize Local Government prohibition, by enactment of an Ordinance or by voter initiative, until after it took effect on February 21, 2016.

A review of the books, of voters' signatures, indicates that they were all signed in 2015, submitted in 2015, and then resubmitted again in 2016. It appears the proposed zoning initiative was prepared by the sponsors, submitted to the Clerk for approval, and the signatures were all gathered before the Alaska Statute was signed into law and took

[102] The codified canons require a statute's retroactive effect to be express, obvious, plain, manifest, or clear., No statute is retrospective unless expressly declared therein.
[103] AS § 01.10.090 (2008).

effect, that provided the authority for the Local Government prohibition, (commonly referred to as the opt out provision), by "enactment of an ordinance or by initiative."

The Alaska statute,[104] that first authorized the proposed zoning initiative, was not signed into law by Byron Mallot until January 22, 2016. The law did not take effect until 30 days later on February 21, 2016.[105]

But the day, and the dates, they were signed indicates the voters' signatures may have been induced by political propaganda to influence legislation, with 755 signatures gathered on Sundays, indicating the voters' signatures may have been the result of the influence of political propaganda to influence legislation.

Federal statutes prohibit churches from "carrying on political propaganda, or by otherwise attempting to influence legislation."[106] The subject of the proposed initiative, "Prohibiting Marijuana Establishments Except Those Involving Industrial Hemp in the Area Outside of the Cities," is believed to have become part of the political propaganda to influence legislation, directed by a tax exempt church, and may have even occurred on church property, on Sundays.

According to the wording in the Federal statutes, if political propaganda was used to influence legislation, it appears those churches could be subjected to a loss of their 501(c)(3) tax exempt status, and even punishments of possible fines, and forfeitures, that has sometimes even led to tax seizures and forfeitures of church properties.

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[104] AS 17.38.210 (a), "A local government may prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores through the enactment of an ordinance **or by a voter initiative**." (Emphasis added)

[105] AS 44.62.180. Local Option was still pending before the House, prior to being signed into law. See HB 75: "An Act relating to the regulation of marijuana by municipalities; and providing for an effective date." "AS 17.38.110(a) is amended to read . ."

[106] Title 26 U.S.C. § 501(c)(3). Disqualified organizations, for purposes of tax exempt status set out in paragraph (3), an organization is a disqualified organization if it is - (A) described in section 170(b)(1)(A)(i) (relating to churches), (B) an integrated auxiliary of a church or of a convention or association of churches.

The proposed zoning initiative was submitted to the Clerk on May 7, 2015. On May 15, 2015, the Clerk submitted her review of the application rejecting the application for initiative because the title did not accurately reflect the contents of the initiative. A copy of the memorandum opinion of the Borough attorney was included.

On Page 2 of the May 15, 2015 letter it states, "The signatures of at least 10 registered voters (sponsors) is affixed, and they are registered voters from outside the cities of Houston, Palmer, and Wasilla." The sponsors names and addresses contains fourteen signatures. However, it is stamped at the top as being received by the Clerk's Office on May 22, 2015. This would appear to be seven (7) days after the May 15, 2015 letter was written. A review of the sponsors' information indicates 1) address that does not exist, 2) a vacant lot, and 3) a number that appear may be within the cities.[107]

N. Prejudice to the Plaintiffs caused by the Defendants Takings:

Plaintiffs' investment, expenses, and loss of income, from the invalid proposed initiative, that violates mandatory Alaska Statutes, and is unconstitutional, caused or contributed to the unconstitutional takings of the Plaintiffs' constitutional and statutory personal property rights, to exercise their right to engage in lawful marijuana business in the Matanuska-Susitna Borough, due to the proposed zoning initiative, and because of the moratorium, is not presented herein, because this action is for declaratory judgment and injunctive relief. Plaintiffs reserve their right to present their losses and damages to their rights in a separate taking action, including, but not limited to, Plaintiffs' investment, maintenance and other expenses, and actual loss of income, due to the unconstitutional

[107] AS 15.45.330.
Each petition shall include a statement of warning that a person who signs a name other than the person's own to the petition, or who knowingly signs more than once for the same proposition at one election, or who signs the petition when knowingly not a qualified voter is guilty of a class B misdemeanor.

takings and damage to the rights of the Plaintiff, and the illegal and unconstitutional delay intentionally caused by the Defendants.

O. No sovereign immunity for takings actions:

First English Evangelical Lutheran Church[108] holds that the Constitution requires a state to waive its sovereign immunity to the extent necessary to allow claims to be filed against it for takings of private property for public use.[109] It is also true that when the government takes property for a public use it must pay interest,[110] which is (among other things) compensation for delay in getting money that is owed one.[111] The other side of this coin, however, is that if a person whose property is taken is entitled to interest at a properly compensatory rate from the date of the taking.[112]

PLAINTIFFS' CLAIMS FOR RELIEF

Plaintiffs incorporate by reference each of the allegations in pages 1-32 above, and request the following relief:

A. For a declaratory judgment, declaring as follows:

1. That the proposed zoning initiative is in clear conflict "with one or more state statutes";

2. That the proposed zoning initiative violates "explicit constitutional prohibitions";

3. That the proposed zoning initiative "cannot be used to deprive a municipality of a power which state law specifically allows (and mandates) that it perform";

---

[108] First English Evangelical Lutheran Church v. County of Los Angeles, 482 U.S. 304, 315-16 (1987).
[109] Cf. McKesson Corp. v. Division of Alcoholic Beverages & Tobacco, 496 U.S. 18, 36-41 (1990); Ward v. Board of County Commissioners, 253 U.S. 17, 24 (1920).
[110] Library of Congress v. Shaw, 478 U.S. 310, 317 n. 5 (1986); cf. Kirby Forest Industries, Inc. v. United States, 467 U.S. 1, 18 (1984); Jacobs v. United States, 290 U.S. 13, 17 (1933); Evans v. City of Chicago, 10 F.3d 474, 481 (7th Cir. 1993) (en banc); Simon v. Cebrick, 53 F.3d 17, 24 (3d Cir. 1995),
[111] Library of Congress v. Shaw, supra, 478 U.S. at 321 -22.
[112] Evans v. City of Chicago, supra, 10 F.3d at 481-82.

4. That "[t]he power to initiate cannot exceed the power to legislate", and the proposed zoning initiative exceeds Matanuska-Susitna Borough's legislative powers;

5. That a portion of AS 17.38.210(a), that authorized area wide zoning by initiative is unconstitutional, either as written, or at least as applied in this case. The statute that authorized area wide zoning by initiative "is in clear conflict with one or more state statutes" and is unconstitutional;

6. That the Defendant Sponsors of the proposed zoning initiative were standing in place of the Matanuska-Susitna Borough, exercising the government powers through the initiative, the legislative powers of the Matanuska-Susitna Borough;

7. That the wording in the proposed zoning initiative seems to establish that the only purpose of the proposed ordinance is "to implement the will of the voters";

8. That the wording in the proposed zoning initiative seems to establish that it is intended to take away the personal property rights of everyone in the Matanuska-Susitna Borough, outside of the cities of Houston, Palmer, and Wasilla, to exercise their constitutional and statutory right to engage in marijuana businesses in the Matanuska-Susitna Borough, if it passes;

9. That Matanuska-Susitna Borough's moratorium, based on an invalid proposed zoning initiative, caused, or contributed to, a delay in the consideration of the Plaintiffs' exercise of their constitutional and statutory rights to engage in marijuana businesses in the Matanuska-Susitna Borough;

10. That Matanuska-Susitna Borough clerk, and the Borough Attorney, knew, or by due diligence should have known, that the teachings of the Supreme Court in

Griswold v. City of Homer,[113] Carmony v. McKechnie,[114] and Municipality of Anchorage v. Frohne,[115] have made it clear that zoning by initiative is invalid, and that the Clerk exceeded her jurisdiction in accepting an application for a proposed zoning initiative which did not comply with the statutory requisites.

B. For a preliminary and permanent injunction directing as follows:

1. To prevent the zoning initiative[116] from being placed before the voters;

2. To have the zoning initiative removed from the Ballot; and

3. To prevent any votes from being counted on the zoning initiative, in the event that it is voted on, until after this matter is resolved.

C. Grant the Plaintiffs attorney fees, research expenses, and costs for having to bring this action to vindicate violation of t Plaintiffs constitutional and statutory rights.[117]

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests this Court enter the Declaratory Judgments, and grant the injunctions, prayed for herein.

Respectfully submitted this 1st day of September 2016.

Thomas Hannam, Plaintiff *pro se*

Ronda Marcy, Plaintiff *pro se*

[113] 186 P.3d 558 (Alaska 2008).

[114] Carmony v. McKechnie, 217 P.3d 818, (Alaska 2009); and See also Griswold v. City of Homer, 186 P.3d 558, 563 (Alaska 2008))

[115] *See* Municipality of Anchorage v. Frohne, 568 P.2d 3, 8 (Alaska 1977) ("[T]he subject of the initiative must constitute such legislation as the legislative body to which it is directed has the power to enact.").

[116] Initiative Ordinance Serial No. 15-088, the Matanuska-Susitna Borough Proposition No. B-1 "Prohibiting Marijuana Establishments Except Those Involving Industrial Hemp in the Area Outside of the Cities".

[117] by an invalid unconstitutional proposed zoning initiative that violates mandatory Alaska statutes and usurps planning and zoning powers mandated for the Borough to exercise.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 2nd day of September, 2016, a true and complete copy of the above and foregoing document was served on the appropriate parties by placing it in the United States Mail with first class postage prepaid and addressed as follows: All served by Process Service

Matanuska-Susitna Borough
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Palmer, AK 99645
Phone: (907) 861-7801

Larry DeVilbiss.
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Palmer, AK 99645

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Sally Pollen
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Barry Orzalli
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Wasilla, Alaska 99623

Ted Franke
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Dennis Hotchkiss;
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Paul Riley
7851 E. SouthShore Drive
Wasilla, Alaska 99687

Philip Markwardt
3641 Puffin Circle
Palmer, Alaska 99645

Paul Steiner
10739 E. Center Street
Palmer, Alaska 99645

Bob Lee
1500 E. Robin Lane
Palmer, Alaska 99645

Dated this 2nd Day of September, 2016,

Signed, Randy Mercy

Thomas Hannam
435 S. Knik Street
Wasilla, AK 99654
(907) 775-1880

Ronda Marcy
P.O. Box 3771
Palmer, Alaska 99645
(907) 376-2232 – Phone
(907) 376-0530 - Fax

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SEP 06 2016
MATANUSKA-SUSITNA BOROUGH
BOROUGH ATTORNEY'S OFFICE

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

Thomas Hannam and Ronda Marcy, Plaintiffs, v. Matanuska-Susitna Borough; Barry Orzalli; Ted Franke; Christopher R. Miller; Robert Hanner; Stephen D. Guisinger; Paul Riley; Paul Steiner; Dennis Hotchkiss; Bob Lee; Philip Markwardt; Rudy Poglitsh; Timothy R. Sergie; Daniel Hamm; Sally Pollen; and Larry DeVilbiss. Defendants.	Case No. 3PA-16-1952 C.

AFFIDAVIT OF THOMAS HANNAM IN SUPPORT OF THE EMERGENCY MOTION FOR DECLARATORY JUDGMENT AND FOR MANDATORY AND INJUNCTIVE RELIEF

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Thomas Hannam, being first duly sworn, deposes and states:

1. That I am an adult resident of the State of Alaska, and that I am the named Plaintiff in the above styled and numbered cause.

2. That I have personal knowledge of the facts in the Emergency-Expedited Complaint for Declaratory Judgment and for Injunctive Relief, and that I reviewed my Emergency-Expedited Complaint for Declaratory Judgment and for Injunctive Relief, finding any factual assertions made therein to be true to the best of my knowledge and belief.

3. Affiant sayeth further naught.

RESPECTFULLY submitted on this the 1st day of September, 2016.

BY _____
Thomas Hannam, Plaintiff, pro se

SUBSCRIBED AND SWORN to before me this 1st day of September, 2016.

By Ronda Marcy
Notary Public for Alaska
My Commission expires: 12-25-16

RONDA L. MARCY
NOTARY
PUBLIC
STATE OF ALASKA

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 2nd day of September, 2016, a true and complete copy of the above and foregoing document was served on the appropriate parties by placing it in the United States Mail with first class postage prepaid and addressed as follows: All served by Process Service.

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Paul Steiner
10739 E. Center Street
Palmer, Alaska 99645

Bob Lee
1500 E. Robin Lane
Palmer, Alaska 99645

Dated this 2nd Day of September, 2016,

Signed, Renda Marcy

Thomas Hannam
435 S. Knik Street
Wasilla, AK 99654
(907) 775-1880

Ronda Marcy
P.O. Box 3771
Palmer, Alaska 99645
(907) 376-2232 – Phone
(907) 376-0530 - Fax

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SEP 06 2016
MATANUSKA-SUSITNA BOROUGH
BOROUGH ATTORNEY'S OFFICE

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

Thomas Hannam and Ronda Marcy, Plaintiffs, v. Matanuska-Susitna Borough; Barry Orzalli; Ted Franke; Christopher R. Miller; Robert Hanner; Stephen D. Guisinger; Paul Riley; Paul Steiner; Dennis Hotchkiss; Bob Lee; Philip Markwardt; Rudy Poglitsh; Timothy R. Sergie; Daniel Hamm; Sally Pollen; and Larry DeVilbiss. Defendants.	Case No. 3PA-16-1952 CI

AFFIDAVIT OF RONDA MARCY IN SUPPORT OF THE EMERGENCY MOTION FOR DECLARATORY JUDGMENT AND FOR MANDATORY AND INJUNCTIVE RELIEF

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Ronda Marcy, being first duly sworn, deposes and states:

1. That I am an adult resident of the State of Alaska, and that I am the named Plaintiff in the above styled and numbered cause.

2. That I have personal knowledge of the facts in the Emergency-Expedited Complaint for Declaratory Judgment and for Injunctive Relief, and that I reviewed my Emergency-Expedited Complaint for Declaratory Judgment and for Injunctive Relief, finding any factual assertions made therein to be true to the best of my knowledge and belief.

3. Affiant sayeth further naught.

RESPECTFULLY submitted on this the 1st day of September 2016.

BY Ronda Marcy
Ronda Marcy, Plaintiff, pro se

SUBSCRIBED AND SWORN to before me this 1st day of Sept, 2016.

By Sierra R. Dresnek
Notary Public for Alaska
My Commission expires:

OFFICIAL SEAL
Sierra R. Dresnek
Notary Public-State of Alaska
My Comm. Expires: 08/07/2017

CERTIFICATE OF SERVICE

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Paul Steiner
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Palmer, Alaska 99645

Bob Lee
1500 E. Robin Lane
Palmer, Alaska 99645

Dated this 2nd Day of September, 2016,

Signed, Ronda Marcy

Thomas Hannam
435 S. Knik Street
Wasilla, AK 99654
(907) 775-1880

Ronda Marcy
P.O. Box 3771
Palmer, Alaska 99645
(907) 376-2232 – Phone
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MATANUSKA-SUSITNA BOROUGH
BOROUGH ATTORNEY'S OFFICE

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

Thomas Hannam and Ronda Marcy, Plaintiffs, v. Matanuska-Susitna Borough; Barry Orzalli; Ted Franke; Christopher R. Miller; Robert Hanner; Stephen D. Guisinger; Paul Riley; Paul Steiner; Dennis Hotchkiss; Bob Lee; Philip Markwardt; Rudy Poglitsh; Timothy R. Sergie; Daniel Hamm; Sally Pollen; and Larry DeVilbiss. Defendants.	Case No. 3PA-16-1952 CI

ORDER

This matter came before the court on Plaintiffs' Emergency Expedited Complaint for Declaratory Judgment and for Injunctive Relief, supported by affidavit of Plaintiffs.

Based on the un-contradicted facts, contained in Plaintiffs' Complaint, it appears the Plaintiffs have established a case of actual controversy between the parties. Therefore, this Court may declare the rights and legal relations of the Plaintiffs, (the interested parties seeking the declaration), whether or not further relief is or could be sought.

JURISDICTION

This Court has jurisdiction over this action pursuant to AS 22.10.020(g),[1] Alaska Civil Rule 57(a),[2] and AS 44.62.010-44.62.950.

COURT'S DECISION

After a review of the complaint, any opposition thereto, and any reply that may have been filed, it appears the Plaintiffs have established that they are entitled to the relief that they request.

It is Hereby ORDERED, that the Plaintiffs' Emergency-Expedited Complaint for Declaratory Judgment and for Injunctive Relief, is Hereby GRANTED.

Therefore, it is Hereby ORDERED, the Court issues a Declaratory Judgment to the Plaintiffs, declaring the following:

1. That the proposed zoning initiative is in clear conflict "with one or more Alaska statutes";

2. That the proposed zoning initiative violates "explicit constitutional prohibitions";

3. That the proposed zoning initiative "cannot be used to deprive a municipality of a power which state law specifically allows (and mandates) that it perform";

4. That "[t]he power to initiate cannot exceed the power to legislate", and the proposed zoning initiative exceeds Matanuska-Susitna Borough's legislative powers;

5. That a portion of AS 17.38.210(a), that authorized area wide zoning by initiative is unconstitutional, either as written, or at least as applied in this case. The

---

[1] AS 22.10.020(g). In case of an actual controversy in the state, the superior court, upon the filing of an appropriate pleading, may declare the rights and legal relations of an interested party seeking the declaration, whether or not further relief is or could be sought. The declaration has the force and effect of a final judgment or decree and is reviewable as such. Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against an adverse party whose rights have been determined by the judgment.

[2] Civil Rule 57(a) provides, in part: "The procedure for obtaining a declaratory judgment pursuant to statute shall be in accordance with these rules.... The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate."

statute that authorized area wide zoning by initiative "is in clear conflict with one or more state statutes" and is unconstitutional;

6. That the Defendant Sponsors of the proposed zoning initiative were standing in place of the Matanuska-Susitna Borough, exercising the government powers through the initiative, the legislative powers of the Matanuska-Susitna Borough;

7. That the wording in the proposed zoning initiative seems to establish that the only purpose of the proposed ordinance is "to implement the will of the voters";

8. That the wording in the proposed zoning initiative seems to establish that it is intended to take away personal property rights of everyone in the Matanuska-Susitna Borough, outside of the cities of Houston, Palmer, and Wasilla, to exercise their constitutional and statutory right to engage in marijuana businesses in the Matanuska-Susitna Borough;

9. That Matanuska-Susitna Borough's moratorium, based on an invalid proposed zoning initiative, caused, or contributed to, a delay in the consideration of the Plaintiffs' exercise of their constitutional and statutory rights to engage in marijuana businesses in the Matanuska-Susitna Borough;

10. That Matanuska-Susitna Borough clerk, and the Borough Attorney, knew, or by due diligence should have known, that the teachings of the Supreme Court in Griswold v. City of Homer,[3] Carmony v. McKechnie,[4] and Municipality of Anchorage v. Frohne,[5] have made it clear that zoning by initiative is invalid, and that the Clerk exceeded her jurisdiction in accepting an application for a proposed zoning initiative which did not comply with the statutory requisites.

---

[3] 186 P.3d 558 (Alaska 2008).

[4] Carmony v. McKechnie, 217 P.3d 818, (Alaska 2009); and See also Griswold v. City of Homer, 186 P.3d 558, 563 (Alaska 2008))

[5] *See* Municipality of Anchorage v. Frohne, 568 P.2d 3, 8 (Alaska 1977) ("[T]he subject of the initiative must constitute such legislation as the legislative body to which it is directed has the power to enact.").

The Court further ORDERS as follows:

A Preliminary and Permanent Injunction is GRANTED to the Plaintiffs.

The Injunction Hereby ORDERS the Clerk of the Matanuska-Susitna Borough is Hereby Directed as follows:

1. To prevent the zoning initiative[6] from being placed before the voters;

2. To have the zoning initiative removed from the Ballot; and

3. To prevent any votes from being counted on the zoning initiative, in the that it is voted on, until after this matter is resolved.

The Court Further ORDERS as follows:

Plaintiffs are Hereby GRANTED

Plaintiffs' attorney fees, research expenses, and costs for having to bring this action to vindicate violation of the Plaintiffs constitutional and statutory rights.[7]

DATED this _____day of _____, 2016.

_____
Hon._____,
Superior Court Judge

[6] Initiative Ordinance Serial No. 15-088, the Matanuska-Susitna Borough Proposition No. B-1 "Prohibiting Marijuana Establishments Except Those Involving Industrial Hemp in the Area Outside of the Cities".
[7] by an invalid unconstitutional proposed zoning initiative that violates mandatory Alaska statutes and usurps planning and zoning powers mandated for the Borough to exercise.

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Dated this 2nd Day of September, 2016,

Signed, Ronda Marsh