

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

RECEIVED TRIAL COURT
State of Alaska Third District
at Palmer

SEP 19 2016

Clerk of the Trial Courts
By _____ Deputy

THOMAS HANNAM, et al.)
)
Plaintiffs,)
)
v.)
)
MATANUSKA-SUSITNA BOROUGH,)
 et al.)
)
Defendants.)

Case No. 3PA-16-01952 CI

MATANUSKA-SUSITNA BOROUGH'S OPPOSITION TO REQUEST
FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF AND CROSS MOTION
FOR SUMMARY JUDGMENT

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COMES NOW the Matanuska-Susitna Borough (the "Borough"), by and through the Borough Attorney's Office and presents this Opposition to Request for Declaratory Judgment and Injunctive Relief and Cross Motion for Summary Judgment and states as follows:

Plaintiffs in this matter are *pro-per*. The complaint filed here appears to be in the simultaneous form of a complaint and motion for summary judgment or judgment on the pleadings. This Opposition is against the claims for relief and the Borough is moving for summary judgment.

The Borough Clerk is obligated by state law and Alaska Supreme Court precedent to place proposition B-1, Ordinance Serial No. 15-088, before the voters. Claims for declaratory

relief must fail at this time because there is no controlling authority as to the errors claimed in the complaint. The remaining allegations of error are meritless or not ripe at this time.

The plaintiffs have an adequate remedy at law, cannot show irreparable harm, and cannot show probable success on the merits so a preliminary injunction is not warranted.

FACTS

A statewide ballot initiative to enact AS 17.38 and generally legalize marijuana was placed before the voters in the November 2014 statewide general election. That ballot measure was passed by the voters. As per Art. XI, § 6 of the Alaska Constitution, AS 17.38 took effect ninety days after certification and became law on February 24, 2015. See AS 17.38.010 (refs and annos).

A. The proposed initiative here.

On May 22, 2015, the Matanuska-Susitna Borough Clerk received an application for initiative petition titled "Application for Ballot Initiative to Prohibit Marijuana Businesses Except Those Involving Industrial Hemp in the Matanuska-Susitna Borough¹." See Affidavit of Lonnie McKechnie.

¹ This application was essentially a re-submittal of a prior application submitted May 7, 2015 "Application for Ballot Initiative to Prohibit Marijuana businesses in the Matanuska-Susitna Borough" which was rejected by the Clerk.

The Borough Clerk approved the application and prepared petition signature books for sponsors to circulate as per 29.26.120. Id. After the sponsors were provided additional time to gather signatures as per AS 29.26.140(b), the Borough Clerk certified the petition on September 25, 2015. Id. The proposed ordinance was assigned a number 15-088. Id.

The 2015 Borough regular election was held on the first Tuesday of October which was October 6, 2015. Id. Since the initiative proposing Initiative Ordinance 15-088 was certified less than 75 days before the election, it was not placed on the 2015 ballot as per AS 29.26.179. Instead, Initiative Ordinance 15-088 was held to be placed on the next regular or special election. Id.

A local election involves a great deal of preparation. Rather than re-write the relevant portions, dates and facts of the preparation and voting already occurring, the Borough hereby incorporates by reference Part B "The upcoming election and ballot preparation" found in the "FACTS" section and both Affidavits supporting the Matanuska-Susitna Borough's opposition to the request injunction based on latches. See Matanuska-Susitna Borough's Opposition to Request For Preliminary And Permanent Injunction (Latches); Affidavit of Lonnie McKechine and

Affidavit of Brenda Henry in support. Those facts are relevant to this opposition/motion as well.

The 2016 Borough regular election is the only election by the Matanuska-Susitna Borough since October 2015. Id.

B. The complaint here.

On September 1, 2016, plaintiffs, in proper persona, filed a 35 page "Expedited Complaint for Declaratory and Injunctive Relief."

Headings of the complaint are on pages as follows:

- A. Jurisdiction (p.3)
- B. Venue (p.3)
- C. Parties (p.3)
- D. Legal Background of the Case of Actual Controversy (p.4)
- E. Plaintiff's seek Declaratory Judgment and Injunctive Relief (p.7)
- F. Preelection Review of the Initiative (p.8)
- G. Invalid Exercise of Matanuska-Susitna Borough's Legislative Authority (p.13)
- H. The Initiative creates a constitutional challenge to part of AS 17.38.210(a) (p.19)
- I. Title and Body of the Initiative are Deceptive and Misleading (p.21)
- J. The zoning initiative violates Article X Section 2 of the Alaska Constitution. (p.22)
- K. Unconstitutional takings and damage to the property rights of the Plaintiffs. (p.24)
- L. No ordinances or regulations prohibiting Marijuana Businesses at the time (p.28)
- 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. (p.29)
- N. Prejudice to the Plaintiffs caused by the Defendants Takings (p.31)
- O. No sovereign immunity for takings actions (p.32)

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See Complaint.

Simultaneous with filing the complaint, the plaintiffs requested expedited consideration. See Emergency Motion for Expedited Consideration. This request was granted by the court *ex parte*, and the time to answer/oppose was shortened to 10 days from distribution of the order. See Order dated 7 September, 2106.

Plaintiffs request injunctive relief to stop the ballot question from going forward and 10 separate points of declaratory relief amounting to a conclusion that the Borough acted illegally.

LAW

Summary judgment is appropriate where there are no genuine issues of material fact and a party is entitled to judgment as a matter of law. Ak R. Civ. P. 56; City of St. Mary's v. St. Mary's Native Corp., 9 P.3d 1002, 1005 (Alaska 2000).

Upon appeal, the Alaska Supreme Court will review a grant of summary judgment *de novo*, and review questions of law presented on appeal from a grant of summary judgment by adopting "the rule of law that is most persuasive in light of precedent, reason, and policy." Carmony v. McKechnie, 217 P.3d 818, 819 (Alaska 2009).

1. AS 17.38: The Regulation of Marijuana.

The statewide voter initiative enacting AS 17.38 and generally legalizing marijuana took effect on February 24, 2015. See AS 17.38.010 (refs and annos). However, AS 17.38 contained several provisions which were delayed. For example, AS 17.38.190(a)² provides, in part "Not later than nine months after February 24, 2015, the board shall adopt regulations necessary for implementation of this chapter. . ." AS 17.38.190. In addition, AS 17.38.200(b)³ provides "The board shall begin accepting and processing applications to operate marijuana establishments one year after February 24, 2015." AS 17.38.200.

Other provisions of AS 17.38 contained no implementation provisions and took effect without delay. For example, the definitions sections took effect on February 24, 2015. AS 17.38.900 defines the subject matter and provides:

(7) "marijuana" means all parts of the plant of the genus *cannabis* whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its

² Formerly AS 17.38.090 but renumbered since enactment. In addition, the original language read "Not later than nine months after the effective date of this act. . ." but that date reference is now codified to read "Not later than nine months after February 24, 2015. . ." See 2014 Statewide Ballot Measure 2 (13PSUM).

³ Formerly AS 17.38.100 but renumbered since enactment. In addition, the original language in subsection (b) read "The board shall begin accepting and processing applications to operate marijuana establishments one year after the effective date of this act." but that date reference is now codified to read ". . . one year after February 24, 2015." See 2014 Statewide Ballot Measure 2 (13PSUM).

seeds, or its resin, including marijuana concentrate; "marijuana" does not include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products;

AS 17.38.900.

Another part of AS 17.38 which did not contain a delayed implementation date was AS 17.38.210 titled "Local Control" and provides, in part:

(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.

AS 17.38.210(a).

Just as with any law applying to local government, the provisions of the Alaska Constitution apply to the operation of AS 17.38. In particular, when dealing with the powers of local governments, the Alaska Constitution provides:

A liberal construction shall be given to the powers of local government units.

Alaska Const. Art X, § 1.

2. Initiative Statutes.

The Alaska Constitution reserves to the people the power of initiative on a statewide basis. Alaska Constitution, Art 11, § 1. However, at the local level, the power to initiate is

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reserved by statute. Griswold v. City of Homer, 186 P.3d 558, 563 (Alaska 2008). As per Alaska law:

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.

AS 29.26.100.

Alaska Statutes contain a comprehensive set of rules regarding an application for an initiative petition, contents of a petition, signature requirements, supplementary signature rules, protest procedures if denied, rules about new petitions and rules governing elections. AS 29.26.110-170. Specifically relevant to the case here, AS 29.26.110 is titled "Application for petition" and provides:

(a) An initiative or referendum is proposed by filing an application with the municipal clerk containing the ordinance or resolution to be initiated or the ordinance or resolution to be referred and the name and address of a contact person and an alternate to whom all correspondence relating to the petition may be sent. An application shall be signed by at least 10 voters who will sponsor the petition. An additional sponsor may be added at any time before the petition is filed by submitting the name of the sponsor to the clerk. Within two weeks the clerk shall certify the application if the clerk finds that it is in proper form and, for an initiative petition, that the matter:

- (1) is not restricted by AS 29.26.100;
- (2) includes only a single subject;
- (3) relates to a legislative rather than to an administrative matter; and
- (4) would be enforceable as a matter of law.

(b) A decision by the clerk on an application for petition is subject to judicial review.

AS 29.26.110.

3. Supreme Court precedent on initiatives.

A. Review and processing of initiatives.

As for review and processing of an application for initiative petition, the Alaska Supreme Court has described the municipal clerk's role in the following manner:

[C]lerks should only deny initiative petitions that violate the constitutional and statutory rules regulating initiatives or that propose ordinances for which controlling authority precludes enforcement as a matter of law.

. . . .

Prior to the election, courts will review only the question whether an initiative meets the constitutional and statutory provisions regulating initiatives. Courts will not review the constitutionality of the substantive initiative proposal until and unless the voters pass the ordinance.

Kodiak Island Borough v. Mahoney, 71 P.3d 896, 898 (Alaska 2003) (footnotes omitted).

The Alaska Supreme Court developed this standard further in later cases where it explained:

The constitutionality of an initiative may be reviewed either before it goes to the voters or after it is enacted. We have divided challenges into two categories to determine when review is proper. One type of challenge invokes 'the particular constitutional and statutory provisions regulating initiatives.' The executive officer in charge of certifying initiatives - - in this case, the municipal clerk -- has discretion to reject the measure if she determines it 'violates any of these liberally construed restrictions on initiatives,' and the courts may review the clerk's decision right away. Separation of powers principles are not offended by this procedure, as these restrictions were devised to prevent certain questions

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from going before the electorate at all; an executive officer must play the gatekeeper role in the first instance. Other challenges are grounded in 'general contentions that the provisions of an initiative are unconstitutional.' The executive officer may only reject the measure if 'controlling authority' leaves no room for argument about its unconstitutionality. The initiative's substance must be on the order of a proposal that would 'mandate local school segregation based on race' in violation of *Brown v. Board of Education* before the clerk may reject it on constitutional grounds. And absent controlling authority, the court should not decide this type of challenge until the initiative has been enacted by the voters.

Alaska Action Center, Inc. v. Municipality of Anchorage, 84 P.3d 989 (Alaska 2004) (footnotes omitted).

In the case of Swetzof v. Philemonoff, 203 P.3d 471 (Alaska 2009) the Alaska Supreme Court also discussed:

First, we "construe voter initiatives broadly so as to preserve them whenever possible." Thus, we narrowly interpret the subject matter limitations placed on initiatives by the Alaska Constitution and statutes. Nonetheless, courts have a duty to give careful consideration to questions involving whether a constitutional or statutory limitation prohibits a particular initiative proposal on subject matter grounds.

Second, because this case involves questions of whether the proposed initiative complies with the statute regulating initiatives, it is appropriately decided before the proposed initiative is voted on by the electorate:

Pre-election review of challenges to ballot initiatives is limited to ascertaining "whether [the initiative] complies with the particular constitutional and statutory provisions regulating initiatives."

Other claims of unlawfulness are justiciable only after the initiative is enacted. Thus, our review at this stage is limited to compliance with AS 29.26.110(a).

Id. at 474-475 (citations omitted).

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There are scant few Alaska Supreme Court cases upholding a rejection of an initiative because it is an improper subject matter outside of the express prohibitions in the Alaska Constitution. The Alaska Supreme Court approved a rejection of a petition calling for the State of Alaska's secession from the United States. Kohlhaas v. State, Office of Lieutenant Governor, 147 P.3d 714, 715 (Alaska 2006). Such a proposition is clearly illegal in light of the Civil War.

Also, in Griswold v. City of Homer, 186 P.3d at 565, the Alaska Supreme Court considered a case where an initiative went forward (because there was no controlling authority to the contrary) and then after it passed, there was a post-election claim the subject matter was illegal. In Griswold, the Alaska Supreme Court first ruled that zoning by initiative is invalid. This prohibition was later reaffirmed in a case involving the Matanuska-Susitna Borough where the Borough Clerk rejected an initiative application and did not allow it to proceed to the ballot. Carmony v. McKechnie, 217 P.3d 818, 821 (Alaska 2009), (the initiative is "clearly barred by our holding in *Griswold*.")

B. Restrictions on appropriation by initiative.

[I]nitiatives touching upon the allocation of public revenues and assets require careful consideration because the constitutional right of direct legislation is limited by the Alaska Constitution.

Pullen v. Ulmer, 923 P.2d 54 (Alaska 1996) citing, Fairbanks v. Convention & Visitors Bureau, 818 P.2d 1153, 1155 (Alaska 1991).

The Alaska Supreme Court addressed numerous initiatives which have been challenged as violating the constitutional prohibition on using initiatives for appropriations. See Thomas v. Bailey, 595 P.2d 1 (Alaska 1979); Alaska Conservative Political Action Committee v. Municipality of Anchorage, 745 P.2d 936 (Alaska 1987); McAlpine v. University of Alaska, 762 P.2d 81 (Alaska 1988); City of Fairbanks v. Fairbanks Convention and Visitors Bureau, 818 P. 2d 1153 (Alaska 1991); Pullen v. Ulmer, 923 P.2d 54 (Alaska 1996); Alaska Action Center, Inc. v. Municipality of Anchorage, 84 P. 3d 989 (Alaska 2004).

In Pullen v. Ulmer, 923 P.2d 54 (Alaska 1996), the Court addressed a proposed initiative providing that subsistence, personal use, and sport fisheries would receive a preference to take a specific portion of the salmon harvest before the remaining harvestable salmon are allocated to commercial fisheries. The court held that this was an appropriation and, therefore, impermissible under an initiative. In reaching this decision, the court reviewed previous cases dealing with initiatives and appropriation challenges and noted the following:

Article XI, section 7 of the Alaska Constitution provides in part that 'the initiative shall not be used to ... make or repeal appropriations....' In Thomas v. Rosen, 569 P.2d 793, 796 (Alaska 1977), we endorsed the

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following definition of 'appropriations':

the setting aside from the public revenue of a certain sum of money for specific objects in such a manner that the executive officers of the government are authorized to use that money, and no more for that object, and no other.

Two subsequent decisions of this court have held that the term 'appropriations' as used in article XI, section 7 embraces not only appropriations of money but initiatives that propose to 'give away' any public asset, including land. In *Thomas v. Bailey*, 595 P.2d 1 (Alaska 1979), we held that an appropriation of state land to the general public was just as much an appropriation as a disposition of money from the treasury. Specifically, we said, "The stated purpose and effect of the Initiative on the state treasury is still an expenditure of state assets in the form of public lands." *Id.* at 9. Subsequently, in regard to an initiative that would have required the Municipality of Anchorage to sell a utility to a private non-profit organization for one dollar, we said:

We noted [in *Thomas v. Bailey*] that the constitutional convention delegates 'wanted to prohibit the initiative process from being used to enact give-away programs, which would endanger the state treasury.' ... We conclude that the logic of *Bailey* also applies in the instant appeal. The prohibition against appropriation by initiative applies to all state and municipal assets.

...

From these decisions two core objectives of the constitutional prohibition on the use of initiatives to make appropriations can be distilled. First, the prohibition was meant to prevent an electoral majority from bestowing state assets on itself. Second, the prohibition was designed to preserve to the legislature the power to make decisions concerning the allocation of state assets. In light of these objectives, we now address the question of whether the proposed initiative violates article XI, section 7 of the Alaska Constitution as well as AS 15.45.010. We answer this

question in the affirmative.

Pullen v. Ulmer, 923 P.2d 54, 58-59 & 63-64 (Alaska 1996), citing Alaska Conservative Political Action Committee v. Municipality of Anchorage, 745 P.2d 936, 938 (Alaska 1987) (citation and footnote omitted).

In Thomas v. Bailey, 595 P.2d 1 (Alaska 1979), the court addressed an initiative proposing a land give-away and held that the prohibition on making appropriations by initiative included the outflow of state assets, such as land, as well as money. Id. at 4.

In Alaska Conservative Political Action Committee v. Municipality of Anchorage, 745 P.2d 936 (Alaska 1987), the court addressed an initiative proposing the sale of a public utility for \$1 and held that "the prohibition against appropriations by initiative applies to all state and municipal assets." Id. at 938.

In McAlpine v. University of Alaska, 762 P.2d 81 (Alaska 1988), the court held that the initiative calling for the reestablishment of the community college system and transfer of real and personal property to the community college was permissible and did not violate the prohibition on appropriations. On the other hand, the court held that the second part of the initiative which specified the amount of the property to be transferred was impermissible. In reaching this

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conclusion, the court held that "since the inclusion of the third sentence [of the initiative] causes the community college initiative to designate the use of state assets in a manner that is executable, mandatory, and reasonably definite with no further legislative action, the initiative would make an appropriation."

Id. at 92. The court noted that:

Outside the context of giveaway programs, the more typical appropriation involves committing certain public assets to a particular purpose. The reason for prohibiting appropriations by initiative is to ensure that the legislature, and only the legislature, retains control over the allocation of state assets among competing needs. This rationale applies as much or nearly as much to allocations of physical property as to allocations of money. To whatever extent it is desirable for the legislature to have sole responsibility for allocating the use of state money, it is also desirable for the legislature to have the same responsibility for allocating property other than money. Otherwise, the prohibition against appropriation by initiative could be circumvented by initiatives changing the function of assets the State already owns. We conclude that the prohibition against appropriations by initiative applies to appropriations of state assets, regardless of whether the initiative would enact a give-away program or simply designate the use of assets.

Id. at 88, 89.

In City of Fairbanks v. Fairbanks Convention & Visitors Bureau, 818 P.2d 1153 (Alaska 1991), the court addressed an initiative proposing to repeal a city code section which designated bed tax revenues on one area and enacting a code to place them in the city council discretionary fund. The court

held that the initiative was not an appropriation. The test applied by the court was 'whether the initiative would set aside a certain specified amount of money or property for a specific purpose or object in such a manner that it is executable, mandatory, and reasonably definite with no further legislative action." Id. at 1157. The court noted:

A reference to the dual purposes behind the prohibition of initiatives which make appropriations is instructive. First, the initiative is not a give-away program. No particular group or person or entity is targeted to receive state money or property, nor is there any indication that by passing this initiative, the voters would be voting themselves money. Second, this initiative does not reduce the council's control over the appropriations process. Instead, the initiative allows the council greater discretion in appropriating funds than does the current law. It is axiomatic that if FGCO 5.402 does not make an appropriation, then the initiative, which affords greater legislative discretion and is not a give-away program, cannot make an appropriation.

Id. at 1157.

In Alaska Action Center, Inc. v. Municipality of Anchorage, 84 P.3d 98 (Alaska 2004), the court addressed an initiative proposing to preserve much of the lower end of Girdwood valley as a park. The land was owned by the Municipality of Anchorage and an initiative was presented which would have designated the use of specific areas of land. The court found that the initiative constituted an appropriation and was properly rejected by the municipal clerk. In its conclusion on the issue, the court

noted:

Moreover, our cases establish that the prohibition against appropriating land by initiative in this manner is meant to "retain . . . control of the appropriation process in the legislative body." Here, by limiting the mechanism for future change to another initiative process, the initiative's dedication requirement necessarily intrudes on the legislature's control over future designation. The Girdwood initiative's designation of a specific parcel of land as parkland cannot be distinguished from the designation in McAlpine. It intrudes on decisions reserved by statute and constitution to the assembly by making an appropriation. The Anchorage clerk was therefore correct to refuse to place the initiative on the ballot.

Id. at 20 (footnotes omitted).

C. Title of initiatives.

When considering the content of an initiative application, the Alaska Supreme Court has considered what constitutes a proper title. "A description which is untruthful, misleading, or which is not complete enough to convey basic information as to what the ordinance does, cannot be regarded as a legally adequate or sufficient description within the meaning of the ordinance". Citizens for Implementing Medical Marijuana v. Municipality of Anchorage, 129 P.3d 898, 904 n.24 (Alaska 2006) (citation omitted).

In Faipeas v. Municipality of Anchorage, 860 P.2d 1214, 1221 (Alaska 1993), the Alaska Supreme Court held:

The public interest in informed lawmaking requires that referendum and initiative petitions meet minimum

standards of accuracy and fairness. "[O]ur main concern should be that all matters (legislative enactments, initiative petitions and even proposed resolutions) should be presented clearly and honestly to the people of Alaska." Yute Air Alaska, Inc. v. McAlpine, 698 P.2d 1173, 1188 (Alaska 1985) (Moore, J., dissenting.) To this end it is necessary "[t]o guard against inadvertence by petition-signers and voters and to discourage stealth by initiative drafters and promoters...."

The Alaska Supreme Court also noted:

"Description" in these circumstances signifies a fair portrayal of the chief features of the proposed law in words of plain meaning so that it can be understood by the persons entitled to vote. It must be complete enough to convey an intelligible idea of the scope and import of the proposed law. It ought not to be clouded by undue detail, nor yet so abbreviated as not to be readily comprehensible. It ought to be free from any misleading tendency, whether of amplification, of omission, or of fallacy. It must contain no partisan coloring. It must in every particular be fair to the voter to the end that intelligent and enlightened judgment may be exercised by the ordinary person in deciding how to mark the ballot.

Id. at 1219 (citation omitted).

In another case, the Alaska Supreme Court noted the deferential standard of review for a ballot summary:

In reviewing the adequacy of a lieutenant governor's ballot summary we apply a "deferential standard of review." This means that we will not invalidate the summary simply because we believe a better one could be written; instead, "the lieutenant governor's summary [will] be upheld unless we [cannot] reasonably conclude that the summary [is] impartial and accurate." And we must place "[t]he burden ... upon those attacking the summary to demonstrate that it is biased or misleading."

Alaskans for Efficient Government, Inc. v. State, 52 P.3d 732, 735 (Alaska 2002) (footnotes omitted).

4. Preliminary Injunctions.

"Equitable injunctive relief is an extraordinary remedy that is appropriate only where the party requesting relief is likely to otherwise suffer irreparable injury and lacks an adequate remedy at law." Lee v. Konrad, 337 P.3d 510, 517 (Alaska 2014).

In developing this standard the Alaska Supreme Court has approvingly quoted cases from other jurisdictions noting that injunctions should not be granted when money damages could compensate for injury:

Injunctive relief is considered an extraordinary equitable remedy and it is to be granted only where the ... party [seeking injunctive relief] has established that immediate and irreparable harm, which cannot be compensated by damages, will result if the injunction is denied. Furthermore, the party seeking to enjoin certain conduct must demonstrate that greater injury would result by refusing the injunction than by granting it." (alterations in original) (internal quotation marks and citations omitted).

Id. at 517 n.11, quoting Grimes v. Enter. Leasing Co. of Philadelphia, LLC., 66 A.3d 330, 340 (Pa. 2013).

In State, Division of Elections v. Metcalfe, 110 P.3d 976 (Alaska 2005) the Alaska Supreme Court considered a lower court's order granting an injunction which ordered a candidate's name be placed on the ballot. The Court noted that there are varying standards for a preliminary injunction:

The showing required to obtain a preliminary injunction depends on the nature of the threatened injury. If the plaintiff faces the danger of irreparable harm and if

the opposing party is adequately protected, then we apply a balance of hardships approach in which the plaintiff must raise serious and substantial questions going to the merits of the case; that is, the issues raised cannot be frivolous or obviously without merit. If, however, the plaintiff's threatened harm is less than irreparable or if the opposing party cannot be adequately protected, then we demand of the plaintiff the heightened standard of a clear showing of probable success on the merits.

Id. at 978.

In Metcalf, the Court applied the latter test because they saw no way the State's interests could be protected. Id. After concluding the plaintiff had failed to meet his burden, the Alaska Supreme Court dissolved the injunction.

Likewise, in State v. Kluti Kaah Native Village of Copper Center, 831 P.2d 1270, 1275 (Alaska 1992), the Alaska Supreme Court vacated an injunction where it found that "the superior court failed to adequately weigh and protect the interests of the state, other hunters, or the resource in issuing its injunction." Since the state's interests could have been harmed by the issuance of an injunction, the plaintiffs were required to show probable success on the merits. Id.

5. Ripeness.

"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." AS 22.10.020(g).

In Brause v. State, Dept. of Health & Social Services, 21 P.3d 357, 358 (Alaska 2001), the Alaska Supreme Court considered the concept of an "actual controversy" with regards to a claim that a same-sex couple was denied benefits. There, the Court first noted:

The "actual controversy" language in AS 22.10.020(g) reflects a general limitation on the power of courts to entertain cases; similar language is used in federal law. It encompasses a number of more specific reasons for not deciding cases, including lack of standing, mootness, and lack of ripeness. Although these are interrelated doctrines, they also have distinct elements.

Id. (footnotes omitted)

The Alaska Supreme Court looked to a treatise titled *Federal Practice and Procedure* for consideration of the issues. "[T]he central concern of ripeness is whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all." Id. at 359. The Court then quoted the treatise and noted:

The central perception is that courts should not render decisions absent a genuine need to resolve a real dispute. Unnecessary decisions dissipate judicial energies better conserved for litigants who have a real need for official assistance. As to the parties themselves, courts should not undertake the role of helpful counselors, since refusal to decide may itself be a healthy spur to inventive private or public

planning that alters the course of possible conduct so as to achieve the desired ends in less troubling or more desirable fashion. Defendants, moreover, should not be forced to bear the burdens of litigation without substantial justification, and in any event may find themselves unable to litigate intelligently if they are forced to grapple with hypothetical possibilities rather than immediate facts. Perhaps more important, decisions involve lawmaking. Courts worry that unnecessary lawmaking should be avoided, both as a matter of defining the proper role of the judiciary in society and as a matter of reducing the risk that premature litigation will lead to ill-advised adjudication. These concerns translate into an approach that balances the need for decision against the risks of decision. The need to decide is a function of the probability and importance of the anticipated injury. The risks of decision are measured by the difficulty and sensitivity of the issues presented, and by the need for further factual development to aid decision.

Id. at 359.

ARGUMENT

1. Plaintiffs' claims fail.

Plaintiffs' claims of illegality must fail in this pre-election suit. The Borough is entitled to summary judgment at this time. The substantive portions based upon the headings in the plaintiffs' complaint/motion will each be addressed in turn. Parts A-E are not addressed because they are background and allegations leading to the main parts of the complaint/motion.

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1. Part F of the complaint "Preelection Review of the Initiative".

Plaintiffs' argument of illegality here is premised upon the claim that initiative B-1 (Ordinance serial No. 15-088) is a zoning ordinance.

There is no controlling authority establishing that initiative B-1 (Ordinance serial No. 15-088) is a zoning ordinance or flows from the Borough's power to zone. Likewise, there is no controlling authority establishing that the subject matter of this initiative is beyond the power of the initiative. Quite the contrary.

The Matanuska-Susitna Borough's powers to zone flow from planning and land use regulation under AS 29.35.180 and AS 29.40.010-200. Regardless of these powers, the power to prohibit marijuana businesses is found at AS 17.38.210. This power granted to the Borough from Title 17 exists regardless of the Borough's comprehensive plan and regardless of any other zoning regulations of the Borough.

Indeed, a second class borough such as the Matanuska-Susitna Borough has many powers granted to it to regulate and license all kinds of activities through Title 29 of the Alaska Statutes. For example, the Borough has the independent grant of power, not flowing from zoning, to regulate day care facilities as per AS

29.35.210(b)(5); regulate animals and kennels as per AS 29.35.210(a)(3); and regulate rights of way and facilities as per AS 29.335.010.

The Matanuska-Susitna Borough also has grants of power from other statutes outside Title 29. The Borough has the independent grant of power, not flowing from zoning, to have local options on charitable gambling under AS 5.15.620; local options on alcohol under AS 4.11.491; and AS 18.72.060 allows for local regulation on fireworks. These separate grants of power do not depend on the enactment of a comprehensive plan for the systematic and organized development of the borough with "a compilation of policy statements, goals, standards, and maps for guiding the physical, social, and economic development, both public and private" as referenced in Carmony. Carmony, 217 P.3d at 821. These other grants of power do not depend on zoning whatsoever.

Similarly, AS 17.38.210 is a separate grant of power on local option. Moreover, AS 17.38.210 specifically contemplates "voter initiative" as a method to accomplish a local option election on marijuana without reference to a comprehensive plan.

The question facing this trial court at this time on a pre-election review is whether controlling authority "leaves no room for argument" about constitutionality of the initiative. This court must construe the initiative broadly so as to preserve it

whenever possible. Swetzof, 203 P.3d at 474. To do this, the court here is bound by Alaska Supreme Court precedent and must "narrowly interpret the subject matter limitations placed on initiatives by the Alaska Constitution and statutes." Id.

The application for initiative here was submitted on May 22, 2015. This was after the effective date of AS 17.38.210 which was February 24, 2015. There was, and remains, no controlling authority establishing that such an initiative is illegal or not within the power of initiative or referendum at the municipal level.

Given the pre-election review standards applicable to initiatives, the Matanuska-Susitna Borough Clerk had no choice but to certify the application for initiative. This was not error and the Matanuska-Susitna Borough is entitled to summary judgment as to the claims in Part F of the Complaint.

2. Part G of the complaint "Invalid Exercise of Matanuska-Susitna Borough's Legislative Authority."

This section of the complaint again argues that the initiative here is a zoning initiative.

As noted in the previous section above, this argument cannot prevail in a pre-election challenge. Rather than re-write the arguments above, the Borough will simply incorporate them by reference as to the arguments in Part F of the complaint.

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When narrowly interpreting the subject matter limitations placed on initiatives by the Alaska Constitution and statutes, and when construing the initiative broadly so as to preserve it, the plaintiffs' claims must fail. There is no controlling authority that proposed Initiative Ordinance 15-088 is illegal.

The Borough is entitled to summary judgment as to the claims in part G of the complaint.

3. Part H of the complaint "The Initiative creates a constitutional challenge to part of AS 17.38.210(a)."

This portion of the complaint once again asserts Initiative Ordinance 15-088 is a zoning ordinance. The Borough incorporates by reference the arguments in the preceding sections on this claim.

Furthermore, this section purports to be an indirect attack on the constitutionality of existing State law found at AS 17.38.210(a). The argument is that if this current initiative ordinance 15-088 passes, then the passage of the local borough law will create a constitutional issue with regards to a separate, existing law.

The Alaska Supreme Court is clear:

Prior to the election, courts will review only the question whether an initiative meets the constitutional and statutory provisions regulating initiatives. Courts will not review the constitutionality of the substantive initiative proposal until and unless the voters pass the ordinance.

Mahoney, 71 P.3d at 898.

The claim here is not ripe and will only ripen if the initiative is passed and Initiative Ordinance 15-088 takes effect. "The central concern of ripeness is whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all." Bruse, 21 P.3d at 359. The Borough is entitled to summary judgment as to the arguments of Part H of the Complaint at this time.

4. Part I of the complaint "Title and Body of the Initiative are Deceptive and Misleading."

The plaintiffs' argument in this matter must fail. Plaintiffs do not argue that the title of the initiative is deceptive or misleading vis-à-vis the body of the ordinance.

Rather, a careful reading of the allegations reveals a claim that the title and body of the ordinance will be of no effect or be illegal. In other words, the plaintiffs argue that if Initiative Ordinance 15-088 is passed, it cannot legally do what it purports to do. Plaintiffs allege that "Industrial Hemp is included in the definition of marijuana, and would also be prohibited if⁴ the initiative passes." See Complaint at page 21,

⁴ While this may beg a laconic response, the plaintiffs' inclusion of the word "if" should amply demonstrate that this claim is not ripe. See Bruse, 21 P.3d at 358-59.

lines 13-15. However, such a review by the court necessitates a consideration beyond what the Alaska Supreme Court has directed:

Other claims of unlawfulness are justiciable only after the initiative is enacted.

Swetzof, 203 P.3d at 475.

Indeed, this standard is closely connected with ripeness, "The central concern of ripeness is whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all." Bruse, 21 P.3d at 359.

The Borough is entitled to summary judgment as to the allegations contained in Part I of the Complaint.

5. Part J of the Complaint "The zoning initiative violates Article X Section 2 of the Alaska Constitution."

Plaintiffs claim Initiative Ordinance 15-088 somehow usurps the power of the Borough Assembly to levy taxes and violates Art X, § 2 of the Alaska Constitution. In the argument, plaintiffs also note the constitutional restriction on initiatives which make or repeal appropriations. The argument appears to be that if passed, the initiative will prohibit taxation⁵ and prohibit the borough from receiving funds as per AS 17.38.200(c). Neither of these is true.

⁵ On the October 4, 2016 ballot, the question of a marijuana sales tax will appear. See Affidavit of Lonnie McKechnie.

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An appropriation is "the setting aside from the public revenue of a certain sum of money for specific objects in such a manner that the executive officers of the government are authorized to use that money, and no more for that object, and no other." Pullen, 923 P.2d at 54.

As it pertains to any claims that Initiative Ordinance 15-088 violates Article X, § 2 of the Alaska Constitution, those claims are premature. "Courts will not review the constitutionality of the substantive initiative proposal until and unless the voters pass the ordinance." Mahoney, 71 P.3d at 898; see also Bruse, 21 P.3d at 358-59 (discussing ripeness).

As it pertains to any claims that Initiative Ordinance 15-088 violates Article XI, § 7 of the Alaska Constitution, even if the Initiative Ordinance did what plaintiffs allege, it does not make or repeal any appropriation. According to Alaska Supreme Court precedent, appropriations deal with *disposal* of money or assets. Plaintiffs claim here is that the proposed initiative interferes with the collection of money and taxes. Even if it does, that is not an appropriation.

In opposite to McAlpine, no public assets are committed to a particular purpose via Initiative Ordinance 15-088. Much like the issue in Fairbanks Convention and Visitors Bureau, no particular group or person is receiving a municipal asset. In addition,

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Initiative Ordinance 15-088 does not reduce the Borough Assembly's control over the appropriations process.

However, when liberally construing the proposed Initiative Ordinance here, it does not even do what plaintiffs allege. Enactment of Initiative Ordinance 15-088 will not interfere with the operation of AS 17.38.200's mandate that a local regulatory authority receive half of a filing fee⁶. Likewise it will not restrict the proposed tax question regarding marijuana on the October ballot.

For example, Industrial Hemp cultivation facilities will still be growing the plant genus cannabis. See AS 17.38.900(6) defining marijuana. To be legal in the Borough under ordinance 15-088, that plant must meet the definition of industrial hemp as found in the ordinance:

[T]he plant cannabis sativa and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis and shall also include any definition of "industrial hemp," or similar term serving the same purpose, adopted by the laws or regulations by the State of Alaska.

See Initiative Ordinance Serial No. 15-088.

Should industrial hemp cultivators wish to engage in business in the Borough, the enactment of ordinance 15-088 will

⁶ The Borough takes no position on the legality of AS 17.38.200 vis-à-vis Art IX, § 7 of the Alaska Constitution at this time.

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not impact the operation of AS 17.38.200 or the proposed Borough sales tax on marijuana (should it pass).

The Borough is entitled to summary judgment on the claims in Part J of the Complaint.

6. Part K of the complaint "Unconstitutional takings and damage to the property rights of the Plaintiffs."

Plaintiffs allege that the Borough has inversely condemned their property. The alleged taking arguments all flow from the claims that Initiative Ordinance 15-088 is illegal.

As noted above in previous sections, the Borough Clerk had no choice but to accept the initiative. On a pre-election review, Initiative Ordinance 15-088 is not illegal. Any claim that the substance of the Initiative Ordinance is illegal is justiciable only if it passes.

Likewise, if Initiative Ordinance 15-088 does operate to create a constitutional taking of property, these claims are premature. The matter becomes ripe only if the voters approve the initiative. "The central concern of ripeness is whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all." Bruse, 21 P.3d at 359. Indeed, as addressed below in response to part N of the complaint, plaintiffs specifically reserve their rights to

file a "takings claim" in a separate action. This is addressed below

The Borough is entitled to summary judgment as to the claims in Part K of the Complaint.

7. Part L of the complaint "No ordinances or regulations prohibiting Marijuana Businesses at the time."

The factual allegations in this part of the complaint are apparently tied to the takings claims in part K of the complaint.

As noted above, these takings claims are not ripe because pre-election review of Initiative Ordinance 15-088 shows it is not restricted and therefore must proceed. In addition, the vote is yet to occur, so the issue is not ripe.

The Borough is entitled to summary judgment as to the claims in Part L of the complaint.

8. Part M of the complaint "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."

Plaintiffs' argument under this section argues dates which are in direct contradiction with the legislative history of AS 17.38. Such assertions do not create a genuine issue of material fact. Arguments about churches and tax status are irrelevant to this case. Plaintiffs arguments about signature dates also are incorrect and such assertions do not create a genuine issue of material fact. Finally, claims that 3 of the sponsors were

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invalid are inconsequential because the law requires 10 sponsors to certify an application for initiative petition and here there were 14.

AS 17.38 was on the statewide ballot in November 2014. Delayed implementation portions of the initial law contained the phrase "after the effective date." See 2014 Statewide Ballot Measure 2 (13PSUM). Current law replaces the words "effective date" with "February 24, 2015." See AS 17.38.190-200. According to its express terms and legislative history, AS 17.38 took effect on February 24, 2015. See AS 17.38 (refs and annos.) Plaintiffs arguments based upon claims that the effective date of AS 17.38 was in 2016 must fail because there is no genuine dispute as to the effective date.

Arguments as to tax status of churches, losing that status, improper political activities, or gathering signatures on Sundays are not relevant to the case here. Neither AS 29.29.26.100-190 (pertaining to municipal initiatives) nor AS 17.38 (pertaining to marijuana) contain any restrictions about tax status of churches, losing that status, improper political activities, or gathering signatures on Sundays.

As noted in footnote 1 above, the May 22, 2015 application at issue here was essentially a re-submittal of a prior application submitted May 7, 2015. That earlier "Application for

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Ballot Initiative to Prohibit Marijuana businesses in the Matanuska-Susitna Borough" was rejected by the Clerk. On page 31, lines 7-10 of the complaint, the plaintiffs note the differing dates implicitly alleging an error. However, both applications, submitted on different dates, had signatures attached. The application approved in this matter is attached. See Affidavit of Lonnie McKechnie. There can be no genuine dispute as to the contents of the application.

Finally, there are claims on page 31, lines 10-11 of the complaint which imply sponsors were not proper. The Borough does not agree with the plaintiffs assertions here or the implication that 3 of the sponsors were invalid. However, for purposes of this motion, when evaluating whether the application for initiative was proper in the first instance, even assuming that the sponsors were invalid, it is irrelevant. An application for initiative requires "10 voters who will sponsor the petition." AS 29.26.110(a). Here, there were 14 sponsors and all 14 were certified by the Clerk. See Affidavit of Lonnie McKechnie. Removing 3 sponsors still leaves 11 sponsors which is legally sufficient.

The Borough is entitled to summary judgment as to the claims in part M of the Complaint.

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9. Part N of the complaint "Prejudice to the Plaintiffs caused by the Defendants Takings."

Plaintiffs plead here that the complaint in this matter is limited to declaratory judgment and injunctive relief. Plaintiffs also "reserve their right to present their losses and damages to their rights in a separate taking action. . ."

The Borough agrees that the current action is limited to declaratory and injunctive relief. The Borough agrees plaintiffs are generally entitled (i.e. as long as it is not vexatious or frivolous) to present a separate taking action, and the Borough agrees those claims are not part of this action now. This is particularly apparent because there are 15 other defendants. Indeed, the Borough would likewise prefer a takings claim on its own because the issues and standards of review are less likely to be confused by all parties.

To be clear, however, the Borough does not agree that a taking occurred, will occur, or that such a lawsuit premised on the same allegations in this complaint will be successful. Any future claims will be evaluated when made.

There is no judgment or decision necessary from the court as to the pronouncements in part N of the Complaint.

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10. Part O of the complaint "No sovereign immunity for takings actions."

Plaintiffs plead legal standards and cite cases as to each allegation in Part O. The Borough has no response to the claims at this time. Should the plaintiffs bring a separate action, the Borough will evaluate the claims and legal standards at that time.

There is no judgment or decision necessary from the court as to the pronouncements in part O of the Complaint.

II. A preliminary injunction is not warranted.

Plaintiffs' alleged harm is that their business interest will be damaged and an inverse condemnation will occur. They are reserving the right to file an inverse condemnation action in the future.

Inverse condemnation is compensable by money and as such, the plaintiffs have an adequate remedy at law. See Lee v. Konrad, 337 P.3d at 517 n.11, quoting Grimes v. Enter. Leasing Co. of Philadelphia, LLC., 66 A.3d 330, 340 (Pa. 2013). No injunction should issue.

In addition, even considering the equities of an injunction, the balance of hardships test is not applicable here because plaintiffs are not subject to irreparable harm and the Borough

cannot be adequately protected. Plaintiffs' allegations of harm are loss of money from not being able to operate their marijuana business. This is not irreparable. If they prevail, they could be compensated later. However, as addressed in the Borough's separate opposition based on Latches, the Borough cannot be adequately protected and the requests here risk disruption of the entire election. See MSB Opposition to Request for Injunction (Latches).

Therefore, if an injunction is to be considered, the test applicable to the request is "clear showing of probable success on the merits." See Metcalfe, 110 P.3d at 978. On a pre-election review of the voter sponsored Initiative Ordinance 15-088, plaintiffs cannot meet this standard. In addition, many of the claims by the plaintiffs are not ripe for adjudication. Based upon all the reasons noted in Part I of the Argument section *supra*, the request for injunction must be denied.

CONCLUSION

The plaintiffs' claims as to the subject matter and restrictions on the proposed Initiative Ordinance 15-088 are without merit as a matter of law and should be dismissed with prejudice. The plaintiffs' other claims in this suit filed before the election are premature and not ripe and should be dismissed.

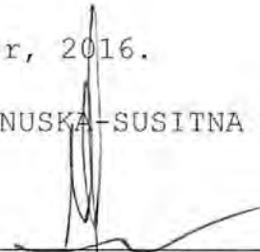
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Even if the claims filed had merit and/or were ripe, the plaintiffs suffer no irreparable harm. Granting the injunctive relief the plaintiffs requested cannot be done because it is literally impossible and the Borough's interests in conducting an orderly and efficient election as to all questions on the ballot. Furthermore, plaintiffs have not clearly shown probable success on the merits so a preliminary injunction is not warranted in any event.

WHEREFORE the Matanuska-Susitna Borough respectfully requests this Honorable Court DENY plaintiffs request for preliminary and permanent injunction and DENY plaintiffs' request for declaratory relief. The Borough further requests this Honorable Court GRANT the Borough's Motion for Summary Judgment. The pre-election claims in this matter should be DISMISSED WITH PREJUDICE at this time. The claims which are premature or not ripe should be DISMISSED at this time. Claims which plaintiffs have "reserved" in their complaint are not before this Court and should not be affected by the court's order.

DATED this 19th day of September, 2016.

MATANUSKA-SUSITNA BOROUGH

By: 

Nicholas Spiropoulos
Borough Attorney
Alaska Bar No. 0010068

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

RECEIVED in the TRIAL COURTS
State of Alaska Third District
at Palmer
SEP 19 2016
Clerk of the Trial Courts
By _____ Deputy

THOMAS HANNAM, et al.)
)
Plaintiffs,)
)
v.)
)
MATANUSKA-SUSITNA BOROUGH,)
 et al.)
)
Defendants.)

Case No. 3PA-16-01952 CI

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

AFFIDAVIT OF LONNIE MCKECHNIE
IN SUPPORT OF
MATANUSKA-SUSITNA BOROUGH'S OPPOSITION TO REQUEST
FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF AND CROSS
MOTION FOR SUMMARY JUDGMENT

Lonnie McKechnie, being first duly sworn upon oath or affirmation, deposes and states as follows:

1. I am the Clerk for the Matanuska-Susitna Borough.
2. I have personal knowledge of the facts contained herein.
3. My duties include processing of applications and petitions for initiatives and administering local elections in the Matanuska-Susitna Borough.
4. On May 22, 2015, I received an application for initiative petition titled "Application for Ballot Initiative to Prohibit Marijuana Businesses Except Those Involving Industrial

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Palmer, Alaska 99645

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Hemp in the Matanuska-Susitna Borough" and it is attached (Exhibit A).

5. This application was essentially a re-submittal of a prior application submitted May 7, 2015, "Application for Ballot Initiative to Prohibit Marijuana businesses in the Matanuska-Susitna Borough" which I rejected.

6. The May 22, 2015 application was accompanied with a signature page with 14 sponsors and all 14 were certified by me.

7. I certified the May 22, 2015 application and prepared petition signature books for sponsors to circulate as per 29.26.120.

8. After the sponsors were provided additional time to gather signatures as per AS 29.26.140(b), I certified the petition on September 25, 2015.

9. The proposed Initiative Ordinance was assigned a number 15-088 and is attached (Exhibit B).

10. The 2015 Borough regular election was held on the first Tuesday of October which was October 6, 2015.

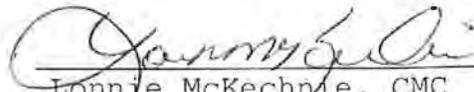
11. Since the initiative proposing Initiative Ordinance 15-088 was certified less than 75 days before the election, it was not placed on the 2015 ballot as per AS 29.26.179. Instead, Ordinance 15-088 was held to be placed on the next regular or special election.

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12. The 2016 Borough regular election is the only election by the Matanuska-Susitna Borough since October 2015.

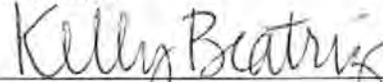
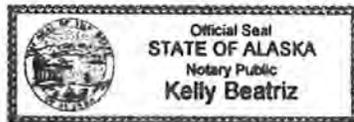
13. I have read the Matanuska-Susitna Borough's Opposition to Request for Declaratory Judgment and Injunctive Relief and Cross Motion for Summary Judgment and all of the factual allegations therein are true and correct to the best of my knowledge.

FURTHER YOUR AFFIANT SAYETH NAUGHT.



Lonnie McKechnie, CMC
Borough Clerk
Matanuska-Susitna Borough

SUBSCRIBED and SWORN or affirmed to before me this 19th day of September, 2016, in Palmer, Alaska.



Notary Public in and for the
State of Alaska

My Commission Expires: 3/8/2020

COPY

CODE ORDINANCE

Submitted to Borough Clerk: _____

Certified by Borough Clerk: _____

Placed Before the Voters at the Regular Election of: _____

Election Certified: _____

Passed: _____

Effective Date: _____

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MAY 27 2015

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**MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 15-_____**

**AN INITIATIVE ORDINANCE OF THE VOTERS OF THE MATANUSKA-SUSITNA
BOROUGH AMENDING TITLE 8, BY ADOPTING NEW CHAPTER 8.22 MARIJUANA
LICENSE REFERRALS, PROHIBITING MARIJUANA BUSINESSES EXCEPT THOSE
INVOLVING INDUSTRIAL HEMP**

WHEREAS, the residents of Alaska passed Ballot Measure No. 2 - 13PSUM An Act to Tax and Regulate the Production, Sale, and Use of Marijuana, codified as Alaska Statute Chapter 17.38; and

WHEREAS, the Ballot Measure creates classes of registrations, licenses, or permits to enable the lawful conduct of certain types of marijuana commerce and business; and

WHEREAS, the conduct of these commercial and business activities is unlawful without the appropriate registration, license, or permit; and

WHEREAS, AS 17.38.110 Local Control, enacted by Ballot Measure 2, empowers municipalities to prohibit the operation of these businesses by enactment of an ordinance or voter initiative; and

WHEREAS, prohibiting the operation of commercial marijuana businesses does not infringe upon the personal use rights guaranteed by Ballot Measure 2; and

WHEREAS, the voters do not seek to inhibit the development of industrial hemp;

Therefore, by voter initiative, BE IT ENACTED:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become part of the Matanuska-Susitna Borough Code.

Section 2. Matanuska-Susitna Borough Code Title 8, Health and Welfare, is hereby amended by the addition of a new Chapter 8.22, to read as follows:

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Chapter 8.22

MARIJUANA LICENSE REFERRALS

Sections

8.22.010 Definitions

8.22.020 Marijuana businesses prohibited

8.22.010 Definitions.

As used in this chapter, the words shall have meanings as follows:

- "Industrial hemp" means the plant *Cannabis sativa* and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis and shall also include any definition of "industrial hemp," or similar term serving the same purpose, adopted by laws or regulations by the State of Alaska.

- "Marijuana business" means any and all business, acts, or commerce subject to registration or licensure pursuant to Alaska Statute Chapter 17.38.

8.22.020 Marijuana businesses prohibited.

(a) Marijuana businesses are prohibited in the borough in the areas outside of cities.

(b) The prohibition contained in subsection (a) shall not apply to or restrict any business, act, or commerce relating to the growing or processing of industrial hemp otherwise authorized by state or federal law, whether authorized by Chapter 17.38 or any other provision of state or federal law; nor shall the prohibition contained in subsection (a) preclude issuance of a license or registration required for industrial hemp-related business or commerce to a qualified person or entity.

Section 3. Effective date. If a majority vote favors this ordinance, it shall become effective upon certification of the election.

PROPOSED SUMMARY OF INITIATIVE:

This initiative proposes to amend Matanuska-Susitna Borough Code by adding Chapter 8.22 Marijuana License Referrals to Title 8 Health and Welfare. If adopted, marijuana businesses except those involving industrial hemp will be prohibited in the Matanuska-Susitna Borough in areas *outside* of established cities (Houston, Palmer, and Wasilla). Personal marijuana use and industrial hemp are unaffected by the initiative.

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MAY 22 2015

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AN APPLICATION FOR BALLOT INITIATIVE TO PROHIBIT MARIJUANA BUSINESSES EXCEPT THOSE INVOLVING INDUSTRIAL HEMP IN THE MATANUSKA-SUSITNA BOROUGH

The following registered voters of the Mat-Su Borough Sponsor this Initiative:

| Signature | Printed Name | Residence Address | Mailing Address (Check if same) |
|--------------------|---|--|--|
| <i>[Signature]</i> | Christopher R Miller | 4028 N Snowgrose Rd Palmer AK 99645 | 4028 N Snowgrose Rd Palmer AK 99645 |
| <i>[Signature]</i> | BARRY ORZALLI | 1561 South Beaver Lake Rd Wasilla, AK 99623 | 1561 South Beaver Lake Rd Wasilla, AK 99623 |
| <i>[Signature]</i> | Ted Franke | 5381 E. Pine St. Wasilla, AK 99654 | 5381 E. Pine St. Wasilla, AK 99654 |
| <i>[Signature]</i> | Robert Hanner | 525 Schoolfield Dr Wasilla, AK 99654 | 525 Schoolfield Dr Wasilla, AK 99654 |
| <i>[Signature]</i> | Stephen D. Hisinger (STEPHEN D. HISINGER) | 2850 Snowshoe Ln Wasilla, AK 99654 | 2850 Snowshoe Ln Wasilla, AK 99654 |
| <i>[Signature]</i> | Paul Riley | 7851 South Shore Drive P.O. Box 870127 Wasilla, AK 99687 | 7851 South Shore Drive P.O. Box 870127 Wasilla, AK 99687 |
| <i>[Signature]</i> | Annun Hillman | 3040 N. Belos St Wasilla, AK 99654 | 3040 N. Belos St Wasilla, AK 99654 |
| <i>[Signature]</i> | Paul Stines | 3060 Lazy Eight Ct Ste 2 Wasilla, AK 99654 | 10739 E Center St Palmer, AK 99645 PO Box 4250 Palmer, AK 99645 |
| <i>[Signature]</i> | Bob Lee | 1500 E ROBIN Ln. PALMER, AK 99645 | 1500 E ROBIN Ln. PALMER, AK 99645 |
| <i>[Signature]</i> | Philip Markwart | 3641 Patton Circle Palmer, AK 99645 | 3641 Patton Circle Palmer, AK 99645 |
| <i>[Signature]</i> | Rudy Ogilvie | 7180 E. Train Lakes Dr Wasilla, AK 99654 | 7180 E. Train Lakes Dr Wasilla, AK 99654 |
| <i>[Signature]</i> | Timothy R. Seigie | 5736 E. Simbally Dr Palmer, AK 99645 | 5736 E. Simbally Dr Palmer, AK 99645 |
| <i>[Signature]</i> | Daniel Hanner | 6616 Bryant's Road Palmer, AK 99645 | 6616 Bryant's Road Palmer, AK 99645 |
| <i>[Signature]</i> | SALLYMPOLLEN | 3000 Perry Ln Palmer, AK 99645 | 3000 Perry Ln Palmer, AK 99645 |

AN APPLICATION FOR BALLOT INITIATIVE TO PROHIBIT MARIJUANA BUSINESSES
EXCEPT THOSE INVOLVING INDUSTRIAL HEMP IN THE MATANUSKA-SUSITNA
BOROUGH

All correspondence relating to this application should be sent to:

Principal Sponsor:

Name: Daniel Hamm
Mailing Address: 8661 E Regents Road
Home Phone: 907-745-4305
Cell Phone: 858-366-5373
Email Address: daniel_hamm@hotmail.com

Secondary Sponsor:

Name: SALLY M POLLEN
Mailing Address: 2000 Penny Ln. Palmer
Home Phone: 907 745-8970
Cell Phone: NONE
Email Address: Sallymac@ak.net

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MAY 22 2015

CLERKS OFFICE

Application received in the Borough Clerk's
Office this _____ day of May, 2015

Borough Clerk's Office Representative

Application certified this _____ day of
_____, 2015.

Borough Clerk - Lonnie R. McKechnie

CODE ORDINANCE

Application for Petition Filed: 05/22/15
Petition Issued: 06/09/15
Petition Certified: 09/25/15

MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 15-088

AN INITIATIVE ORDINANCE OF THE VOTERS OF THE MATANUSKA-SUSITNA BOROUGH AMENDING TITLE 8, BY ADOPTING A NEW CHAPTER, 8.22 MARIJUANA LICENSE REFERRALS, PROHIBITING MARIJUANA BUSINESSES EXCEPT THOSE INVOLVING INDUSTRIAL HEMP.

WHEREAS, the residents of Alaska passed Ballot Measure No. 2 - 13PSUM An Act to Tax and Regulate the Production, Sale, and Use of Marijuana, codified as Alaska Statute Chapter 17.38; and

WHEREAS, the Ballot Measure creates classes of registrations, licenses, or permits to enable the lawful conduct of certain types of marijuana commerce and business; and

WHEREAS, the conduct of these commercial and business activities is unlawful without the appropriate registration, license, or permit; and

WHEREAS, AS 17.38.100 Local Control, enacted by Ballot Measure 2, empowers municipalities to prohibit the operation of these businesses by enactment of an ordinance or voter initiative; and

WHEREAS, prohibiting the operation of commercial marijuana businesses does not infringe upon the personal use rights guaranteed by Ballot Measure 2; and

WHEREAS, the voters do not seek to inhibit the development of industrial hemp.

THEREFORE, BY VOTER INITIATIVE, BE IT ENACTED:

Section 1. This ordinance is of a general and permanent nature and shall become a part of the Matanuska-Susitna Borough code.

Section 2. Adoption of chapter. MSB 8.22 is hereby adopted as follows:

8.22 Marijuana License Referrals

8.22.010 Definitions

8.22.020 Marijuana businesses prohibited

8.22.010 Definitions

(A) As used in this chapter, the words shall have meanings as follows:

- "Industrial hemp" means the plant *Cannabis sativa* and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis and shall also include any definition of "industrial hemp," or similar term serving the same purpose, adopted by laws or regulations by the State of Alaska.

- "Marijuana business" means any and all business, acts, or commerce subject to registration or licensure pursuant to Alaska Statute Chapter 17.38.

8.22.020 Marijuana businesses prohibited

(A) Marijuana businesses are prohibited in the borough in the areas outside of cities.

(B) The prohibition contained in section (A) shall not apply to or restrict any business, act, or commerce relating to the growing or processing of industrial hemp otherwise authorized by state or federal law, whether authorized by Chapter 17.38 or any other provision of state or federal law; nor shall the prohibition contained in section (A) preclude issuance of a license or registration required for industrial hemp-related business or commerce to a qualified person or entity.

Section 3. Effective date. If a majority vote favors this ordinance, it shall become effective upon certification of the election.

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

RECEIVED in the Superior Courts
 State of Alaska Third District
 at Palmer

SEP 19 2015

Clerk of the Trial Courts
 By _____ Deputy

THOMAS HANNAM, et al.)
)
 Plaintiffs,)
)
 v.)
)
 MATANUSKA-SUSITNA BOROUGH,)
 et al.)
)
 Defendants.)

Case No. 3PA-16-01952 CI

ORDER ON REQUEST FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF
 AND CROSS MOTION FOR SUMMARY JUDGMENT

THIS CAUSE coming to be heard on plaintiffs' Declaratory Judgment and Injunctive Relief and the Matanuska-Susitna Borough Cross Motion for Summary Judgment, and responses thereto, the Court being fully advised in the premises:

STANDARD OF REVIEW:

Prior to the election, this Court will review only the question whether an initiative meets the constitutional and statutory provisions regulating initiatives. This Court will not review the constitutionality or legality of the substantive initiative proposal until and unless the voters pass the ordinance.

The ballot initiative here may only be properly rejected before an election where controlling authority leaves no room for argument about its unconstitutionality. The initiative's substance must be on the order of a proposal that would 'mandate local school segregation based on race' in violation of Brown v. Board of Education before it may be rejected on constitutional grounds. Other claims of unlawfulness are justiciable only after the initiative is enacted.

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As to the claims raised in the complaint, there are 4 claims that Initiative Ordinance 15-088 violates constitutional and statutory provisions regulating initiatives.

In considering those issues, this Court must construe voter initiatives broadly so as to preserve it whenever possible. Thus, the Court narrowly interprets the subject matter limitations placed on initiatives by the Alaska Constitution and statutes.

A proper subject for a pre-election inquiry is whether a proposed initiative contains an improper subject matter. Under Alaska Supreme Court precedent, Zoning by initiative is invalid and cannot be done.

Likewise, another proper subject matter inquiry on a pre-election basis is whether Initiative Ordinance 15-088 creates or repeals appropriations. Appropriations are improper initiative subject as per AS 29.26.100 and Art XI, § 7 of the Alaska Constitution. An appropriation is the setting aside from the public revenue of a certain sum of money or public assets for specific objects in such a manner that the executive officers of the government are authorized to use that money, or assets, and no more for that object, and no other. Also in this analysis, a court must consider a law would set aside a certain specified amount of money or property for a specific purpose or object in such a manner that it is executable, mandatory, and reasonably definite with no further legislative action.

Another appropriate inquiry on a pre-election basis is whether the title of Ordinance 15-088 is proper. A description must be truthful, not misleading, and complete enough to convey basic information as to what the ordinance does in order to be regarded as a legally adequate or sufficient description.

Another proper inquiry on a pre-election basis is whether there were enough sponsors for an application for initiative petition in the first instance. There must be 10 voters who sponsor a petition as per AS 29.26.110.

Injunctive relief is an extraordinary equitable remedy that is appropriate only where the party requesting relief is likely to otherwise suffer irreparable injury and lacks an adequate remedy at law. The showing required to obtain a preliminary injunction

depends on the nature of the threatened injury. If the plaintiff faces the danger of irreparable harm and if the opposing party is adequately protected, then a balance of hardships approach is appropriate in which the plaintiff must raise serious and substantial questions going to the merits of the case; that is, the issues raised cannot be frivolous or obviously without merit. If, however, the plaintiff's threatened harm is less than irreparable or if the opposing party cannot be adequately protected, then a higher standard applies to the plaintiffs' claims and there must be a clear showing of probable success on the merits.

The "actual controversy" language in AS 22.10.020(g) reflects a general limitation on the power of this Court to entertain cases. It encompasses a number of more specific reasons for not deciding cases, including lack of standing, mootness, and lack of ripeness. The central concern of ripeness is whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all.

FINDINGS:

For purposes of this order, facts are drawn in a light most favorable to the plaintiffs.

AS 17.38 was the subject of a statewide ballot initiative which was voted on in the November, 2014 Alaska general election. The measure passed and as per Art. XI, § 6 of the Alaska Constitution, AS 17.38 took effect ninety days after certification and became law on February 24, 2015. Some parts of AS 17.38 contained delayed implementation dates while others did not. One part without a delayed implementation date was AS 17.38.210 titled "Local Control" which provides, in part:

(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.

On May 22, 2015, the Matanuska-Susitna Borough Clerk received an application for initiative petition titled "Application for Ballot Initiative to Prohibit Marijuana

Businesses Except Those Involving Industrial Hemp in the Matanuska-Susitna Borough." This application was signed by 14 people who indicated they were the sponsors of the initiative. The sponsors ultimately gathered the required signatures and the Borough Clerk certified the initiative petition on September 25, 2015 and assigned a number 15-088. The certification was made after the date to make it on to the 2015 Borough general election ballot, so the Initiative Ordinance was held until the 2016 Borough general election to be held on October 4, 2016.

The Initiative Ordinance is titled:

An Initiative Ordinance of the Voters of the Matanuska-Susitna Borough Amending Title 8, by Adopting a New Chapter, 8.22 Marijuana License Referrals, Prohibiting Marijuana businesses Except Those Involving Industrial Hemp.

Generally, proposed Initiative Ordinance 15-088 prohibits marijuana businesses as defined in AS 17.30 in the Borough in the area outside the cities. The ordinance contains an exemption for "industrial hemp" which is defined in the ordinance:

"Industrial hemp" means the plant cannabis sativa and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis and shall also include any definition of "industrial hemp," or similar term serving the same purpose, adopted by the laws or regulations by the State of Alaska.

Plaintiffs in this matter are a lifetime and longtime Alaska residents and own property in the Matanuska-Susitna Borough. After the passage of AS 17.38 both plaintiffs invested in property and activities with the intent of developing a marijuana business.

Sometime before May 3, 2016, plaintiffs became aware of Initiative Ordinance 15-088. News sources published articles in May, 2015, August, 2015 and February, 2016 about the Initiative Ordinance. Plaintiff Rhonda Marcy was provided a copy of proposed Initiative Ordinance 15-088 on February 29, 2016. Plaintiffs appeared before the Borough Assembly prior to May 3, 2016 to

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express concerns over the legality of the Initiative Ordinance. Likewise, plaintiffs objected to a Borough moratorium on marijuana businesses imposed by the Borough Assembly as a result of the upcoming vote on the Initiative Ordinance. Nonetheless, as per the complaint, as of May 3, 2016, plaintiffs knew that the Borough Assembly would do nothing regarding their claims of illegality as to proposed Initiative Ordinance 15-088.

The Matanuska-Susitna Borough holds regular elections every year on the first Tuesday of October. The 2016 regular election will be held on Tuesday, October 4, 2016. The Matanuska-Susitna Borough has 41 voting precincts spread among the 7 different Assembly/School board districts. The Borough uses a system of paper ballots which are read by Accuvote machines. These machines are programmed with a memory card calibrated to specific ballot types to ensure accuracy of the results. The results of all elections, based upon the specific marks on the various ballot types, are recorded and stored on the memory cards of the Accuvote machines.

For the 2016 regular election, approximately 69,875 printed ballots comprised of the 7 ballot types were delivered to the Matanuska-Susitna Borough on August 25, 2016. In addition, on approximately August 22, 2016 programming cards for each of the various ballot types were delivered to the Borough. The ballot cards were tested against the various ballot types and verified on September 8, 2016. After successful testing, each memory card was locked into its specific Accuvote machine on September 8, 2016.

In conducting regular elections, the Borough allows for absentee-by-mail and absentee-in-person voting. For the 2016 regular election, approximately four hundred sixty eight (468) absentee-by-mail ballots were mailed to voters on Thursday, September 15, 2016. Absentee-in-person voting began on Monday, September 19, 2016.

Distribution of election materials to 41 precincts occurs on September 28 through October 1, 2016. In person voting at the polls will be Tuesday, October 4, 2016.

Plaintiffs filed suit on September 2, 2016 and requested expedited consideration. On September 7, 2016, expedited

consideration was granted *ex parte* and time to answer/oppose was shorted to 10 from date of order or service, whichever was later.

DISCUSSION AND FINDINGS

As a general matter the legality of proposed Initiative Ordinance 15-088 cannot be decided on a pre-election basis. The exceptions are 1) if controlling authority leaves no room for argument about its unconstitutionality; or 2) if it violates constitutional and statutory provisions regulating initiatives. Part of those restrictions include whether the subject matter is appropriate.

I. Power of the voters to propose initiatives on marijuana.

Plaintiffs argue that the subject matter of a marijuana initiative was not available to the residents of the Matanuska-Susitna Borough until February 21, 2016. However, the law provides otherwise.

AS 29.26.100 reserves the power of initiative to residents of a municipality except for the limitations found in Art XI, § 7 of the Alaska Constitution. AS 29.26.110 sets further limitations on the subject matter. AS 17.38.210 titled "Local Control" took effect on February 24, 2015. This provision of law specifically allows "voter initiative" as a method whereby a local government may prohibit operations of marijuana businesses. Given the constitutional mandate to liberally construe powers of local government units, and liberal construction of initiatives generally, there can be no question that the subject of marijuana businesses was proper for an initiative application submitted on May 22, 2015.

There is no controlling authority establishing the subject matter is illegal here. As it pertains to the overall subject matter, the Borough Clerk had no choice but to certify the application for initiative petition.

II. Subject matter restrictions on zoning.

Zoning is an improper subject for an initiative as per Carmony v. McKechnie. However, when construing this initiative broadly to preserve it if possible, and narrowly interpreting subject matter

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limitations, Initiative Ordinance 15-088 cannot be found to be a zoning ordinance.

As noted in the Borough's opposition and cross motion, the Matanuska-Susitna Borough has powers granted to it through various parts of the Alaska Statutes. Planning, platting and land use regulation is but one part of those powers. Here, AS 17.38.210(a) specifically reserved to residents of a municipality the power for a "voter initiative" to prohibit marijuana businesses.

There is no controlling authority establishing that Initiative Ordinance 15-088 is a zoning ordinance and there is an independent statute specifically allowing for an initiative on marijuana businesses. Therefore, when considering whether it is a prohibited zoning ordinance, the Borough Clerk had no choice but to certify the application for initiative petition.

III. Subject matter restrictions on appropriations.

Part J of plaintiffs' complaint claims a violation of Art X § 2 of the Alaska Constitution. This is addressed later in the order here. However, in the argument under the same section, plaintiffs allege proposed Initiative Ordinance 15-088 creates or repeals appropriations. This is a proper inquiry on a pre-election challenge and is addressed here.

Appropriations are an improper subject for an initiative. Initiative Ordinance 15-088 purports to prohibit marijuana businesses except industrial hemp. Plaintiffs' argument is that this will interfere with the Borough's collection of fees as per AS 17.38.200(c) and the collection of sales taxes as per a separate ballot question appearing on the ballot simultaneous with the Initiative Ordinance here.

Any claims that proposed Initiative Ordinance 15-088 will interfere with another ballot proposal appearing on the same ballot cannot be considered at this time. Even if plaintiffs allegations are correct as to the effect of proposed Initiative Ordinance 15-088 on the collection of taxes, and even if this constituted an appropriation (a decision this Court does not reach) it is unknown how the voters will decide the pending sales tax vote. This Court will not speculate on those results and the

claim that proposed Initiative Ordinance 15-088 interferes with another ballot question is not ripe.

As it pertains to claims regarding AS 17.38.200(c), when construing this initiative broadly to preserve it if possible, and narrowly interpreting subject matter limitations, Initiative Ordinance 15-088 cannot be found to be an ordinance creating or repealing appropriations. Proposed Initiative Ordinance 15-088 does not set aside public revenue of a certain sum of money or public assets for specific objects in such a manner that the executive officers are authorized to use that money, or assets, and no more for that object, and no other. In addition, Proposed Initiative Ordinance 15-088 does nothing which is executable, mandatory, and reasonably definite with no further legislative action.

Taking plaintiffs' allegations as true, what proposed Initiative Ordinance 15-088 will do is potentially reduce the amount of money the Matanuska-Susitna Borough will obtain as a result of AS 17.38.200. However, even if this can be said to be an appropriation, no amount is certain, mandatory or reasonably definite. As the Borough notes in its opposition, the application fees from operators of proposed industrial hemp will still be subject to AS 17.38.200. Therefore, when considering whether proposed Initiative Ordinance 15-088 is a prohibited appropriation ordinance, the Borough Clerk had no choice but to certify the application for initiative petition.

IV. Title.

The plaintiffs' argue the title and body of proposed Initiative Ordinance 15-088 are deceptive and misleading. However, as correctly noted by the Borough, the plaintiffs' are really arguing is that, if passed, proposed Initiative Ordinance 15-088 cannot do what it purports to do.

Evaluation of the substance of this claim involves going beyond constitutional and statutory provisions regulating initiatives. It involves analyzing the operation of the law, whether it is proper, legal or constitutional. Such inquiries cannot be performed on a pre-election basis. Claims of unlawfulness are justiciable only after the initiative is enacted. When considering the substance of the claimed illegality here, the

Borough Clerk had no choice but to certify the initiative application.

V. Sponsors.

Plaintiffs argue in section M of the complaint that the Alaska Statutes did not authorize local government prohibition of marijuana until February 21, 2016. This argument is addressed in part I, *supra*. However, on page 31, lines 10 and 11, plaintiffs appear to argue 3 sponsors were invalid. These claims are not tied to any specific prayer for relief other than the general illegality of proposed Initiative Ordinance 15-088. However, since this would be a proper inquiry for a pre-election review, the Court will address the issue briefly.

A review of the initiative application filed on May 22, 2015 reveals 14 sponsors. AS 29.26.110 requires 10 sponsors. Even if 3 sponsors were invalid when the application for initiative petition was submitted on May 22, 2015, it is not relevant. There were still 11 other sponsors. When considering the adequacy of sponsors, the Borough Clerk had no choice but to certify the application.

VI. General challenges to constitutionality and legality.

Plaintiffs' claim proposed Initiative Ordinance 15-088 creates a constitutional challenge to AS 17.38.210(a), violates Art X § 2 of the Alaska Constitution, and creates an unconstitutional taking.

These matters have never been decided by a court and there is no controlling authority as to the claims. The initiative's substance is not on the order of a proposal that would 'mandate local school segregation based on race' in violation of *Brown v. Board of Education* before and therefore it could not be rejected on constitutional grounds. Other claims of unlawfulness are justiciable only after the initiative is enacted. These claims are not ripe.

In addition, plaintiffs specifically reserve their rights to file a separate takings action based upon the Borough's conduct. The Borough has agreed with this approach and nothing in this order otherwise acts to impact such filing.

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Therefore, when considering these claims, the Borough Clerk had no choice but to certify the application for initiative.

VII. Request for injunctive relief.

Plaintiffs request an injunction prevent the question concerning proposed Initiative Ordinance 15-088 from being placed before the voters, to remove the question from the ballot, and, if this is not done, then to prevent the counting the results until this matter is resolved.

Equitable injunctive relief is an extraordinary remedy that is appropriate only where the party requesting relief is likely to otherwise suffer irreparable injury and lacks an adequate remedy at law. Remedies at law include whether the alleged harm can be compensated by damages. Plaintiffs specifically note and reserve in their complaint the ability to file a later inverse condemnation action against the Borough. This demonstrates an adequate remedy at law.

Even if there was no remedy at law, the plaintiffs have not demonstrated irreparable harm in letting the vote proceed because it might fail. Finally, as amply noted by the Borough's response and incorporation of its motion on Latches, the Borough cannot be adequately protected. Attempting to alter or stop counting at this juncture would risk upsetting the results of all other races on the ballot and disrupt the orderly and efficient conduct of the election. Thus, to be entitled to an injunction, the plaintiffs must demonstrate a clear showing of probable success on the merits.

As noted in the above sections however, plaintiffs' claims cannot succeed at this time. They are either without merit or not ripe. Indeed, the election on proposed Initiative Ordinance 15-088 is the thing which could cause some claims to ripen.

ORDER

Based upon the above, the Court ORDERS as follows:

1. Plaintiffs' request for preliminary and permanent injunctions are DENIED.

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2. Plaintiffs' requests for declaratory relief are DENIED.
3. The Matanuska-Susitna Borough's request for Summary Judgment is GRANTED.
4. The pre-election claims in this matter are DISMISSED WITH PREJUDICE at this time.
5. Claims which are premature or not ripe are DISMISSED at this time.
6. Takings claims which plaintiffs have "reserved" in their complaint are not before this Court and are not affected by this order.

DATED AND SIGNED this _____ day of _____, 2016, at
Palmer, Alaska.

Superior Court Judge

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

RECEIVED in the TRIAL COURTS
State of Alaska, Third District
at Palmer

SEP 19 2016

Clerk of the Trial Courts
By _____ Deputy

THOMAS HANNAM, et al.)
)
Plaintiffs,)
)
v.)
)
MATANUSKA-SUSITNA BOROUGH,)
 et al.)
)
Defendants.)

Case No. 3PA-16-01952 CI

REQUEST FOR EXPEDITED ORAL ARGUMENT ON PLAINTIFFS'
REQUEST FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF AND
BOROUGH'S CROSS MOTION FOR SUMMARY JUDGMENT

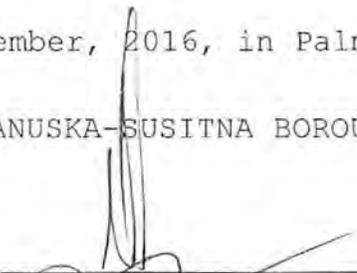
COMES NOW, the Matanuska-Susitna Borough, by and through counsel at the Borough Attorney's Office, and hereby requests expedited oral argument on the Plaintiffs' Request for Declaratory Judgment and Injunctive Relief and the Matanuska-Susitna Borough's Cross Motion for Summary Judgment.

Expedited Consideration has already been granted in this matter, therefore, the Borough requests Expedited Oral Argument as to these matters as well.

DATED this 19th day of September, 2016, in Palmer, Alaska.

MATANUSKA-SUSITNA BOROUGH

By:


Nicholas Spiropoulos
Borough Attorney
Alaska Bar No. 0010068

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

RECEIVED in the TRIAL COURTS
State of Alaska Third District
Palmer

THOMAS HANNAM, et al.)
)
 Plaintiffs,)
)
 v.)
)
 MATANUSKA-SUSITNA BOROUGH,)
 et al.)
)
 Defendants.)

SEP 19 2015
Clerk of the Trial Courts
By _____ Deputy

Case No. 3PA-16-01952 CI

ORDER GRANTING EXPEDITED ORAL ARGUMENT ON
PLAINTIFFS REQUEST FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF
AND BOROUGH'S CROSS MOTION FOR SUMMARY JUDGMENT

The Court, having received the Borough's Request for Expedited Oral Argument;

IT IS HEREBY ORDERED that the request is GRANTED.

Any reply/opposition to the merits of the Plaintiff's request and Borough's Cross Motion for Summary Judgment is due on the ____ day of _____, 2016.

Expedited oral argument is set before the undersigned on the ____ day of _____, 2016, at ____ .m. in Courtroom ____.

DATED AND SIGNED this ____ day of _____, 2016 at Palmer, Alaska.

Superior Court Judge

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
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at Palmer

SEP 19 2016

Clerk of the Trial Courts
By _____ Deputy

THOMAS HANNAM, et al.)
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Plaintiffs,)
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v.)
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MATANUSKA-SUSITNA BOROUGH,)
 et al.)
)
Defendants.)

Case No. 3PA-16-01952 CI

CERTIFICATE OF SERVICE

I, Kelly Beatriz, hereby certify that on the 19th day of September, 2016, I caused to be served, via U.S. Mail, postage prepaid, a copy of *Matanuska-Susitna Borough's Opposition to Request for Declaratory Judgment and Injunctive Relief and Cross Motion for Summary Judgment, Affidavit of Lonnie McKechnie in Support of Matanuska-Susitna Borough's Opposition to Request for Declaratory Judgment and Injunctive Relief and Cross Motion for Summary Judgment (with Exhibits A-B), Order on Request for Declaratory Judgment and Injunctive Relief and Cross Motion for Summary Judgment, Request for Expedited Oral Argument and Order Granting Expedited Oral Argument* on the following:

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Kelly Beatriz, Legal Secretary