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TO: Anchorage Municipal Assembly

FROM: Joseph Miller, Counsel for May 4, 2023 Notice of Election Contest
Petitioners

THROUGH: Dean Gates, Assembly Counsel

DATE: May 23, 2023

SUBJECT: (1) Response to Clerk's May 16, 2023 Report and (2) Supplement to
Petitioners' May 4, 2023 Notice of Election Contest

Given the Clerk's May 16, 2023 Report addressing the substance of the May 4, 2023 Notice of Election Contest ("Notice"), the Anchorage Municipal Assembly ("Assembly") may be tempted to go straight to the merits of the proposed Election Contest. But that would be premature. Rather, the Assembly should instead determine whether Petitioners have alleged sufficient grounds for an Election Contest and, if so, vote to hear it.

In other words, the Assembly should determine whether, on the face of the materials from Petitioners, they have alleged a case of "[m]alconduct . . . of an election official sufficient to change the result of the election." Anchorage Municipal Code (AMC) 28.100.010A1. Petitioners submit that their allegations squarely satisfy the legal prerequisite for an Election Contest.¹

Petitioners' Notice states that there "were 235,564 eligible active registered voters for the April 4, 2023 [mail-in] municipal election." It further states that "actual ballot packages were sent to [only] 201,029 registered voters," a difference of 34,535, or over 15% of the registered voters in the Municipality of Anchorage. It is a matter of record that only several hundred votes separated candidates in several assembly races, and other candidates were separated by only a few dozen votes.² No municipality-wide candidates were separated by

¹Petitioners request that the subsequent three paragraphs supplement their Notice. The original Notice did not include all relevant matters of record or reference several of the Petitioners' past inquiries and contacts with election officials regarding issues with the April 4, 2023, election.

²<https://www.muni.org/Departments/Assembly/Clerk/Elections/Election%20Results/2023-0425%20Official%20Results%20Signed.pdf>

more than 10,000 votes.³ This was a “mail-in election” where an enormous number of registered voters were never mailed ballots, a much greater percentage than has been seen in past elections.⁴ Petitioners have clearly alleged sufficient votes at issue “to change the result of the election.”⁵ AMC 28.100.010A1.

The second question that the Assembly must answer is whether “malconduct” on the part of election officials has been alleged by Petitioners. “Malconduct” is not defined in Code and is not generally used in common parlance. However, “mal” is derived from the Latin word “malus,” meaning “bad.” So, literally, “malconduct” means “bad conduct.” The Century Dictionary expands on this literal definition, explaining that “malconduct” means “[w]rong, faulty, or improper conduct; especially, maladministration of public affairs: as, malconduct in office.”⁶ Petitioners submit that it was wrong, faulty, bad, improper and/or a maladministration of public affairs for municipal election officials to not send ballot packages to all eligible active registered voters in a broadly-advertised “mail-in” election. Given the very small percentage of in-person votes in mail-in elections,⁷ it is transparent that failing to send ballot packages to all eligible active registered voters results in fewer voters not casting votes in a mail-in election. Petitioners allege that this failure is bad administration by municipal election officials, chiefly Election Administrator Jamie Heinz and her supervisor, Municipal Clerk Barbara Jones (collectively, “Election Officials”). Whether such Election Officials have a defense to this *prima facie* case of malconduct is, yet again, subject to the Election Contest.

Importantly, Petitioners spent significant effort prior to filing their Notice trying to determine why the Municipality failed to send ballot packages to tens of thousands of eligible active registered voters. What they discovered reflects even more malconduct by Election Officials, including the following: (1) failure to maintain an accurate “voters receiving ballots” list (“VRB list”). By the Clerk’s admission at the Public Session of Canvas on April 20, 2023, the VRB list includes numerous errors including duplicate names and bad addresses; (2) removal of the unique identifier (ascension number) assigned to each name in the State of Alaska Division of Election database. Election Officials report that they use that database to determine which voters are to receive ballots, but their removal of the ascension numbers only serves to prevent public oversight of Election Officials’ decisions regarding the distribution of ballot packages; and (3) refusal to provide

³*Id.*

⁴See Assembly Memorandum, 324-2023, at 3.

⁵Whether the voters who did not receive their mail-in ballots could have voted another way, or to what extent they were disenfranchised by not receiving ballots, are questions that must be addressed at the Election Contest.

⁶<https://www.wordnik.com/words/malconduct>

⁷See, e.g., Assembly Memorandum, 324-2023, at 3 (reflecting 2,613 in person votes for the April 4, 2023 mail-in election).

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transparency regarding why ballots are sent to some voter and not others, claiming that disclosure would endanger “critical infrastructure.”⁸

To reiterate, attempting to assess the merits of a future Election Contest at this stage is improper. This is acknowledged by the Assembly Informational Memorandum for today’s Assembly Meeting which states that “members . . . may not ask about the substance of the matter” when considering whether to vote to hear the Contest. However, Petitioners contend that even mere *consideration* of the merits is improper at this stage since no sworn testimony has been submitted in response to their allegations. In other words (and with all due respect), the Assembly should completely disregard the Clerk’s unsworn May 16, 2023 Report.

As Petitioners have alleged sufficient grounds for an election contest under AMC 28.100.010, the Contest should be heard by the Assembly. A transparent process, consistent with the Code, will help restore faith in the election process and municipal institutions.

⁸Petitioners contend that Election Officials’ refusal to disclose the process for the creation of the Municipal voter list is actually a “corrupt practice” under AMC 28.100.101A3 as the only apparent purpose is prevention of transparency and public oversight.