STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT, DIVISION OF BANKING AND SECURITIES

In the matter of AUSTIN AHMASUK	OAH No. 17-0353-SEC Agency No. 2017-00049

MOTION FOR SUMMARY JUDGMENT

Austin Ahmasuk moves for complete summary judgment in his favor and against the Division of Banking and Securities. No material facts are in dispute and this case can be resolved as a matter of law on the ground that the letter that the Division alleges was a proxy solicitation was not a proxy solicitation under the regulations as drafted, or, if the regulations are interpreted to encompass Ahmasuk's letter, on the ground that this interpretation violates Ahmasuk's constitutional rights to due process and free speech.

This motion is supported by the accompanying memorandum and exhibits.

Respectfully submitted, this 15 day of September 2017.

ACLU of Alaska

Susan Orlansky [ABA 8106042]

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MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

Austin Ahmasuk moves for complete summary judgment in his favor and against the Division of Banking and Securities. No material facts are in dispute, and this case can be resolved in Ahmasuk's favor as a matter of law.

The Division alleges that Ahmasuk violated regulations governing proxy solicitations when he wrote a letter to the editor that was published in the local newspaper, but he did not file the letter with the Division. However, the letter merely criticized a matter of corporate governance and did not advocate a vote for or against any candidate or for or against a specific proposition on which shareholders were being asked to vote. At the time of the letter, no election was scheduled, and candidates had not even been announced. Summary judgment in Ahmasuk's favor is warranted because as a matter of law Ahmasuk's letter to the editor was not a proxy solicitation, and applying the proxy solicitation regulations to his letter would violate Ahmasuk's due process and free speech rights.

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STATEMENT OF MATERIAL FACTS

Ahmasuk's letter to the editor

Austin Ahmasuk is a shareholder of Sitnasuak Native Corporation ("SNC"). He has a history of activism on issues related to the governance of SNC.[1]

On February 3, 2017, Ahmasuk emailed a letter to the editor of the Nome Nugget, which the newspaper published on February 9. [Exhibit 2 (Ahmasuk's email, also available at R.4), Exhibit 3 (letter as published)] Ahmasuk's letter expressed his negative view of the procedure known as "vot[ing] a discretionary proxy." As defined more precisely below, a discretionary proxy does not direct a vote for or against any candidate but instead authorizes the holder of the proxy to determine how the shareholder's votes should be distributed. Ahmasuk's letter did not encourage SNC shareholders to support or oppose any specific proxy solicitation, nor did it advocate supporting or opposing any particular candidate. In early February, there were no announced candidates for the SNC Board of Directors election scheduled for summer 2017. Ahmasuk's letter stated in the future tense that "soon . . . shareholders will file for candidacy" for the SNC board election. [Exhibit 2] [2]

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[1] *See* Affidavit of Austin Ahmasuk, Exhibit 1 ¶¶ 2-3. Ahmasuk provides the accompanying affidavit to offer a few additional details not established in the record in this case. Ahmasuk believes the facts asserted in his affidavit are uncontested, but, if the Division disputes any of the facts, they may be disregarded because none is a material fact for purposes of this summary judgment motion.

[2] Ahmasuk later stated in an email to the Division's investigator, written on February 10, 2017: "Sitnasuak Native Corp has not issued a proxy yet for its 2017 annual

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Key terms

With a "directed proxy," a shareholder who does not plan to attend the annual meeting completes a form that directs his or her votes to one or more particular candidates, either from the Board of Directors' slate of nominees and/or from the list of independent nominees. For example, when the 2017 election was scheduled, there were four seats up for election. Because SNC allows cumulative voting, a shareholder who holds 100 shares would have 400 votes to divide and could direct all 400 votes to one candidate or could divide them any way he or she chose among up to four of the 13 named candidates and any write-in. [Exhibit 4] As SNC explained on its Official Proxy Card issued in April 2017:

> Directed – If you wish to direct specific numbers of votes to certain nominees, either within the Board of Directors' slate or among the independent nominees, write the number of votes you wish to give each nominee next to that nominee's name. Vote for no more than four nominees.

[*Id.*]

With a "discretionary proxy," a shareholder does not assign votes to any candidate. Instead, a shareholder voting a discretionary proxy checks one box and gives a proxy holder the authority to distribute the shareholder's votes however the proxy holder chooses, including choosing whether and how to cumulate votes. [*Id.*] Again, to use SNC's explanation on its Official Proxy Card from April 2017:

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meeting[.] [W]e don't even know who the candidates are. SNC has not even issued a notice of candidacy filing[.]" [R. 19-20]

> Discretionary – Your votes will be voted for candidates on the Board of Directors' slate. Do not indicate your votes below. The Corporation will distribute your votes among its slate at the discretion of the Proxyholders named below.

[*Id.*] Discretionary proxies, however, are not limited to the Board of Directors' slate. Independent candidates may form a slate and use discretionary proxies. For example, a group of independent shareholders issued an Independent Shareholder Solicited Discretionary Proxy Card in May 2017. [Exhibit 5] It allowed a shareholder to appoint three named individuals as proxies and to authorize them "to cumulate and distribute my votes among the following people, to elect as many to the Sitnasuak Native Corporation Board of Directors as my proxy holder decides is appropriate." [*Id.*]

SNC also provided an explanation about directed and discretionary proxies in a newsletter to shareholders. In part, the newsletter explained: "In a directed proxy, the shareholder tells the proxy holder how to vote. With a discretionary proxy, the shareholder allows the proxy holder to vote 'in their discretion.'" [Exhibit 6 at 2]

The 2017 SNC election

SNC scheduled its 2017 annual meeting for June 3. Approximately seven weeks in advance of the meeting, on or about April 7, SNC mailed its Annual Report to shareholders, along with a Notice of Annual Meeting, a Proxy Statement, and an Official Proxy Card.[3]

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[3] Ahmasuk recalls receiving his copy of these materials on April 21. He cannot locate a copy of the Annual Report, Notice of Annual Meeting, or Proxy Statement, but he located a copy of the Official Proxy Card. [Exhibit 1 ¶ 8; Exhibit 4] An Independent

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Before receiving the proxy materials from SNC in April, Ahmasuk did not know who would be on the slate of nominees proposed by the Board of Directors or the names of all the independent nominees. [Exhibit 1 ¶ 6][4]

The complaint against Ahmasuk

On February 3, 2017, Jason Evans, a member of the SNC Board of Directors, filed a complaint with the Division of Banking and Securities after seeing Ahmasuk's letter to the Nome Nugget. [R. 1-5][5] Evans contended that the letter constituted a proxy solicitation and that Ahmasuk violated the proxy solicitation regulations (1) by not filing the letter with the Division in advance of its dissemination and not making the disclosures required with a proxy solicitation, and (2) by making a number of false or misleading statements about discretionary proxies and how they have been used. [R. 5]

Leif Haugen, an investigator for the Division, contacted Ahmasuk, and the two exchanged emails as part of Haugen's investigation into Evans's complaint. [R. 7-21] Ahmasuk explained the position that he still maintains: the proxy solicitation regulations

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Shareholder Solicited Discretionary Proxy Card provides the April 7 distribution date for the annual report and related documents. [Exhibit 5]

[4] *See also* Exhibit 2 (Ahmasuk's letter referred to the candidacy statements that would soon be filed); R.19-20 (Ahmasuk's email written on February 10, quoted *supra* at n.2).

[5] Evans's complaint is dated "2/3/17." [R. 3] It is unclear how Evans obtained a copy of the letter to the editor on that day, when the Nome Nugget apparently did not publish the letter until February 9. [*See* R. 23 ¶ 4; Exhibit 3] The Nome Nugget's website confirms that the paper is published on Thursdays. Ahmasuk believes that February 3 – a Friday – was the deadline for submitting a letter to the editor to be published in the February 9 edition. [Exhibit 1 ¶ 7]

do not apply to a letter to the editor of a newspaper that discusses corporate governance policies and the alleged misuse of discretionary proxies, but that does not support or oppose a vote for any candidate, particularly when the letter is published at a time when no candidates have been named. Further, he asserted, reading the regulations to apply to his letter would violate his First Amendment rights. [R. 8, 16] Ahmasuk also denied making false or misleading statements, and he provided one example of how he believed discretionary proxies had been used to affect an election. [R. 12-13, 15-16] He explained that he would need additional information from SNC to demonstrate more clearly how discretionary proxies had been used by SNC. [R. 11-12, 15]

The Division ultimately rejected Ahmasuk's position and issued an order finding that Ahmasuk had violated the proxy solicitation regulations and imposing a fine of $1500. [R. 23-25]

Ahmasuk timely filed a notice of request for a hearing. He reiterated his position that his letter to the editor was not a proxy solicitation, that he did not make any false or misleading statements, and that his speech was political speech protected by the First Amendment to the U.S. Constitution. [R. 27]

By agreement between the parties, the proceedings have been bifurcated. A ruling for Ahmasuk on this summary judgment motion will conclude the entire case and result in dismissal of the complaint against him. For purposes of the present motion, the accuracy of Ahmasuk's statements is not relevant because, if the letter was not a proxy solicitation, then the Division has no authority to investigate its accuracy. An adverse

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ruling on this motion would lead next to an evidentiary hearing on the question whether statements in Ahmasuk's letter to the editor were false.[6]

ARGUMENTS

I. AHMASUK'S LETTER WAS NOT A PROXY SOLICITATION UNDER ALASKA REGULATIONS.

A. Ahmasuk's letter does not meet the statutory definition of a "proxy solicitation."

Alaska regulations define two key terms:

> "[P]roxy" means a written authorization which may take the form of a consent, revocation of authority, or failure to act or dissent, signed by a shareholder or his attorney-in-fact and giving another person power to vote with respect to the shares of the shareholder[.][7]

> "[S]olicitation means
>
> (A) a request to execute or not to execute, or to revoke a proxy; or
>
> (B) the distributing of a proxy or other communication to shareholders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy[.][8]

In the Division's Temporary Cease and Desist Order, the Division asserted that Ahmasuk's letter qualified as a proxy solicitation as defined in 3 AAC 08.365(16)(B).

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6 An evidentiary hearing would also address whether, as a matter of fact, Ahmasuk acted in a good faith belief that he was complying with the proxy solicitation regulations when he did not file his letter to the editor with the Division. *See* AS 45.55.950(d) (providing that any provision of AS 45.55 that imposes liability "does not apply to an act done or omitted in good faith in conformity with a regulation").

7 3 AAC 08.365(12).

8 3 AAC 08.365(16).

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[R. 24] But this is wrong as a matter of law. Ahmasuk's letter to the editor does not qualify as a proxy solicitation under this (or any other) section. Ahmasuk's letter was not "reasonably calculated to result in the procurement, withholding, or revocation of a proxy." It advocated against use of one kind of proxy – a discretionary proxy – but not against all proxies, and it did not advocate for or against any specific candidate. Ahmasuk encouraged fellow shareholders to allocate their votes themselves, rather than grant unfettered discretion to anyone else. [Exhibit 2] Both the Corporation and a slate of independent candidates later solicited discretionary proxies. [Exhibits 4, 5] A shareholder who received these solicitations and who remembered and was persuaded by Ahmasuk's letter would reject both sides' requests to return a discretionary proxy and instead would choose to vote in person at the meeting or to return a directed proxy, allocating the shareholder's votes to one or more of the candidates on either or neither slate.

Because Ahmasuk's letter was not "reasonably calculated to result in the procurement, withholding, or revocation of a proxy," it was not a proxy solicitation as a matter of law under 3 AAC 08.365(16).

B. The proxy solicitation regulations as a whole limit proxy solicitations to communications advocating a vote for or against a particular candidate or a particular proposition subject to a shareholder vote.

In interpreting regulations, courts (and administrative agencies) look to the regulatory scheme as a whole to determine the intended meaning of disputed terms. Even where an express definition is stated, other language in the regulatory scheme can refine

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the meaning.[9]

The State's comprehensive scheme of regulations governing proxy solicitations is set forth at 3 AAC 08.305–.365. Fairly read, this chapter of regulations as a whole governs proxy solicitations for or against particular candidates or for or against a specific matter to be voted upon by shareholders, and *not* communications on all other matters of possible interest to shareholders.[10] A reasonable reading of the regulatory scheme does not alert a shareholder that the proxy solicitation regulations apply to public statements about the election process in general, particularly at a time when no candidates have been announced, no individuals or slates of nominees are asking shareholders to sign proxies on their behalf, and no shareholder vote on a particular matter is scheduled. This reasonable reading of the regulations conforms with the common lay view that a proxy

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[9] *See Federal Deposit Ins. Corp. v. Laidlaw Transit, Inc.*, 21 P.3d 344, 351 (Alaska 2001) ("[I]n ascertaining the plain meaning of a statute, the court must look to the particular language at issue, as well as the language and design of the statute as a whole. And when a statute or regulation is part of a larger framework or regulatory scheme, even a seemingly unambiguous statute must be interpreted in light of the other portions of the regulatory whole." (internal quotation marks, brackets, and footnotes omitted)); *see generally* Rebecca S. Webber, *Element Analysis Applied to Environmental Crimes: What did they know and when did they know it?*, 16 B.C. ENVTL. AFF. L. REV. 53, 81-82 (1988) ("A court may also ignore the plain meaning of a statute when interpreting a regulatory crime and when the apparent plain meaning of that regulatory statute does not effectuate the regulatory purpose. Unlike crimes originating in the common law, regulatory crimes should not necessarily be construed strictly. Thus, if the language . . . is ambiguous, if the plain meaning would lead to a harsh or foolish result, or if the statute is a regulatory statute, a court should consider the particular statutory language as well as the language and design of the statute as a whole." (footnotes omitted)).

[10] *See generally* 3 AAC 08.335 (requirements as to a proxy), .345 (requirements for Board proxy solicitations), .355 (requirements for non-Board proxy solicitations).

solicitation involves a request to vote for particular candidates,[11] or perhaps a vote for or against a particular matter subject to a shareholder vote.

Ahmasuk is an informed shareholder, familiar with the proxy solicitation regulations. In other years, when he wished to communicate with fellow shareholders to advocate proxies for or against specific candidates who had announced they were seeking election to the SNC Board of Directors, he submitted his communication to the Division as required by AS 45.155.139 and 3 AAC 08.307(a). [Exhibit 1 ¶ 4] By contrast, in February 2017, no candidates had been announced. Ahmasuk deliberately acted before the election season to make a public statement espousing his strongly-held views about the process of allowing discretionary proxies. Ahmasuk's letter advocated against giving unbridled discretion to the Corporation so that it could cumulate votes to serve its own purposes. He did not urge shareholders to vote against the Board of Directors' nominees, whoever they might be when the slate was announced; he urged voters to think for themselves and to make their own choices on how to allocate their votes rather than delegate that decision-making to the Corporation. [Exhibit 2]

When proxy solicitations were mailed months after Ahmasuk's letter was published, if shareholders recalled reading Ahmasuk's letter and were persuaded by him not to vote a discretionary proxy, they could return a directed proxy allocating their votes

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11 *See, e.g.*, BLACK'S LAW DICTIONARY (10th ed. 2014 online) (A "proxy contest" is defined as "A struggle between two corporate factions to obtain the votes of uncommitted shareholders. A proxy contest usu. occurs when a group of dissident shareholders mounts a battle against the corporation's managers.").

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for some or all of the Board's slate of candidates, or they could allocate their votes among independent nominees. The fact that, at election time, people heeding Ahmasuk's negative advice about discretionary proxies could vote for *any* of the candidates makes clear that his letter was not a proxy solicitation in the well-understood sense of a communication that advocates a vote for or against specific candidates.

In short, a fair reading of the terms "proxy" and "solicitation" in the context of the regulatory scheme as a whole means that Ahmasuk's letter to the editor cannot be considered a proxy solicitation because it did not advocate for or against any candidate or for or against a particular matter that was then subject to a shareholder vote. For this reason too, summary judgment should be granted to Ahmasuk.

II. TREATING AHMASUK'S LETTER AS A PROXY SOLICITATION WOULD VIOLATE HIS RIGHTS OF DUE PROCESS AND FREE SPEECH.

Courts should construe regulations, where possible, to avoid unconstitutional results.[12] Interpreting the proxy solicitation regulations to apply to Ahmasuk's letter would violate his rights to due process and free speech.

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[12] *See Estate of Kim ex rel. Alexander v. Coxe*, 295 P.3d 380, 388 (Alaska 2013) ("The doctrine of constitutional avoidance is a tool for choosing between competing plausible interpretations of a statutory text. Under this tool, as between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, [this court's] plain duty is to adopt that which will save the Act." (internal quotation marks and footnotes omitted)); *Bigley v. Alaska Psychiatric Inst.*, 208 P.3d 168, 184 (Alaska 2009) ("The canon of constitutional avoidance recommends that when the validity of an act of the [legislature] is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle . . . [to] first ascertain whether a

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A. Applying the proxy solicitation regulations to Ahmasuk's letter would violate due process.

A violation of the regulations governing proxy solicitations can result in severe consequences, including a civil fine of up to $25,000 and imprisonment for up to five years.[13] Although only civil sanctions are sought in this case, the same language defining "proxy solicitation" applies in both civil and criminal proceedings.[14] Citizens constitutionally may be punished, civilly or criminally, only when regulations give clear notice of what conduct is required or forbidden. The Supreme Court of the United States has written:

> A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required. . . . This requirement of clarity in regulation is essential to the protections provided by the Due Process Clause of the Fifth Amendment.[15]

To protect citizens against being punished without fair notice of what conduct is required or prohibited, the Due Process Clause

> requires the invalidation of laws that are impermissibly vague. A conviction or punishment fails to comply with due process if the statute or regulation under which it is obtained fails to provide a person of ordinary

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construction of the statute is possible by which the question may be avoided." (internal quotation marks and footnote omitted)).

[13] *See* AS 45.55.920(b) (establishing civil fines up to $25,000 for multiple knowing or intentional violations of a regulation under AS 45.55), (c) (establishing civil fines up to $5,000 for multiple violations not covered by section (b)); AS 45.55.925 (providing for criminal penalties based on willful violation of a regulation under AS 45.55).

[14] *See* AS 45.55.920, .925.

[15] *Federal Communications Comm'n v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2317 (2012); *see State v. Erickson*, 574 P.2d 1, 20 & n.125 (Alaska 1978) (stating similar principles under Alaska Const. art. I, § 7).

> intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.[16]

Although the due process requirement of fair notice is thought of most commonly in criminal cases,[17] the principle unquestionably applies in civil cases as well. For example, *Fox Television Stations*, the U.S. Supreme Court case quoted above, was a civil case about the constitutionality of regulations governing indecency on radio and television.[18] And the Alaska Supreme Court applies exactly the same due process analysis to both criminal ordinances and civil regulations.[19]

The Alaska proxy solicitation regulations do not put a reasonable person on notice that a communication with contents such as in Ahmasuk's letter is a proxy solicitation that needs to be filed with the Division. As discussed above, a commonsense understanding of the concept of "proxy solicitation" applies only to communications that encourage shareholders to return a proxy for or against a particular candidate or for or

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16 *Fox Television Stations*, 132 S. Ct. at 2317 (internal quotation marks omitted); *see Erickson*, 574 P.2d at 20.

17 *See, e.g., Marks v. City of Anchorage*, 500 P.2d 644, 646 (Alaska 1972) (invalidating criminal ordinance because it was unconstitutionally vague).

18 *See Fox Television Stations*, 132 S. Ct. at 2314.

19 *Compare, e.g., Marks*, 500 P.2d at 652-53 (invalidating a criminal ordinance because it "fail[ed] to give adequate notice of what conduct is prohibited") *with F/V American Eagle v. State*, 620 P.2d 657, 663 (Alaska 1980) (quoting *Marks* when analyzing a civil fishing regulation and stating, "A statute or regulation is impermissibly vague when the 'language is so indefinite that the perimeters of the prohibited zone of conduct are unclear,' violating rights to due process because the law fails to give adequate notice of what type of conduct is prohibited.").

against a particular proposition subject to a shareholder vote, and not to communications that encourage shareholders to favor or eschew a particular type of voting.

Besides failing to give citizens fair notice of what they must do to avoid a penalty, unclear regulations raise the specter of under- or over-enforcement.[20] Recent history illustrates that this is not merely a theoretical risk with respect to the interpretation of Alaska's proxy solicitation regulations. As the current case illustrates, the Division has taken the position that Ahmasuk's letter, which expresses skepticism about the SNC Board and advocates against the use of discretionary proxies, is a proxy solicitation. The Division has taken the same stance regarding similar communications by other shareholders. [Exhibit 7][21] By contrast, the Division has not applied the same interpretation to statements by SNC. In Winter 2016, SNC published an article in its newsletter, titled "Pros and Cons of Cumulative Voting." [Exhibit 6] This article, written by SNC's Parliamentarian, generally speaking, espouses a view opposite to that expressed by shareholders; that is, the SNC article is generally supportive of the Board and generally favors discretionary proxies. The article concludes, "While discretionary voting is controversial, if it is applied fairly, it has benefits for all shareholders." [*Id.* at 3] SNC

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20 *See Marks*, 500 P.2d at 652-53.

21 These orders by the Division were provided to the superior court by counsel for SNC as exhibits to a motion in *Sitnasuak Native Corp. v. Jane Doe & John Doe*, 3AN-17-07064CI. These orders reflect determinations by the Division that shareholder statements attacking discretionary proxies, without advocating for or against any candidate, were proxy solicitations. *See* Exhibit 7 at 1 ¶ 7, 6 ¶ 5, 9 ¶ 4.

did not file the article with the Division as a proxy solicitation, and the Division is not investigating SNC for possible violation of the proxy regulations for its failure to file the article. [Exhibit 8] The different treatment of shareholders' publications and the Corporation's publication as to whether each qualifies as a "proxy solicitation" illustrates how the regulations, as interpreted by the Division, give rise to inconsistent results. Uneven enforcement is likely to continue so long as the regulations are not clearly and more narrowly drafted, so that shareholders, the Corporation, and the Division all have the same understanding of what constitutes a "proxy solicitation." Without a clear, narrow definition of "proxy solicitation," the risk exists that SNC can continue to use its understanding of "proxy solicitation" to suppress shareholder communications, while remaining free to share its own views on appropriate corporate policies.

Clarity in defining and applying regulations is particularly important where speech is at issue, because an overbroad or ambiguous regulation can chill constitutionally protected speech.[22] A clear and narrow definition of proxy solicitation ensures that both shareholders and the Corporation can speak freely about general issues related to corporate governance, while adhering to the stricter rules that apply when speaking during an election season about particular candidates. The twin goals of protecting speakers'

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22 *See Fox Television Stations*, 132 S. Ct. at 2317 ("When speech is involved, rigorous adherence to those [clear notice] requirements is necessary to ensure that ambiguity does not chill protected speech."); *Marks*, 500 P.2d at 647 ("Because of the chilling effect that overbroad laws have on the exercise of constitutional rights, . . . broad prophylactic rules are suspect and precision of regulation must be the touchstone[.]" (internal quotation marks and brackets omitted)).

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due process and free speech rights *and* protecting the integrity of the electoral process would both be served by adopting the commonsense understanding of "proxy solicitation" and interpreting the regulations not to apply to speech that occurs outside of election season, when no candidates have been named, and that does not advocate returning proxies for or against particular candidates or for or against a specific proposition that is then subject to a shareholder vote.

For all these reasons, if the regulations are interpreted to cover communications outside the election season that do not advocate for or against a particular candidate or for or against a particular proposition subject to an upcoming shareholder vote, the regulations would violate due process because (a) they do not give fair notice of what is required or forbidden, (b) they are subject to uneven enforcement, and (c) they risk chilling free speech.[23]

B. Applying the proxy solicitation regulations to Ahmasuk's letter would violate Ahmasuk's right to free speech.

The freedom of political speech is at the core of the protection afforded by the First Amendment.[24] "'[A]s a general matter, the First Amendment means that government has

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[23] In applying federal regulations governing proxy solicitations, the SEC generally presumes that a communication to shareholders made "[w]here there is no [proxy] contest and the stockholder has no decision as to whether he [or she] will send in [a] proxy or not . . . is unlikely to constitute soliciting material." *Broker-Dealer Participation in Proxy Solicitations*, 29 Fed. Reg. 341, at 342 (Jan. 15, 1964), as quoted in *Gas Natural, Inc. v. Osborne*, 624 Fed. Appx. 944, 950 (6th Cir. 2015).

[24] *See McCutcheon v. Federal Election Comm'n*, 134 S. Ct. 1434, 1440-41 (2014) (plurality opinion) ("There is no right more basic to our democracy than the right to participate in electing our political leaders."); *McIntyre v. Ohio Elections Comm'n*, 514

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no power to restrict expression because of its message, its ideas, its subject matter, or its content.'"[25] A shareholder's public statement about the governance of an Alaska Native Corporation is a kind of political speech.

Any statute or regulation that places restrictions on the free dissemination of political speech is presumptively unconstitutional and may be upheld only when the government has a compelling interest in restricting the speech *and* the restriction is narrowly tailored to achieve that interest.[26] Regulating "the truth" is not in itself a compelling ground for restricting speech. The First Amendment protects even speech that is demonstrably false.[27] In most contexts, the law presumes that a free flow of ideas

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U.S. 334, 346-47 (1995) (making clear that political speech is greatly protected and that "core political speech need not center on a candidate for office" but includes advocacy on issues); *In re Primus*, 436 U.S. 412, 434 (1978) ("Where political expression or association is at issue, this Court has not tolerated the degree of imprecision that often characterizes government regulation of the conduct of commercial affairs."); *Susan B. Anthony List v. Driehaus*, 814 F.3d 466, 473 (6th Cir. 2016) ("Political speech is at the core of First Amendment protections.").

[25] *United States v. Alvarez*, 132 S. Ct. 2537, 2543 (2012) (plurality opinion) (quoting *Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 573 (2002) (internal quotation marks omitted)).

[26] *See McCutcheon*, 134 S. Ct. at 1444; *Alvarez*, 132 S. Ct. at 2543-44; *McIntyre*, 514 U.S. at 347; *In re Primus*, 436 U.S. at 432-33 ("[B]ecause First Amendment freedoms need breathing space to survive, government may regulate in [this] area only with narrow specificity." (internal quotation marks omitted)).

[27] *See Alvarez*, 132 S. Ct. at 2544 ("[T]he common understanding [is] that some false statements are inevitable if there is to be an open and vigorous expression of views in public and private conversation, expression the First Amendment seeks to guarantee."); *281 Care Committee v. Arneson*, 766 F.3d 774, 784-85 (8th Cir. 2014) (noting that *Alvarez* dealt with "false speech in light of general First Amendment protections," but not with political speech, which requires even greater protection than nonpolitical speech).

is preferable to government having any role in regulating speech.[28] While, in some circumstances, the constitution tolerates restrictions against fraudulent speech, generally such restrictions may apply only to knowing and reckless falsehoods.[29]

Ahmasuk's case does not require examining whether *all* proxy solicitation regulations are constitutionally suspect for imposing limits on speech about corporate elections. For present purposes, Ahmasuk accepts that the government's legitimate interest in protecting the integrity of corporate elections is sufficiently compelling to justify regulations on actual proxy solicitations – i.e., those that advocate voting for or against a particular board candidate or a proposition that is being put to a shareholder vote.[30] But, as discussed above, Ahmasuk's speech did neither. Outside of clear proxy solicitations, the constitution requires that the law respect an individual's right of political free speech over the government's attempts to regulate it.[31]

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ANCHORAGE, ALASKA 99501-1990
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[28] *See Alvarez*, 132 S. Ct. at 2550 ("The remedy for speech that is false is speech that is true. This is the ordinary course in a free society. . . . [S]uppression of speech by the government can make exposure of falsity more difficult, not less so. Society has the right and civic duty to engage in open, dynamic, rational discourse. These ends are not well served when the government seeks to orchestrate discussion through content-based mandates."); *Susan B. Anthony List*, 814 F.3d at 471-72 (noting that *Alvarez* rejected a rule that false speech is not protected by the First Amendment).

[29] *See Alvarez*, 132 S. Ct. at 2545.

[30] The Alaska Supreme Court has rejected the view that all proxy solicitation regulations violate the First Amendment. *See Meidinger v. Koniag, Inc.*, 31 P.3d 77, 84-85 (Alaska 2001) (writing in the context of alleged false statements in the solicitation of votes for a particular slate of candidates and a particular proposition subject to shareholder vote).

[31] Purely commercial speech may be more tightly controlled than political speech, but there is no basis for classifying Ahmasuk's letter as "commercial speech." *Compare*,

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Rather than attempt to regulate speech in the most narrow way that would achieve its legitimate goal of ensuring integrity in corporate elections, the Division has interpreted its regulations very broadly, such that even general comments by shareholders about corporate affairs are treated as communications "reasonably calculated to result in the procurement, withholding, or revocation of a proxy."[32] That broad interpretation threatens to stifle an enormous amount of free speech by shareholders.[33] Under the Division's view, any letter to the editor or social media post becomes subject to regulation, even when the author speaks in general terms about his or her approval or disapproval of the corporation's recent actions, apparently because the Division concludes that every such communication is reasonably calculated to result in a reader granting or withholding a proxy for the corporation's candidates in the next board election.

Reading the proxy solicitation regulations to apply even when the speaker

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e.g., *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447 (1978) (upholding regulation prohibiting lawyers from in-person solicitation of clients as a reasonable regulation of pure commercial speech) *with In re Primus*, 436 U.S. at 432-39 (striking down regulation prohibiting lawyer with the ACLU, who previously spoke with a person who sought information, from sending a follow-up letter soliciting the person to become a client, holding that application of anti-solicitation rules in this setting violated the lawyer's First Amendment rights).

32 3 AAC 08.365(14).

33 As addressed earlier, the Division does not appear to have applied the same broad reading to communications by SNC. *Compare* Exhibits 6 & 8 (SNC article supporting discretionary proxies was not considered a proxy solicitation) *with* Exhibit 7 (multiple statements by shareholders condemning discretionary proxies have been considered proxy solicitations).

discusses general corporate policies rather than advocating votes for or against specific candidates is not narrowly tailored to serve any legitimate interest of the State in ensuring that corporate elections are conducted fairly. There are several obvious ways the Alaska regulations could be more narrowly tailored[34]:

- The regulations could be rewritten to apply explicitly only to communications by shareholders that specifically support or oppose identifiable individual candidates or specific propositions being put to a shareholder vote.

- The regulations could be rewritten to apply only to shareholder statements that are intentionally false or misleading – that is, statements made with an intent to deceive.

- The regulations could be rewritten to follow the approach of the federal Securities and Exchange Commission and thereby expressly exclude communications by a shareholder stating his or her own opinion about how the shareholder intends to vote and the reasons for that vote, when those statements are made in a public forum, in broadcast media, or in a newspaper or other bona fide publication disseminated on a regular basis.[35] The SEC's Rule 14a-1 presumes that public expressions of individual

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34 *See generally Susan B. Anthony List*, 814 F.3d at 473-76 (striking down Ohio's political false-statements law because the law was not narrowly tailored to the goals of preserving the integrity of elections, protecting voters from confusion, and preventing fraud, and suggesting ways that the law could be more narrowly tailored).

35 *See* 17 C.F.R. § 240.14a-1(*l*)(2)(iv)(A) (SEC Rule 14a-1) [copy provided as Exhibit 9].

views (even when based on a misperception of the underlying facts) can readily be answered in the public forum, and they should not be curtailed by government regulation.[36]

The above less restrictive alternatives, separately or together, establish that the current proxy solicitation regulations are not narrowly tailored. As such, the current proxy solicitation regulations, if applied to Ahmasuk's letter to the editor, would violate his free speech rights.

CONCLUSION

For all the reasons set forth above, Ahmasuk should be granted summary judgment on the issue of whether his letter to the Nome Nugget was a proxy solicitation. Simply put, a letter to the editor that does not endorse or oppose any candidate and that is written at a time when no candidates have been announced should be determined, as a matter of law, not to fall within the regulations governing "proxy solicitations." To read the regulations to apply to such a communication would infringe on Ahmasuk's rights of due

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[36] The SEC rule was adopted in 1992, apparently in part to avoid First Amendment concerns. *See Gas Natural*, 624 Fed. Appx. at 952, quoting *Regulation of Communications Among Shareholders*, 57 Fed. Reg. 48,276 at 48,278-79 (Oct. 22, 1992) (The "literal breadth of the new definition of solicitation was so great as potentially to turn almost every expression of opinion concerning a publicly-traded corporation into a regulated proxy solicitation" that "would raise serious questions under the [F]ree [S]peech [C]lause of the First Amendment[.]" (brackets as in *Gas Natural*)). *See also* Robert S. Frenchman, *The Recent Revisions to Federal Proxy Regulations: Lifting the ban on shareholder communications*, 68 TUL. L. REV. 161, 163 (1993) ("[T]he SEC concluded that its accumulated regulations created unnecessary regulatory impediments and significantly discouraged discussions among shareholders of corporate performance and other matters of direct interest to all shareholders." (internal quotation marks omitted)).

process and free speech. Because, as a matter of law, Ahmasuk's letter was not a proxy solicitation, the complaint against him should be dismissed in its entirety.

Respectfully submitted, this 15 day of September 2017.

ACLU of Alaska

Susan Orlansky [ABA 8106042]

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Exhibits

1 Affidavit of Austin Ahmasuk

2 Ahmasuk's letter to the editor (as published)

3 Ahmasuk's email forwarding his letter to the newspaper

4 Official Proxy Card Sitnasuak Native Corporation

5 Independent Shareholder Solicited Discretionary Proxy Card

6 Sitnasuak Native Corporation, "Venture" (Winter 2016)

7 Example Temporary Cease and Desist Orders issued by the Division of Banking and Securities (*In the Matter of Marie Tozier*; *In the Matter of Charles Fagerstrom*; *In the Matter of Steve Potter*)

8 Affidavit of Mark B. Crozier

9 Securities and Exchange Commission Rule 14a-1

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT, DIVISION OF BANKING AND SECURITIES

In the matter of	)	
	)	OAH No. 17-0353-SEC
	)	Agency No. 2017-00049
AUSTIN AHMASUK	)	
	)	
	)	

AFFIDAVIT OF AUSTIN AHMASUK

STATE OF ALAKA)
) ss
CITY OF NOME)

Austin Ahmasuk, being duly sworn, states as follows:

1. I am the respondent in the above-captioned case. The statements in this affidavit are based on my direct knowledge and observations and are true to the best of my ability.

2. I am a shareholder in Sitnasuak Native Corporation ("SNC").

3. I have a history of activism as a shareholder. For example, in years past I have written letters, and spoken at meetings and helped organize a request for a special meeting.

4. Over the years of my involvement with SNC, I have gained some familiarity with Alaska's proxy solicitation regulations. Thus, in the past, when I wrote a letter to shareholders advocating a vote for particular candidates, in advance of distributing the letter I filed a copy with the Division of Banking and Securities, because I understood this was a requirement for any proxy solicitation.

5. When I wrote the letter to the editor of the Nome Nugget that is the subject of this case, I did not send the letter to the Division of Banking and Securities because I believed that a letter discussing the general practice of discretionary proxies – which did not advocate a vote for or against any particular candidate – was not a proxy solicitation within the meaning of the state regulations.

6. At the time I prepared the letter to the editor that is the subject of this case, the SNC Board had not yet announced its slate of candidates for the next Board election, and I did not know who would be on the corporation's slate of nominees. I had heard about some people who might run as independent candidates, but I did not know of anyone who definitely would run as an independent candidate.

7. My email records reflect that I emailed my letter to the Nome Nugget on Friday, February 3, 2017. I believe that the Nome Nugget is regularly published on Thursdays, and that the preceding Friday is the deadline for submitting a letter to the editor for the next week's paper.

8. I recall receiving in the mail the SNC Annual Report, Notice of Annual Meeting, Proxy Statement, and Official Proxy Card on April 21, 2017. These materials may have been distributed earlier, but this is the date that I recall receiving them.

Further your affiant sayeth naught.

Austin Ahmasuk

Subscribed to and sworn before me, this 12th day of September 2017.

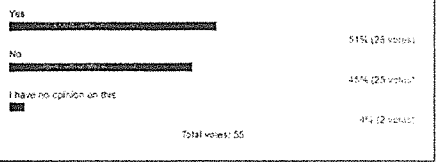
NINA HANEBUTH
Notary Public, State of Alaska
Commission # 170502006
My Commission Expires
May 02, 2021

Notary Public
My commission expires May 2, 2021

Results from our January 31 - February 7 online poll.

(Go to nomenugget.net in order to participate)

Do You Agree With President Trump's Executive Order To Ban Muslims From Entering The Country?



Editorial

Participation

Many of us are pulled into many different directions as we get through every-day life. There are the obligations of work that consume lots of our time; there are the duties that come with keeping the family and the kids fed, clothed, educated and happy, and then, maybe, we still have time for a hobby or a 'happy place' to go to in order to recharge.

Where in all this do we find time and desire to get educated on politics and keep an eye on local, state and federal elected officials?

Well, in this day and age, we need to make that time. A wise man once said that the public gets the leaders it deserves. This goes for all levels of government, from local to national.

It was heartening to see the outpouring of comments, phone calls and involvement coming from Alaskans who lobbied their Senators to not confirm billionaire and outspoken school-voucher proponent Betsy DeVos as the Secretary of Education. To her credit, Republican Senator Lisa Murkowski listened to Alaskans, she used common sense and her conscience to guide her in making the decision to break rank with her fellow Republicans and to vote against DeVos. The other Senator, Dan Sullivan, didn't. Sullivan opted to ignore Alaskan voices, for what dubious reasons, we don't know. A press release said he was satisfied after a meeting with her and that he " received a number of commitments from her about education in Alaska as well as her full commitment to enforce the Every Student Succeeds Act."

On Tuesday, in a 50-50 vote, Vice President Mike Pence cast the deciding vote to confirm yet another billionaire and special interest proponent to President Donald Trump's cabinet.

On the state level, Alaska legislators are discussing how to balance a budget that is more than $3 billion in the hole and on the local level parents are wide-eyed as they are asked to participate in discussions on how to balance a $800,000 budget shortfall for the Nome Public Schools District.

Solutions to all these challenges to our satisfaction can only be found by participating in the process. Read a newspaper. Share an idea. Go to a council meeting or school board meeting. If we all do just a small part, we'll like the outcome so much better because we can say that we claimed our rightful seat at the table and that at least we offered our 2 cents and participated. —D.H.—

Illegitimus non carborundum

The Nome Nugget

Alaska's Oldest Newspaper

Member of: Alaska Newspaper Association, National Newspaper Association
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Letters

Dear Editor,

The Village Corporation for Nome i.e. Sitnasuak Native Corporation (SNC) will soon be holding its annual election and shareholders will file for candidacy. SNC's shareholders have voiced time and time again that they do NOT want discretionary proxies used. Discretionary proxies are NOT required by any Alaskan law and there is NO law that prohibits an ANCSA corporation from prohibiting them for elections. Hundreds of SNC shareholders have said through public letters, social media, or through mailings that they do NOT want discretionary proxies used for elections. I believe SNC shareholders are realizing that discretionary proxies are harmful to our election process and are realizing in greater numbers such practices are disrespectful to our traditions. In 2015 and 2016 I and others spent many hours collecting signatures for a request for a special meeting to do away with discretionary proxies. We collected hundreds of signatures and we met a 10% requirement as required by Alaskan law to petition the SNC Board of Directors to consider doing away with discretionary proxies and to request a special meeting. You might ask yourself why all this commotion about discretionary proxies? Because I and others have thoroughly researched the issue and recognized there is an dramatic ethical argument about what is right and what is wrong with SNC's elections. Discretionary proxies have allowed single persons to use discretionary proxies to dramatically alter the outcome of an election for their singular goal. You know who they are they are members of the SNC 6. Please do NOT vote a discretionary proxy in 2017. Thank you.

Austin Ahmasuk
P.O. Box 693
Nome, AK 99762

Dear Editor,

I am writing to you to express my feelings on the job that our city manager, Tom Moran has been doing. I am fortunate to have been living here in Nome for four years. It has always been a great place to live. I believe that Mr. Tom Moran is doing a great job to keep our city a great place to live. One of the reasons we are great is that we have such an outstanding leader as our city manager.

Spruce Lynch
Nome, AK

Have you thanked a school board member lately?

School board members exemplify local citizen control and decision making in education. They volunteer hundreds of hours and an immeasurable amount of energy to assure that our schools are providing the best education possible for the children of our community. Here are some reasons we are taking this time to show them our appreciation during School Board Recognition Month.

School board members are citizens whose decisions affect our children-what they learn, who will teach them, and what kinds of facilities house their classrooms.

These are men and women elected to establish the policies that provide the framework for our public schools. They represent you, and they take this responsibility seriously by attending lengthy-and sometimes turbulent meetings, conferences, and institutes where they broaden their knowledge about education; during numerous conversations about the schools; and before the Alaska Legislature.

Our school board in Nome is one of fifty-three such boards across the state. These boards enable us to have local control of the public schools, meaning that decisions on school programming are made by local, elected representatives who understand the community's unique problems, values, cultures, and circumstances.

It's a tradition that began more than 200 years ago. With the advice and counsel of the educational professionals they hire, our school board has an impact on virtually every aspect of our schools. It's a huge responsibility and one that should not be taken lightly.

Too often we neglect to recognize the dedication and hard work of these men and women who represent us. The staff and students of our school district are asking all local citizens to take a moment to tell a school board member "thanks for caring about our children's education."

So, hats off to the dedicated men and women who make it possible for local citizens to have a say about education in our communities. We salute the public servants of Nome Public Schools whose dedication and civic responsibility make local control of public schools in our community possible. We applaud them for their vision and voice to help shape a better tomorrow.

List names of Nome Board of Education members:

Dr. Barb Amarok, Ms. Brandy Arrington,Mr. Keith Conger, Mrs. Nancy Mendenhall, Mrs. Jennifer Reader.

Thank you.
Shawn Arnold
NPS Superintendent
PO Box 131
Nome, AK 99762

Letter to the Editor:

The American government is going to have a full scale investigation on how many illegal aliens voted in the last election. What also needs to be looked into is how many outer space aliens voted in the last election and who did they vote for?

If the government is going to be looking at one group of aliens who voted in the last election, then it should be looking at the other group of aliens as well. It's only fair and it is the right thing to do.

John Suter
P. O. Box 670144
Chugiak, AK 99567

Letters to the editor must be signed and include an address and phone number. Thank you notes and political endorsements are considered ads.

Weather Statistics

			High Temp (01/30...02/05)	+31F	01/30/17
			Low Temp	-6F	02/05/17
			Peak Wind	E @ 46 mph	01/30/17
Sunrise	02/09/17	10:17 a.m.	2017 - Total Precip. (through 02/05)		00.72"
	02/15/17	9:57 a.m.	Normal Total Precip. to Date, 2017		01.10"
Sunset	02/09/17	6:16 p.m.	Seasonal Snowfall		35.10"
	02/15/17	6:36 p.m.	Historical Seasonal Avg.		46.60"
			Snow on the Ground		23.00"

National Weather Service
Nome, Alaska
(907) 443-2321
1-800-472-0391

Susan Orlansky

From: Austin Ahmasuk <austin_ahmasuk@yahoo.com>
Sent: Friday, June 09, 2017 3:55 PM
To: TRich@acluak.org
Cc: Susan Orlansky
Subject: Fw: letter to editor

[redacted]

below is the exact e-mail I sent to the Nome Nugget on Feb 3. FYI the deadline for the Nome Nugget is the Monday before the Nome Nugget is published it is published once per week.

[redacted]

[redacted]

--- On Fri, 2/3/17, Austin Ahmasuk <austin_ahmasuk@yahoo.com> wrote:

> From: Austin Ahmasuk <austin_ahmasuk@yahoo.com>
> Subject: letter to editor
> To: diana@nomenugget.com
> Date: Friday, February 3, 2017, 10:32 AM Dear Editor, The Village
> Corporation for Nome i.e.
> Sitnasuak Native Corporation (SNC) will soon be holding its annual
> election and shareholders will file for candidacy. SNC's shareholders
> have voiced time and time again that they do NOT want discretionary
> proxies used. Discretionary proxies are NOT required by any Alaskan
> law and there is NO law that prohibits an ANCSA corporation from
> prohibiting them for elections.
> Hundreds of SNC shareholders have said through public letters, social
> media, or through mailings that they do NOT want discretionary proxies
> used for elections. I believe SNC shareholders are realizing that
> discretionary proxies are harmful to our election process and are
> realizing in greater numbers such practices are disrespectful to our
> traditions. In 2015 and 2016 I and others spent many hours collecting
> signatures for a request for a special meeting to do away with
> discretionary proxies. We collected hundreds of signatures and we met
> a 10% requirement as required by Alaskan law to petition the SNC Board
> of Directors to consider doing away with discretionary proxies and to
> request a special meeting. You might ask yourself why all this
> commotion about discretionary proxies? Because I and others have
> thoroughly researched the issue and recognized there is an dramatic
> ethical argument about what is right and what is wrong with SNC's
> elections. Discretionary proxies have allowed single persons to use
> discretionary proxies to dramatically alter the outcome of an election
> for their singular goal. You know who they are they are members of
> the SNC 6. Please do NOT vote a discretionary proxy in 2017. thank

> you Austin Ahmasuk P.O. Box 693 Nome, AK 99762

OFFICIAL PROXY CARD

SITNASUAK NATIVE CORPORATION

Solicitation by the Board of Directors for the 2017 Annual Meeting of Shareholders	Shareholder Name: Address:	Voting Shares: Votes:

For greater detail on how to vote, see your 2017 Proxy Statement
Check the box of your choice. **Check only one box.**

☐ **Directed** – If you wish to direct specific numbers of votes to certain nominees, either within the Board of Directors' slate or among the independent nominees, write the number of votes you wish to give to each nominee next to that nominee's name. Vote for no more than a total of four nominees.

☐ **Discretionary** – Your votes will be voted for candidates on the Board of Directors' slate. Do not indicate your votes below. The Corporation will distribute your votes among its slate at the discretion of the Proxyholders named below.

☐ **Quorum Only** – If you wish to withhold authority to vote, your proxy will be counted for quorum purposes only. If you check this box, no nominee will receive any of your votes, unless you have also checked the discretionary voting box or cast directed votes for a nominee.

Vote for Directors: How Many Votes Do You Have? See the top right of your proxy card for the number of voting shares you own and the number of votes you have for directors. For example, 100 shares = 400 votes. Four board seats are up for election this year. The four nominees with the highest number of votes will be elected.

BOARD OF DIRECTORS' NOMINEES

The Board of Directors endorses the following slate of nominees. If you checked the "Discretionary" or "Quorum Only" box, you should not write in the number of votes.

Nominee	# of Directed Votes
Barbara Amarok	_____
Helen C. Bell	_____
Jason Evans	_____
Trudy Sobocienski	_____

INDEPENDENT NOMINEES

The following nominees are independent candidates. They are not endorsed by the Board of Directors. If you checked the "Discretionary" or "Quorum Only" box, you should not write in the number of votes.

Nominee	# of Directed Votes
Mary David	_____
Joel Ashby Craft, Jr.	_____
Richard Foster	_____
LieuDell Charles Goldsberry	_____
Gloria Ann Karmun	_____
Theresa Kenick	_____
Karen F. Neagle	_____
Marie Tozier	_____
Emory Charles Wheeler	_____
_____ (write-in candidate)	_____

I hereby appoint as my attorneys in fact and proxies Mark Allred, Edna Baker, Robert Evans, Charles E. Fagerstrom, Neal Foster, Louis Green, Jr., and Andrew Miller, Jr. ("Proxyholders"), a majority of them, or any one of them acting in the absence of the others, with full powers of substitution, to attend the Annual Meeting of Shareholders of Sitnasuak Native Corporation to be held at The Center, Anchorage, AK on June 3, 2017, and any adjournment and postponement thereof, and to vote all of my shares of Sitnasuak Native Corporation that I could vote, including discretionary authority to selectively cumulate votes, with all the powers that I would possess if personally present at the meeting. If this proxy is signed and no specific direction is given, this proxy will be counted for quorum purposes only. If I have directed votes to specific candidates but checked "Discretionary" or "Quorum Only" at the top of this Proxy Card, my directed votes shall prevail. CAST MY VOTES IN THE MANNER INDICATED ABOVE.

Date: _____ , 2017

Signature: _____
(Please sign as your name appears on the top of card)

Print Name: _____

As custodian/guardian/trustee for: _____
(Shareholder's name for whom you are signing)

Witnesses are necessary only when a shareholder signs by marking "X." In such case, two witnesses must sign below.

_____ (Witness, if necessary)

_____ (Witness, If necessary)

Sign this proxy and return it to one of the following:
Sramek Hightower, Election Judge: 2525 C Street, Suite 100, Anchorage, AK 99503 (Hand deliver or Mail)
Ballot box at Nome Corporate Office: 214 Front St., Nome, AK 99762
Ballot box at Anchorage Corporate Office: 4341 B Street, Suite 402, Anchorage, AK 99503
To be valid, a signed, dated proxy must be received no later than 5 p.m., Wednesday, May 31, 2017. SNC may extend the deadline to obtain a quorum. You may revoke this proxy by delivering a written revocation to the Election Judge, by executing and submitting a valid later dated proxy, or by registering to vote in person at the shareholder meeting.

Received by Anchorage Banking and Securities
5-8-17

Independent Shareholder Solicited Discretionary Proxy Card

For the Sitnasuak Native Corporation Annual Meeting of Shareholders

I appoint Richard Foster or Joel Craft or Jason Evans with full power of substitution, to represent me as my proxy and to vote my shares in accordance with the instructions in this document at the Annual Meeting of Shareholders of Sitnasuak Native Corporation to be held June 3, 2017, and at any adjournment thereof.

INSTRUCTIONS TO PROXY HOLDER

For the election of directors, my proxy holder is instructed to cumulate and distribute my votes among the following people, to elect as many to the Sitnasuak Native Corporation Board of Directors as my proxy holder decides is appropriate.

1. Richard Foster
2. Joel "Jay" Craft
3. Jason Evans

(You may withhold authority to vote for a nominee by lining through or otherwise striking out the name of that nominee).

For other matters, my proxy holder is given discretionary authority to vote my shares on matters incident to the conduct of the meeting and on any other matter, not specifically addressed by this proxy, which may properly come before the meeting.

I have received the Sitnasuak Native Corporation 2016 Annual Report and the Notice of Annual Meeting & Proxy Statement dated April 7, 2017, and a Supplemental Proxy Statement from the proxy holder named above.

_____ _____

Signature of Shareholder or Custodian Dated

_____ _____

Print Name of Shareholder or Custodian (For Custodians) Print Name of Minor Shareholder

To be valid, a signed and dated proxy must be received no later than 5 p.m., Wednesday May 31, 2017, in the office of one of the following:

- **Sramek Hightower, Election Judge**:2525 C Street, Suite 100, Anchorage, AK 99503 (Hand Deliver or Mail)
- **Ballot Box at Nome Corporate Office**: 214 Front St., Nome, AK 99762
- **Ballot Box at Anchorage Corporate Office**: 4341 B Street, Suite 402, Anchorage, AK 99503

The Corporation may extend the deadline to obtain a quorum. You may revoke this proxy by delivering a written revocation to the Election Judge by the deadline for submitting proxies, by executing and submitting a valid later dated proxy, or by registering to vote in person at the shareholder meeting

This independent proxy material is solely paid for by Richard Foster, Joel Craft and Jason Evans

SPECIAL EDITION WINTER 2016

SITNASUAK NATIVE CORPORATION

VENTURE

SPIRITUALITY • COMMITMENT TO FAMILY • LOVE OF CHILDREN • RESPECT FOR ELDERS • RESPECTING OTHERS • HARD WORK • REVERENCE TOWARD NATURE • COOPERATION • SHARING
HONESTY • OBEDIENCE • PATIENCE • HUMOR • HUMILITY • RESPONSIBILITY • PRIDE IN CULTURE • AVOIDANCE OF CONFLICT • OPEN COMMUNICATION • SPEAKING OUR TRADITIONAL LANGUAGE

Greetings!

This special edition of the Venture is to inform shareholders of the outcome of the Special Meeting of Shareholders that was held in response to a request made by petitioners. The requested meeting failed to obtain a quorum, and no business was conducted at the meeting. However, prior to the Special Meeting, the Board of Directors instructed that both subject matters that were to be taken up at the Special Meeting would be included on the proxy associated with the Annual Meeting of Shareholders. This meeting will be held in Nome on June 4, 2016.

We look forward to seeing as many of you as possible who are able to make it to Nome for this important Annual Meeting, and we encourage your participation. We understand that the 2,000 plus shareholders residing outside of Nome may find it difficult to participate. Therefore, we hope to hear from you either through phone calls, letters or email.

Finally, we are proud to report on our continued support of Nome Public Schools, which we generously supported with nearly $200,000 in tax credit qualifying donations in 2015.

On January 7, 2016 Sitnasuak Native Corporation held a Special Meeting of Shareholders at the Alaska Native Heritage Center in Anchorage, Alaska. Sitnasuak received a petition to hold a Special Meeting of Shareholders signed by more than ten percent of the shares outstanding and entitled to vote.

The petition requested the meeting to discuss the following:

1. Eliminating discretionary proxy voting for director elections, and
2. Requiring that all eligible candidates be included on the board solicited proxy

The Sitnasuak Bylaws (Art. II, Sec. 2) provide that the Chairman shall call a special meeting at the request of not less than ten percent of the outstanding shares. According to the Sitnasuak Bylaws (Art. II, Sec. 2), "Only such business shall be transacted at a special meeting as may be stated or indicated in the Notice of such meeting." A Notice was sent out to shareholders of record on December 18, 2015.

The Board of Directors considered the locale where the greatest number of shareholders normally reside in designating a meeting place according to Bylaws (Art. II Sec. 3). The majority of shareholders (774) resided in the Municipality of Anchorage during the time the petition was received, which was chosen as the location of the meeting.

During the Special Meeting of Shareholders both Action Items 1 and 2 were further explained by Attorney, Brian Duffy of Havelock & Duffy as detailed below:

ACTION ITEM 1: Shall the Corporation amend the Amended and Restated Articles of Incorporation to replace the statement in Art. VIII that states, "Cumulative voting shall apply in all board elections" with the statement that states, "Cumulative voting shall apply in all board elections, except that no shareholder shall have the right to appoint a proxy holder with discretion to allocate their votes."

ACTION ITEM 1 NOTE: The proposed amendment would need to be approved by the Board of Directors before it could become effective. The Board has not approved this amendment. If shareholders approve the amendment, the Board will be required to address the question at the next Board meeting.

[Continued on page 2]

[Continued from page 1]

ACTION ITEM 1 VOTING STANDARDS: Approval of an amendment to the Amended and Restated Articles of Incorporation to eliminate the use of discretionary proxies during board elections requires the affirmative vote of at least two-thirds of the shares entitled to vote, and the amendment will not be effective if the votes cast against the amendment would be sufficient to elect a director if voted cumulatively at an election of the entire board. See [AS 10.06.504(d) and AS 10.06.420(d)].

ACTION ITEM 2: Shall the Corporation amend the Bylaws to include as Art. II, Sec. 18, a provision that states, "All eligible candidates shall be included on the board solicited proxy."

ACTION ITEM 2 NOTE: If the amendment passes, the Board of Directors may adopt a policy or a bylaw provision to further define candidate eligibility.

ACTION ITEM 2 VOTING STANDARDS: Approval of an amendment to the Bylaws requires the affirmative vote of the outstanding shares entitled to vote at the Meeting. See [Bylaws Art. XII].

Following Duffy's presentation was a 20 minute recess. During this time, President Mike Orr requested shareholders who were in attendance to complete voting. The meeting reconvened as Election Judge, Rod Hutchings of Sramek-Hightower announced quorum was not established. Therefore, Orr announced that the remainder of the meeting would be considered an informational meeting and that no action may be approved without quorum. Parliamentarian, Patrick Anderson provided a presentation on cumulative voting and quorum requirements, which is detailed below.

Pros and Cons of Cumulative Voting

BY PARLIAMENTARIAN PATRICK ANDERSON

Sitnasuak held a Special Meeting of Shareholders in early January, at the request of shareholders who object to using "Discretionary Proxies" at Annual Meetings of Shareholders.

A proxy is a legal document authorized by Alaska State Law for a shareholder to give permission to another person (proxy holder) to vote their shares of stock. A proxy can either be "directed" or "discretionary." In a directed proxy, the shareholder tells their proxy holder how to vote. With a discretionary proxy, the shareholder allows the proxy holder to vote "in their discretion."

Alaska State Law also allows for "Cumulative Voting." This means a shareholder can give all of their votes to one candidate or distribute votes equally or unequally among any or all candidates. For a shareholder with 100 shares voting in an election to elect four board members, they can give as many as 400 votes to one candidate. With "Bloc" voting, they can only give 100 votes to a candidate.

Alaska Native Corporation shareholders have very little influence as an individual on an election or shareholder vote. For someone with 100 shares in a corporation with 2,700 shareholders (close to what Sitnasuak has), their total voting influence is .0034%, if every shareholder votes. Many shareholders don't vote, so shareholders who do vote get a little more influence. Sitnasuak recognizes a quorum of 1/3. If 2,700 shareholders have 100 shares each, the number of shares used to calculate the quorum is 270,000, at least 89,991 shares (900 shareholders) must be present or represented by proxy at the meeting. With a minimum quorum, each shareholder with 100 shares has total voting influence of .0111%, still a very small level.

Many shareholders believe that the Board of Directors use discretionary and cumulative voting to keep their power by reelecting themselves or others. While a discretionary proxy can have that result, it is also used by shareholders who believe they are in a minority to elect someone to voice their interests on the board. Robert's Rules of Order states that, "A minority group, by coordinating its effort in voting for only one candidate who is a member of the group, may be able to secure the election of that candidate as a minority member of the board."

However, electing a minority member to a board can be difficult. Most shareholders can only attend a meeting by proxy. This means that they won't know which candidates running for a board will have enough votes to be elected. This happens when shareholders who vote directed proxies and others vote discretionary proxies. Directed votes can't be changed. A candidate who does not get enough directed votes to win still uses up the directed vote. It can't be transferred to another candidate.

I shared this example at the Special Meeting of Shareholders. If four candidates send out a proxy and receive 100 proxies back with a total of 40,000 votes, a directed or bloc vote proxy allows them to only vote up to 10,000 shares for each candidate. With a discretionary proxy, they could vote up to 40,000 shares for one proxy. 40,000 votes is usually enough votes for a candidate to win a board seat, although this is dependent on how many directed votes are cast and what the quorum is.

[Continued on page 3]

[Continued from page 2]

An Annual Meeting of Shareholders and election of directors cannot be predicted accurately. The number of shareholders voting, how many shares they have, who they vote for and how many votes are directed to individual candidates won't be known until the meeting day. Shareholders who are able to attend a meeting in person have the opportunity to change their votes and help a candidate who doesn't have enough proxy votes to potentially be elected to a board seat. That's also what a proxy holder can do with a discretionary proxy. If four candidates run together on one proxy, and only one has enough directed votes to give them a chance of winning a board seat, then a discretionary proxy can mean the difference between electing a minority candidate to the board, or not. Eliminating discretionary voting removes the possibility for this to happen.

Of course this means that the majority can also use discretion to assure election of a maximum number of majority directors. Shareholders who support minority candidates don't like this outcome, but it's just fair.

It is important to note that shareholders who can attend a meeting in person, have an advantage if discretionary proxies are eliminated. This is due to the fact that being present at a meeting allows one to change their vote as late as the closing of the polls. While a discretionary proxy doesn't let the shareholder make the decision on who to vote for, their proxy holder can use their best judgment and change their vote up to the time polls close as well.

While discretionary voting is controversial, if it is applied fairly, it has benefits for all shareholders.

NOME PUBLIC SCHOOLS SUPERINTENDENT SHAWN ARNOLDS (PICTURED SECOND TOP LEFT) AND SCHOOL BOARD MEMBERS ARE PRESENTED WITH A DONATION CHECK OF $94,940 PRESENTED BY SITNASUAK NATIVE CORPORATION BOARD CHAIRMAN ROBERT (BOBBY) EVANS (PICTURED TOP MIDDLE).

Sitnasuak Native Corporation is pleased to announce a donation of $94,940 to Nome Public Schools in support of its Literary Improvement Plan and Art Attacks Program.

Sitnasuak has long supported the Nome community through the means of charitable contributions towards education initiatives. The Sitnasuak Board of Directors approved the donation to Nome Public Schools at their quarterly board meeting this past December.

"As a parent of four children who either are attending or have graduated from Nome Public Schools, I realize the value of these programs and the benefit they have for our youth. I encourage other parents to also get involved with Nome Public Schools to understand how we can improve the educational experience for our children. The Board of Directors of Sitnasuak Native Corporation appreciates this opportunity to show our commitment to the community of Nome," said Board Chairman, Robert (Bobby) Evans.

Nome Public Schools will use $90,250 to support its Literacy Improvement Plan by integrating the two Scholastic Phonics Inventory programs, Read 180 and System 44 into its curriculum. The System 44 Program is a foundational reading program designed for challenged readers in Grades 3 – 12. The Systems 44 Program has been proven to help students master the reading skills required for success with the new standards, college, and career through explicit instructions in phonics, comprehension, and writing, using a personalized learning progression driven by technology. The Read 180 Program is a comprehensive system of curriculum, instruction, assessment, and professional development proven to raise reading achievement for struggling readers in Grades 4 – 12.

Nome Public Schools will use $4,690 to fund its Arts Attacks Program. Although there are many studies and evidence of the value the Arts contribute to the educational process, there has been a large decline of the Arts in schools across Alaska. The Art Attacks Program will supplement this loss by teaching all students at Nome Elementary School the elements and principles of art and drawing in a developmental and sequential way, as well as to study the art of other artists, cultures, and historical periods. The emphasis of this program is on motivation and self-expression. Students will utilize the process of visualizing, synthesizing and expressing through a wide variety of media.

"With this incredible donation to the Read 180 reading program in our junior high, we will be better equipped to identify and target our struggling readers. We are confident this will help get students back on track academically for future success in high school and beyond. The Art Attacks program is another investment that allows us to introduce art lessons back into elementary. When many schools are worrying about raising test scores, we need to give kids more arts, not less. We would not be able to make such great things happen without Sitnasuak's support!" said Nome Public School Superintendent, Shawn Arnold.

SITNASUAK
NATIVE CORPORATION

P.O. Box 905
Nome, Alaska 99762

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Where Sitnasuak shareholders live

How to submit a questionnaire and proposal for the 2016 Annual Meeting

Are you interested in running for a seat on Sitnasuak Native Corporation's Board? Would you like to be involved in the decision making process for our corporation?

WHO: Sitnasuak Native Corporation shareholders. **WHAT:** 2016 Sitnasuak Board Election and Proxy Solicitation **WHEN:** Deadline for submission of shareholder questionnaire or proposal for the election is 5:00 pm. March 4, 2016. **WHERE:** Please come into one of our corporate offices or contact the Shareholder Department to request the proper forms. Both forms are available for download on our website at www.snc.org/forms/. **HOW:** The following documents are to be notarized and submitted to Sitnasuak's Nome or Anchorage office before the deadline stated above.

What to submit for Questionnaire for Candidacy
- Letter of Intent
- Questionnaire for Candidates

What to submit for Shareholder Proposal
- Shareholder Proposal Form
- Fifty (50) Shareholder Signatures

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING AND SECURITIES

IN THE MATTER OF: MARIE TOZIER Respondent.	**ORDER NO. 16-227-S** **TEMPORARY CEASE AND DESIST ORDER EFFECTIVE IMMEDIATELY, ASSESSING CIVIL PENALTIES, WITH NOTICE OF HEARING RIGHTS and NOTICE OF FINAL CEASE AND DESIST ORDER**

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DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING AND SECURITIES
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(907)269-8140

The Director of the Department of Commerce, Community, and Economic Development, Division of Banking and Securities ("Administrator"), has conducted an investigation into certain activities of Marie Tozier ("Respondent"), and has determined that Respondent violated certain provisions of the Alaska Securities Act, Alaska Statute (AS) 45.55 *et seq.*

I. FINDINGS OF FACT

1. Respondent is a shareholder of Sitnasuak Native Corporation ("SNC").

2. SNC is organized pursuant to the Alaska Native Claims Settlement Act ("ANCSA"), 43 U.S.C. 1601 *et seq.*

3. SNC has certified to the Administrator that it has more than 500 shareholders and total assets exceeding $1,000,000.

4. On May 7, 2016, Respondent stated in a Facebook post that was sent to 30 or more shareholders that "Discretionary proxies are a great tool to elect fraudsters to the board. I say NO THANK YOU [*sic*] to fraudsters and those who protect them. [J.E.] is the one who collects Discretionary Proxies and uses them to grant people, who otherwise would not get

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elected, a winning seat."

5. SNC held its annual meeting on June 4, 2016.

6. After the SNC annual meeting, the Administrator received a timely request for investigation regarding Respondent's Facebook post.[1]

7. On January 12, 2017, Respondent published an advertisement in the Nome Nugget that encouraged SNC shareholders to "Vote your OWN [*sic*] proxy!" and "Stand up and say 'NO' [*sic*] to SNC Directors that ask you to vote a discretionary proxy." In addition, the advertisement stated that it was "Paid for by Sitnasuak Shareholders for Positive Change."

8. The Administrator received another timely request for investigation regarding the Nome Nugget advertisement.

9. SNC's next annual meeting is scheduled for June 3, 2017.

10. Respondent did not file her Facebook post or advertisement with the Administrator concurrently with their distribution to shareholders.

11. Respondent did not file with the Administrator a dated, written proxy statement containing the disclosures required in 3 AAC 08.355.

12. The Administrator attempted to contact Respondent by telephone and certified mail over a period of several months, but has received no response as of the date of this order.

13. SNC allows shareholders to use discretionary proxies and to cumulate votes in the election of directors.

14. Current law allows a shareholder to delegate voting rights through a discretionary proxy to another shareholder, who may then cumulate votes in the election of directors. When shareholders vote via discretionary proxies, they consent to the cumulation of their votes and to the proxyholder's voting according to the proxyholder's discretion. No votes are counted until

[1] The Administrator opened case number 2017-00042 for this second request for investigation. The two investigations have been combined per 3 AAC 08.360(d).

the proxyholder exercises discretion to vote the proxy how he or she chooses.

II. CONCLUSIONS OF LAW

1. Respondent is subject to the filing requirements of AS 45.55.139 because she is a shareholder of SNC and SNC is subject to the filing requirements.

2. Respondent's Facebook post and advertisement are "proxy solicitations" as defined in 3 AAC 08.365(16) because they are communications to shareholders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy.

3. Respondent violated 3 AAC 08.307 by failing to file her proxy solicitations concurrently with the Administrator when she distributed them to shareholders.

4. Respondent violated 3 AAC 08.315(a) by materially misrepresenting that discretionary proxies allow a single person to alter the outcome of an election because the cumulation of votes, permitted by law and SNC rules, does not alter the outcome of the election, as the outcome has not been determined until the votes are cumulated and cast.

5. Respondent violated 3 AAC 08.355 by failing to file with the Administrator required disclosures relating to proxy solicitation.

6. Respondent is subject to a civil penalty pursuant to AS 45.55.920(c) because she violated AS 45.55.139, 3 AAC 08.307, 3 AAC 08.315(a), and 3 AAC 08.355.

III. ORDER and NOTICE

Pursuant to AS 45.55.920, and on the basis of the Findings of Fact and Conclusions of Law, the Administrator ORDERS Respondent to:

1. Pay a civil penalty in the amount of one thousand five hundred dollars ($1,500). This amount is immediately due to the Administrator.

2. Comply with all provisions of the Alaska Securities Act, including associated regulations.

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Pursuant to AS 45.55.920(d), if Respondent desires a hearing, she must file her request for a hearing within 15 days after receipt of this Order. The request for a hearing must be in writing, must be directed to the Administrator, and must state the grounds for the request to set aside or modify the Order. This Order takes effect immediately, remains in effect until 10 days after the hearing is held, and becomes final if a hearing is not requested within 15 days after the receipt of this notice.

This Order is a publicly disclosable document.

IT IS SO ORDERED.

Chris Hladick, Commissioner
Department of Commerce, Community and
Economic Development

DATED: April 19, 2017

/s/ Kevin Anselm
BY: Kevin Anselm, Director
Division of Banking and Securities

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STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING AND SECURITIES

IN THE MATTER OF: CHARLES FAGERSTROM Respondent.	**ORDER NO. 17-40-S** **TEMPORARY CEASE AND DESIST ORDER EFFECTIVE IMMEDIATELY, TO PAY SUSPENDED PENALTY, ASSESSING CIVIL PENALTIES, WITH NOTICE OF HEARING RIGHTS and NOTICE OF FINAL CEASE AND DESIST ORDER**

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The Director of the Department of Commerce, Community, and Economic Development, Division of Banking and Securities ("Administrator"), has conducted an investigation into certain activities of Charles Fagerstrom ("Respondent"), and has determined that Respondent violated certain provisions of the Alaska Securities Act, Alaska Statute (AS) 45.55 *et seq.*

I. FINDINGS OF FACT

1. Respondent is a shareholder and past president of Sitnasuak Native Corporation ("SNC").

2. SNC is organized pursuant to the Alaska Native Claims Settlement Act ("ANCSA"), 43 U.S.C. 1601 *et seq.*

3. SNC has certified to the Administrator that it has more than 500 shareholders and total assets exceeding $1,000,000.

4. On June 28, 2016, Respondent entered into Consent Order No. 16-97-S with the Department (attached as Exhibit 1), which imposed a $1,500 civil penalty under AS 45.55.920(c) for violation of AS 45.55.139, 3 AAC 08.307, 3 AAC 08.315(a), and 3 AAC

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08.355(2). Under the Order, Respondent was required to pay $1,500 immediately, with an additional $1,500 suspended for five years, provided that Respondent comply with all provisions of the Alaska Securities Act and associated regulations. Additionally, if Respondent failed to comply with any term or condition of the Order, the suspended portion of the civil penalty would be immediately due.

5. On February 2, 2017, Respondent sent a letter-to-the-editor of the Nome Nugget (attached as Exhibit 2), in which he wrote: "Through the misuse of the discretionary proxy, [J.E.] was able to unseat the shareholders' choice and elect his choice."

6. Respondent filed his letter-to-the-editor with the Administrator on February 2, 2017. However, his filing was not preceded or accompanied by a dated, written proxy statement disclosing additional information.

7. SNC allows shareholders to use discretionary proxies and to cumulate votes in the election of directors.

8. Current law allows a shareholder to delegate voting rights through a discretionary proxy to another shareholder, who may then cumulate votes in the election of directors. When shareholders vote via discretionary proxies, they consent to the cumulation of their votes and the proxyholder's voting according to the proxyholder's discretion. No votes are counted until the proxyholder exercises discretion to vote the proxy how he or she chooses.

9. On March 6, 2017, the Administrator met with Respondent to review Respondent's letter-to-the-editor, to answer any of Respondent's questions, and to discuss resolution of this matter. The Administrator gave Respondent until March 28, 2017 to pay the suspended portion of Consent Order No. 16-97-S pursuant to the terms of that Order. As of the date of this Order, the Administrator has received no response or payment from Respondent.

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II. CONCLUSIONS OF LAW

1. Respondent is subject to the filing requirements of AS 45.55.139 because he is a shareholder of SNC and SNC is subject to the filing requirements.

2. Respondent violated 3 AAC 08.315(a) and Consent Order 16-97-S by materially misrepresenting that J.E. had misused discretionary proxies.

4. Respondent violated 3 AAC 08.355 and Consent Order 16-97-S by failing to file with the Administrator required disclosures relating to proxy solicitation.

5. The suspended late fee in Consent Order 16-97-S is now due pursuant to the terms of that order.

6. Respondent is subject to a civil penalty pursuant to AS 45.55.920(c) because he violated AS 45.55.139, 3 AAC 08.315(a), and 3 AAC 08.355.

III. ORDER and NOTICE

Pursuant to AS 45.55.920, and on the basis of the Findings of Fact and Conclusions of Law, the Administrator ORDERS:

1. Respondent to CEASE AND DESIST from distributing proxy solicitations for the SNC annual meeting scheduled for June 3, 2017.

2. Respondent to file with the Administrator, for the next three years, the following: proxies, consents or authorizations, proxy statements, or other materials relating to proxy solicitations required under AS 45.55.139 for examination and review 10 working days before a distribution to shareholders.

3. Respondent to pay an additional civil penalty in the amount of one thousand five hundred dollars ($1,500) for a total amount due of three thousand dollars ($3,000). This amount is immediately due to the Administrator.

Pursuant to AS 45.55.920(d), if Respondent desires a hearing, he must file his

request for a hearing within 15 days after receipt of this Order. The request for a hearing must be in writing, must be directed to the Administrator, and must state the grounds for the request to set aside or modify the Order. This Order takes effect immediately, remains in effect until 10 days after the hearing is held, and becomes final if a hearing is not requested within 15 days after the receipt of this notice.

This Order is a publicly disclosable document.

IT IS SO ORDERED.

Chris Hladick, Commissioner
Department of Commerce, Community and
Economic Development

DATED: April 13, 2017

/s/ Kevin Anselm
BY: Kevin Anselm, Director
Division of Banking and Securities

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STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING AND SECURITIES

IN THE MATTER OF: STEVE POTTER Respondent.	ORDER NO. 16-137-S ORDER TO CEASE AND DESIST, IMPOSING CIVIL PENALTIES AND CONSENT TO ORDER

The Director of the Department of Commerce, Community, and Economic Development, Division of Banking and Securities ("Administrator"), has conducted an investigation into certain activities of Steve Potter ("Respondent"), and has determined that Respondent violated certain provisions of the Alaska Securities Act, Alaska Statute (AS) 45.55 *et seq.*

I. FINDINGS OF FACT

1. Respondent is a shareholder of Sitnasuak Native Corporation ("SNC").

2. SNC is organized pursuant to the Alaska Native Claims Settlement Act ("ANCSA"), 43 U.S.C. 1601 *et seq.*

3. SNC has certified to the Administrator that it has more than 500 shareholders and total assets exceeding $1,000,000.

4. On February 4, 2016, a letter to the editor, (attached as Exhibit 1), which was written by Respondent, appeared in the Nome Nugget newspaper. That letter stated that "shareholders' voting rights [were being] coerced from shareholders [by the board of directors]" and that "like Bering Straits [Native Corporation] (BSNC), it is time to end the

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abuse, mistrust, and shame [discretionary proxy voting] has brought to [SNC]." The letter was not filed with the Administrator.

5. Respondent admitted that he knew of no instances in which shareholders' voting rights were being coerced.

6. BSNC continues to use discretionary proxy voting.

II. CONCLUSIONS OF LAW

1. Respondent is subject to the filing requirements of AS 45.55.139 because he is a shareholder of SNC and SNC is subject to the filing requirements.

2. The February 4, 2016 letter to the editor of the Nome Nugget is a "proxy solicitation" as defined in 3 AAC 08.365(16) because it is reasonably calculated to result in the procurement, withholding, or revocation of a proxy.

3. Respondent violated AS 45.55.139 by failing to file the February 4, 2016 letter to the editor with the Administrator.

4. Respondent violated 3 AAC 08.315(a) by materially misrepresenting that SNC's board of directors coerced shareholders' voting rights and that BSNC had ended discretionary proxy voting.

5. Respondent is subject to a civil penalty pursuant to AS 45.55.920(c) because he violated AS 45.55.139 and 3 AAC 08.315(a).

III. ORDER

Pursuant to AS 45.55.920, and on the basis of the Findings of Fact and Conclusions of Law, the Administrator ORDERS:

1. Respondent to CEASE AND DESIST from violating the Alaska Securities Act.

2. Respondent to comply with all provisions of the Alaska Securities Act, including associated regulations.

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4. Respondent to pay a civil penalty in the amount of seven hundred fifty dollars ($750), with seven hundred fifty dollars ($750) suspended for a period of five years. If Respondent commits any violation of the Alaska Securities Act during this period, the suspended portion of the civil penalty will be immediately due.

This Order is a publicly disclosable document.

IT IS SO ORDERED.

Chris Hladick, Commissioner
Department of Commerce, Community and
Economic Development

DATED: August 4, 2016

/s/ Kevin Anselm
BY: Kevin Anselm, Director
Division of Banking and Securities

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Consent to Entry of Order

I, Steve Potter, state that I have read the foregoing Order, that I am aware of the right to a hearing and appeal in this matter and have waived the same.

I admit to the jurisdiction of the Department of Commerce, Community and Economic Development, Division of Banking and Securities ("Department") and further consent to entry of this Order by the Department as settlement of the issues contained in this Order. I admit to violation of the Alaska Securities Act.

I understand that the Department reserves the right to take further actions to enforce this Order or to take appropriate action upon discovery of other violations of the Alaska Securities Act, and that I will fully comply with the terms and conditions of this Order, the Alaska Securities Act and associated regulations.

I enter into this Order voluntarily and understand that this Order is a public document.

8/1/16
Date

/s/ Steve Potter
Steve Potter

SUBSCRIBED AND SWORN TO before me this 1st day of August, 2016 at Ellensburg, WA.

/s/ Jennifer Blanken
Notary Public in and for Washington

Jennifer Blanken
Notary Printed Name
My commission expires: 3/25/18

Contact Person:
Leif Haugen
Securities Examiner
(907) 269-8144

REEVES AMODIO LLC
500 L STREET, SUITE 300
ANCHORAGE, ALASKA 99501-1990
PHONE (907) 222-7100, FAX (907) 222-7199

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT, DIVISION OF BANKING AND SECURITIES

In the matter of	)	
	)	OAH No. 17-0353-SEC
	)	Agency No. 2017-00049
AUSTIN AHMASUK	)	
	)	
	)	

AFFIDAVIT OF MARK B. CROZIER

STATE OF ALASKA)
) ss
THIRD JUDICIAL DISTRICT)

I, Mark B. Crozier, hereby depose and say:

1. I am a rising 3L at the University of Washington School of Law, and I am a summer law clerk at the ACLU of Alaska.

2. Part of my responsibilities as a summer law clerk involve legal research and writing, including research related to the current case.

3. As part of my research, I located an article titled "Pros and Cons of Cumulative Voting," published in Sitnasuak Native Corporation's *Venture*, Special Edition Winter 2016 newsletter, *available at* https://snc.org/sites/default/files/newsletters/sncspecialvetnurewinter2016.pdf (last accessed July 31, 2017), and attached as Attachment 5 to Ahmasuk's Motion for Summary Judgment.

4. The article broadly supports the use of discretionary voting within Sitnasuak Native Corporation elections. The article concludes, "While discretionary voting is controversial, if it is fairly applied, it has benefits for all shareholders."

5. I was curious about whether this article had been filed with the Alaska Division of Banking and Securities as a proxy solicitation.

6. On July 11, 2017, I called the Division of Banking at the Anchorage office. I asked whether SNC had filed the article from *Venture* with the Division.

7. On July 12, 2017, I was informed via voicemail that SNC had not filed the article with the Division. I was further informed that there was no pending investigation by the Division into whether SNC violated the proxy solicitation regulations by failing to file the article with the Division.

Further affiant sayeth naught.

Mark B. Crozier

SUBSCRIBED and SWORN to before me this 8th day of August, 2017.

TANIN SHILPI
NOTARY PUBLIC
STATE OF ALASKA

Notary Public in and for Alaska
My Commission Expires: 10-01-2018

REEVES AMODIO LLC
500 L STREET, SUITE 300
ANCHORAGE, ALASKA 99501-1990
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§ 240.14a-1 Definitions.

Unless the context otherwise requires, all terms used in this regulation have the same meanings as in the Act or elsewhere in the general rules and regulations thereunder. In addition, the following definitions apply unless the context otherwise requires:

(a)*Associate.* The term "associate," used to indicate a relationship with any person, means:

(1) Any corporation or organization (other than the registrant or a majority owned subsidiary of the registrant) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities;

(2) Any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and

(3) Any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the registrant or any of its parents or subsidiaries.

(b)*Employee benefit plan.* For purposes of §§ 240.14a-13, 240.14b-1 and 240.14b-2, the term "employee benefit plan" means any purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive, pension or similar plan primarily for employees, directors, trustees or officers.

(c)*Entity that exercises fiduciary powers.* The term "entity that exercises fiduciary powers" means any entity that holds securities in nominee name or otherwise on behalf of a beneficial owner but does not include a clearing agency registered pursuant to section 17A of the Act or a broker or a dealer.

(d)*Exempt employee benefit plan securities.* For purposes of §§ 240.14a-13, 240.14b-1 and 240.14b-2, the term "exempt employee benefit plan securities" means:

(1) Securities of the registrant held by an employee benefit plan, as defined in paragraph (b) of this section, where such plan is established by the registrant; or

(2) If notice regarding the current solicitation has been given pursuant to § 240.14a-13(a)(1)(ii)(C) or if notice regarding the current request for a list of names, addresses and securities positions of beneficial owners has been given pursuant to § 240.14a-13(b)(3), securities of the registrant held by an employee benefit plan, as defined in paragraph (b) of this section, where such plan is established by an affiliate of the registrant.

(e)*Last fiscal year.* The term "last fiscal year" of the registrant means the last fiscal year of the registrant ending prior to the date of the meeting for which proxies are to be solicited or if the solicitation involves written authorizations or consents in lieu of a meeting, the earliest date they may be used to effect corporate action.

(f)*Proxy.* The term "proxy" includes every proxy, consent or authorization within the meaning of section 14(a) of the Act. The consent or authorization may take the form of failure to object or to dissent.

(g)*Proxy statement.* The term "proxy statement" means the statement required by § 240.14a-3(a) whether or not contained in a single document.

(h)*Record date.* The term "record date" means the date as of which the record holders of securities entitled to vote at a meeting or by written consent or authorization shall be determined.

(i)*Record holder.* For purposes of §§ 240.14a-13, 240.14b-1 and 240.14b-2, the term "record holder" means any broker, dealer, voting trustee, bank, association or other entity that exercises fiduciary powers which holds securities of record in nominee name or otherwise or as a participant in a clearing agency registered pursuant to section 17A of the Act.

(j)*Registrant.* The term "registrant" means the issuer of the securities in respect of which proxies are to be solicited.

(k)*Respondent bank.* For purposes of §§ 240.14a-13, 240.14b-1 and 240.14b-2, the term "respondent bank" means any bank, association or other entity that exercises fiduciary powers which holds securities on behalf of beneficial owners and deposits such securities for safekeeping with another bank, association or other entity that exercises fiduciary powers.

(l)*Solicitation.*

(1) The terms "solicit" and "solicitation" include:

(i) Any request for a proxy whether or not accompanied by or included in a form of proxy:

(ii) Any request to execute or not to execute, or to revoke, a proxy; or

(iii) The furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.

(2) The terms do not apply, however, to:

(i) The furnishing of a form of proxy to a security holder upon the unsolicited request of such security holder;

(ii) The performance by the registrant of acts required by § 240.14a-7;

(iii) The performance by any person of ministerial acts on behalf of a person soliciting a proxy; or

(iv) A communication by a security holder who does not otherwise engage in a proxy solicitation (other than a solicitation exempt under § 240.14a-2) stating how the security holder intends to vote and the reasons therefor, provided that the communication:

(A) Is made by means of speeches in public forums, press releases, published or broadcast opinions, statements, or advertisements appearing in a broadcast media, or newspaper, magazine or other bona fide publication disseminated on a regular basis,

(B) Is directed to persons to whom the security holder owes a fiduciary duty in connection with the voting of securities of a registrant held by the security holder, or

(C) Is made in response to unsolicited requests for additional information with respect to a prior communication by the security holder made pursuant to this paragraph (l)(2)(iv).

[51 FR 44275, Dec. 9, 1986, as amended at 52 FR 23648, June 24, 1987; 53 FR 16405, May 9, 1988; 57 FR 48290, Oct. 22, 1992]

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT, DIVISION OF BANKING AND SECURITIES

In the matter of AUSTIN AHMASUK	OAH No. 17-0353-SEC Agency No. 2017-00049

CERTIFICATE OF SERVICE

I certify that on September 15, 2017, I served via email a copy of Austin Ahmasuk's Motion for Summary Judgment, the accompanying Memorandum in Support of Motion for Summary Judgment, and supporting Exhibits 1-9 on:

Renee Wardlaw
Asst. Attorney General
renee.wardlaw@alaska.gov

A hard copy will be provided upon request.

ACLU of Alaska

Susan Orlansky [ABA 8106042]

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