

HOLMES WEDDLE & BARCOTT, PC
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, AK 99501-3408
TELEPHONE (907) 274-0666
FACSIMILE (907) 277-4657

Stacey C. Stone, Esq.
sstone@hwb-law.com
Holmes Weddle & Barcott, P.C.
701 W. Eighth Avenue, Suite 700
Anchorage, Alaska 99501
Phone: 907-274-0666
Fax: 907-277-4657

Attorneys for Intervenor
Heartbeat of Homer

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

DONNA ADERHOLD, DAVID LEWIS, and
CATRIONA REYNOLDS,

Plaintiffs,

v.

CITY OF HOMER,

Defendant.

Case No. 3AN-17-06227 CI

**MOTION AND MEMORANDUM FOR
EXPEDITED CONSIDERATION OF
MOTION TO INTERVENE**

COMES NOW Intervenor Heartbeat of Homer, by and through its attorneys, Holmes Weddle & Barcott, P.C., and pursuant to Alaska R. Civ. P. 77(g), hereby requests expedited consideration of its Motion to Intervene. This motion is supported by the following memorandum of law. Affidavit of counsel and a proposed order are lodged herewith.

MEMORANDUM OF LAW

Intervenor Heartbeat of Homer, a ballot proposition group registered with the Alaska Public Offices Commission, is the sponsor of a petition, dated March 6, 2017, to recall Plaintiffs Donna Aderhold, David Lewis, and Catriona Reynolds from their elected office on the Homer City Council for the City of Homer, Alaska (“Petition”). The Petition is signed by

thirteen Homer residents, and alleges that Plaintiffs engaged in misconduct in office which has adversely affected the public, violated the oath of office, and failed to perform their elected duties prescribed by law.

The Petition was filed with Jo Johnson, the City Clerk, on March 31, 2017. After a preliminary review, the City Clerk found that that Petition was sufficient and certified the Petition on April 5, 2017. Thereafter, the Petition was returned to the sponsors, and circulated for signatures. The City Clerk issued Memorandum 17-057 to Mayor Bryan Zak and the Homer City Council on April 5, 2017, documenting her decision. Pursuant to AS 29.26.320, the City Clerk scheduled a special election to be held on June 13, 2017 for a public vote on the recall initiative.

Plaintiffs filed their verified complaint in this action on April 24, 2017. The same date, Plaintiffs filed their Motion for Declaratory Judgment and Injunctive Relief, a Non-Opposed Motion to Establish Expedited Proceedings, and a Non-Opposed Motion for Expedited Consideration. On April 25, 2017, this Court issued an Order on Plaintiffs' Non-Opposed Motion to Establish Expedited Proceedings, and an Order granting Plaintiffs' Non-Opposed Motion for Expedited Consideration. The Court set oral argument on Plaintiffs' Motion for Declaratory Judgment and Injunctive Relief for May 17, 2017.

As the sponsor of the recall Petition giving rise to this action, Intervenor has a direct interest in the above-captioned case. Intervenor's Petition is named in both Plaintiffs' verified complaint and its Motion for Declaratory Judgment and Injunctive Relief. However, Intervenor cannot participate in this litigation until intervention is granted.

Intervenor's interest in the Petition may be irreparably harmed by a decision on the Motion for Declaratory Judgment and Injunctive Relief. Plaintiffs have filed a complaint and motion seeking to enjoin the special election ordered pursuant to the Petition and Clerk certification. This Court has granted Plaintiffs' request for expedited consideration and proceedings, and an oral argument has been set for May 17, 2017 for party counsel to present arguments pursuant to the pleadings in this matter. Intervenor must be given an opportunity to represent its interests in this litigation. Without expedited consideration, Intervenor's Motion to Intervene would likely not be fully briefed and ripe for decision until after the date of oral argument on the Motion for Declaratory Judgment and Injunctive Relief, at which point, the time for argument would have passed and the Motion to Intervene moot. Such a delay would prevent Intervenor from presenting its interests to the Court for consideration in this matter.

Intervenor submits that justice requires the motion for expedited consideration be granted. While the Plaintiffs have filed this action against the City of Homer, the action is crafted to strike down the recall effort and Petition, and bar to the special election ordered by the Clerk pursuant to the Petition. The City of Homer has no direct interest in whether the measure is placed on the special election ballot. Intervenor is an essential party to this action, and its interests are not adequately represented by any of the parties already named.

This case remains in the early stages of litigation, within two days of filing. Thus, no prejudice will accrue to any of the named parties as a result of expedited consideration of Intervenor's intervention. Due to the short duration of time between filing and oral argument set to hear argument on the Motion for Declaratory Judgment and Injunctive Relief, it was not possible to attempt to resolve the issues with either party counsel beforehand. The

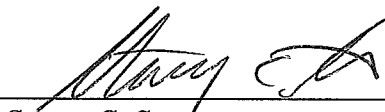
HOLMES WEDDLE & BARCOTT, PC
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, AK 99501-3408
TELEPHONE (907) 274-0666
FACSIMILE (907) 277-4657

proceedings in this matter are expedited, and Intervenor's Motion to Intervene must therefore also be expedited to protect its interests and allow it to participate in this action.

Intervenor respectfully requests this Court grant this Motion for Expedited Consideration and Intervenor's Motion to Intervene as soon as possible, and issue an order to allow Intervenor to respond to Plaintiffs' Motion for Declaratory Judgment and Injunctive Relief, and any other relevant pleadings that may be filed, prior to the date of oral argument, set for May 17, 2017.

DATED this 26th day of April, 2017, at Anchorage, Alaska.

HOLMES WEDDLE & BARCOTT, P.C.
Attorneys for Intervenor

By: 
Stacey C. Stone
Alaska Bar No. 1005030

CERTIFICATE OF SERVICE


The undersigned certifies that on this 26th day of April, 2017, a true and correct copy of the foregoing document was served via:

- E-Mail
 U.S. Mail
 Facsimile
 Hand-Delivery

to:

Joshua A. Decker
Eric G. Glatt
Tara A. Rich
ACLU of Alaska Foundation
1057 W. Fireweed Lane, Suite 207
Anchorage, AK 99503

Holly C. Wells
Jack R. McKenna
Birch Horton Bittner & Cherot
510 L Street, Suite 700
Anchorage, AK 99501

By: 
Legal Assistant
Holmes Weddle & Barcott, P.C.