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success on the merits is required.” *United Cook Inlet Drift Ass’n*, 815 P.2d at 379. As more fully argued above, the Plaintiffs cannot show that they will probably succeed in their challenge. The Court should therefore decline to grant the injunction.

Perhaps more importantly, granting the injunction would be an impermissible prior restraint on the Petitioners’ right to freedom of expression. “The First Amendment broadly protects the ‘freedom of expression upon public questions.’” *Alsworth*, 323 P.3d at 56 quoting *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964). Alaska’s Constitution provides even broader protection. *Alsworth* at 56. As noted above, the Petitioners have a constitutionally protected right to recall their elected officials and to freely express their political opinions through that procedure. Conversely, as noted in *Blair*, the Plaintiffs are not protected by the First Amendment from the normal functioning of the political process. Thus granting an injunction in this case would in fact chill the free expression of speech. “Preliminary injunctions are almost always held to be unconstitutional burdens on speech because they involve restraints on speech before the speech has been fully adjudged to not be constitutionally protected.” *Alsworth* at 57. Because an injunction would be an impermissible prior restraint on the recall proponents’ freedom of expression, Defendant respectfully requests that the Court deny the requested injunction.

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### III. CONCLUSION

The City Clerk correctly determined that, assuming all facts alleged in the statement of recall to be true, the petitions stated two sufficient grounds for recall. That decision complied with the Alaska Statutes, as well as well-settled Alaska Supreme Court precedents and in no way violated the constitutional protections afforded speech. Similarly, and as a direct result, the Plaintiffs are not entitled to an injunction. The City, therefore, respectfully requests that the Court deny the Plaintiffs' motion and allow the people of Homer to vote on June 13, 2017.

DATED this 17 day of May, 2017.

LAW OFFICE OF ERIC SANDERS  
Attorney for City of Homer

By

  
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**Certificate of Service**

I hereby certify that a true and correct copy of the foregoing **Opposition to Motion for Declaratory Judgment and Injunctive Relief and (proposed) Order Denying Declaratory Judgment and Injunctive Relief (37 pgs)** was

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Homer city council goes into full 'resist Trump' mode with resolution

## Homer city council goes into full 'resist Trump' mode with resolution

 Suzanne Downing  February 20, 2017  Alaska News, Politics  250 Comments

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EXHIBIT 1



Some Homer residents want to make Homer, Alaska the most intolerant city in the 49th state. A city intolerant of any opposing ideas about what makes a country great. Intolerant of the legally elected president. Intolerant of enforcing the laws on immigration unless the federal government can “document” it has the authority to do so. They want Homer to be an official “resistance” city, and they’ve got a resolution to prove it.

Read on, it gets better.

On Feb. 27, the City Council of Homer will entertain a resolution that smacks President Donald Trump upside his head for, among other things, being elected without “a popular mandate.” Someone will need to inform the president of this development because he thinks he won 306 electoral votes to 232 for Clinton.

The names of the council members sponsoring the resolution are Donna Aderhold, Catriona Reynolds, and David Lewis.

If the resolution passes, Homer will join Dearborn, Michigan’s city council, which this month passed its own resolution rebuking Trump’s travel “pause button” for immigrants from seven countries that have a high degree of terrorism associated with them.

Mild-mannered Bothell, Washington passed a tame, somewhat simpering inclusivity resolution, which was also aimed at admonishing Trump and his base of voters. Other city councils have entertained becoming “sanctuary cities,” but Homer’s resolution would create a sanctuary city without saying so directly.

Sanctuary cities are places where local police won’t detain illegal noncitizens on the federal government’s behalf. Homer’s resolution says it more coyly: “That the City of Homer will resist any and all efforts to profile undocumented immigrants or any other vulnerable population... the City of Homer will cooperate with federal

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agencies in detaining undocumented immigrants when court-issued federal warrants are delivered.” (italics ours). That is a sanctuary city by definition.

We’ll summarize the rest of the resolution for you: Homer, Alaska thinks the president is an awful, dreadful little man who is inciting hatred from sea to shining sea, is undoing the Paris Climate Treaty, Obamacare, gender-confused bathroom policies, and myriad other Obama stuff. The Homer City Council will, through this resolution, be joining the nascent “resistance movement,” and will not tolerate either the president or the point of view he represents, which, by the way is nearly 50 percent of the voters in America and a good deal more than that in Homer.

Here’s how Homer voted in November: Homer 1, (District 31-350) voted 433 for Trump to 329 for Clinton. Homer 2, (District 31-360) voted 346 for Trump to 284 for Clinton. We call that a local mandate, but the Homer City Council may be unwilling to tolerate it. We shall see how the council members vote on Feb. 27.

Readers with anything to say about Homer’s proposed resolution, pasted below, may contact [clerk@cityofhomer-ak.gov](mailto:clerk@cityofhomer-ak.gov), or Mayor Brian Zak at [mayor@ci.homer.ak.us](mailto:mayor@ci.homer.ak.us) with their civil opinions.

The resolution in full:

CITY OF HOMER, ALASKA

RESOLUTION 17-xxx

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA, STATING THAT THE CITY OF HOMER ADHERES TO THE PRINCIPLE OF INCLUSION AND HEREIN COMMITTING THIS CITY TO RESISTING EFFORTS TO DIVIDE THIS COMMUNITY WITH REGARD TO RACE, RELIGION, ETHNICITY, GENDER, NATIONAL ORIGIN, PHYSICAL CAPABILITIES, OR SEXUAL ORIENTATION REGARDLESS OF THE ORIGIN OF THOSE EFFORTS, INCLUDING FROM LOCAL, STATE OR FEDERAL AGENCIES.

WHEREAS, A new administration is in power in

Popular      Recent



Homer city council goes into full 'resist Trump' mode

with resolution  
February 20, 2017



Newest tax plan, HB 115 — you’re going to need an accountant

Washington, D.C. without a popular mandate;

WHEREAS, During his campaign, President Donald Trump made statements offensive and harmful to the rights of women; immigrants; religious, racial, and ethnic minorities; veterans; the disabled; LGBTQ citizens; and the general public; and that such statements have continued since his election; and

WHEREAS, The President on numerous occasions has stated clearly his disregard for freedom of speech; freedom of the press; freedom of assembly; and freedom of religion, particularly with regard to Muslim Americans; and

WHEREAS, The President has not disavowed his intention to create a registry of Muslim Americans and now intends to ban Muslims from entering the United States; and

WHEREAS, The President now is following through on his promises to deport millions of undocumented immigrants, including millions brought here as children who have grown up to know no other life than that of an American; and

WHEREAS, The President now is following through on plans to build a wall on the border separating the United States from Mexico without apparent regard to its cost, its effects upon our nation's economy, or its sociological ramifications, and to impose an ideological test for entry into our country; and

WHEREAS, The President has promised to repeal federal regulations protecting LGBTQ citizens; and

WHEREAS, The President already has issued executive orders to effect the repeal of the Affordable Care Act, which provides tens of millions of Americans with health care insurance coverage; and

WHEREAS, The President has issued executive orders to rescind certain women's reproductive rights; and

March 27, 2017



Not a single cut allowed by House Democrats — not even their

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March 14, 2017



Alaska Senate Majority rolls out a tax calculator so Alaskans can

'do the math'  
April 18, 2017



Walker rolls over on access to Klutina Lake fishing grounds

March 8, 2017

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WHEREAS, The President has promised to withdraw from the Paris Climate Agreement and to remove other environmental protections instituted under the previous administration, and has begun a process to dismantle the Environmental Protection Agency; and

WHEREAS, Before and especially since the election, some citizens have been emboldened to express overtly an intolerance of diversity that is opposed to the views of most Homer residents and most Americans; and

WHEREAS, The President's cabinet nominees have expressed views similar to those laid out in the whereas clauses above and thus are largely out of step with the attitudes of most Homer residents; and

WHEREAS, The presidential election has exposed deep social and political divisions among Americans and these divisions threaten the general peace as expressions of intolerance rise; and

WHEREAS, The City of Homer recognizes that while the minority community here may be relatively small, it may be vulnerable, and that if those residents feel in any way threatened simply because they are minorities, the City should be on record as opposing all such intolerance; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Homer unequivocally rejects expressions of fear and hate wherever they may exist, and specifically rejects harassment of women, immigrants, religious minorities, racial and ethnic minorities, and LGBTQ individuals.

BE IT FURTHER RESOLVED that the City of Homer embraces all people regardless of skin color, country of birth, faith, sex, gender, marital status, or abilities; and that the City of Homer will not waver in its commitment to inclusion and to continuing to create a village safe for a diverse population.



BE IT FURTHER RESOLVED that the City of Homer will resist any and all efforts to profile undocumented immigrants or any other vulnerable population.

BE IT FURTHER RESOLVED that the City of Homer will cooperate with federal agencies in detaining undocumented immigrants when court-issued federal warrants are delivered.

BE IT FURTHER RESOLVED that the City of Homer shall steadfastly defend the United States and Alaska constitutions, especially with regard to the former's precedent-backed right of privacy and the latter's specified right of privacy (Article 1, Section 22), and safeguard the rights declared in the Bill of Rights.

BE IT FURTHER RESOLVED that the City of Homer will continue its staunch support of our local police in their ongoing efforts to enforce law and protect our community and its visitors in a just, unbiased and transparent manner.

BE IT FURTHER RESOLVED that the City of Homer will declare itself a safety net for the most vulnerable members of and visitors to our community.

BE IT FURTHER RESOLVED that the City of Homer calls on all its citizens to stand against intolerance and resist expressions of hate toward any members of the community, and thus to set an example for the rest of the nation, demonstrating that Homer residents and Alaskans adhere to the principle of live-and-let-live.

PASSED AND ADOPTED by the Homer City Council this 27th day of February, 2017. CITY OF HOMER

\_\_\_\_\_ BRYAN ZAK, MAYOR

ATTEST:

\_\_\_\_\_ JO JOHNSON, MMC, CITY



# SAMPLE BALLOT FRONT

**INSTRUCTIONS TO VOTER:** To vote for the issue/candidate of your choice, **fill in the oval next to the issue/candidate you want to vote for.** Place your ballot inside the secrecy sleeve and then take your ballot to the ballot box.

If you make a mistake while voting, return the ballot to the election official for a new one.  
**A vote which has been erased or changed will not be counted.**

**OFFICIAL BALLOT, CITY OF HOMER  
SPECIAL ELECTION, TUESDAY, JUNE 13, 2017**

Completely fill in the oval next to your choice.

**Question No. 1**

**Sponsor's Statement for Recall:**

Be here advised that Homer City Council Members Aderhold, Lewis and Reynolds are each proven unfit for public office, as evident by their individual efforts in preparation of Resolution 16-121 and 17-019, the text of which stands in clear and obvious Violation of Oath of Office. Whereas the use of City Council office as a platform for broadcasting political activism is unlawful, unethical, and outside the bounds of permissible conduct in public service.

Misconduct in office is further claimed by the irreparable damage done by draft Resolution 17-019 being made public and widely distributed on social and news media, and publicly promoted as conspicuously drafted by and representing the city of Homer. This action has further caused economic harm and financial loss to the city of Homer.

**Councilmember Aderhold's statement:**

I ask voters to vote "no" on the recall. The grounds for it are false.

The recall is based on opposition to a citizen-prepared resolution that I co-sponsored. I was always completely transparent about my role in co-sponsoring and was not responsible for the posting of an early draft to social media. Preparation and introduction of the resolution followed established procedures. I voted against it after hearing from the public.

Two years ago, Homer residents asked me to run for city council. In a field of seven candidates, I received 495 of 2,225 votes, 87 more than the next candidate. I was then and still am honored by your confidence, and I take my role on city council seriously. My scientific career trained me to be objective, recognize and set aside personal bias, and follow process. I bring that training to city council.

During my tenure, council has discussed many controversial matters: beach policy, cannabis, declining revenues, HART reallocation, public safety building. For these and other issues, I study available information, ask questions, listen to your voices, and, based on what I've learned, vote for what I believe is best for Homer. It is a privilege to represent you.

**Shall Donna Aderhold be recalled from the office of Homer City Council?**

Yes

No

**Question No. 2**

**Sponsor's Statement for Recall:**

Be here advised that Homer City Council Members Aderhold, Lewis and Reynolds are each proven unfit for public office, as evident by their individual efforts in preparation of Resolution 16-121 and 17-019, the text of which stands in clear and obvious Violation of Oath of Office. Whereas the use of City Council office as a platform for broadcasting political activism is unlawful, unethical, and outside the bounds of permissible conduct in public service.

Misconduct in office is further claimed by the irreparable damage done by draft Resolution 17-019 being made public and widely distributed on social and news media, and publicly promoted as conspicuously drafted by and representing the city of Homer. This action has further caused economic harm and financial loss to the city of Homer.

**Councilmember Lewis' statement:**

Concerning the first ground for recall: Resolution 16-121 used language identical to a resolution passed by Seattle. Council members Aderhold and Reynolds did not participate in preparing this at all. This was a social statement, not political activity, and is entirely like resolutions that are passed by legislatures across the country all the time. I also co-sponsored Resolution 17-019, which was also a social statement. I have stated that I would sponsor any resolution brought to me by a constituent, even if I did not support it, and it would then have to stand on its own merits. R17-019 was not passed by the Homer City Council.

The second ground for recall refers to a draft resolution that was never brought before the city council for a vote or a discussion. The draft wasn't written by, nor shared by me on social media. As to so-called damages caused to the city, I don't believe someone should be held responsible for theoretical harms that aren't related to any actions that person took.

For these reasons, I believe you should vote no. David Lewis

**Shall David Lewis be recalled from the office of Homer City Council?**

Yes

No

**VOTE BOTH SIDES**

FRONT Card | SEQ# 1

Exhibit 2



# SAMPLE BALLOT BACK

**INSTRUCTIONS TO VOTER:** To vote for the issue/candidate of your choice, fill in the oval next to the issue/candidate you want to vote for. Place your ballot inside the secrecy sleeve and then take your ballot to the ballot box.

If you make a mistake while voting, return the ballot to the election official for a new one.  
**A vote which has been erased or changed will not be counted.**

## Question No. 3

### Sponsor's Statement for Recall:

Be here advised that Homer City Council Members Aderhold, Lewis and Reynolds are each proven unfit for public office, as evident by their individual efforts in preparation of Resolution 16-121 and 17-019, the text of which stands in clear and obvious Violation of Oath of Office. Whereas the use of City Council office as a platform for broadcasting political activism is unlawful, unethical, and outside the bounds of permissible conduct in public service.

Misconduct in office is further claimed by the irreparable damage done by draft Resolution 17-019 being made public and widely distributed on social and news media, and publicly promoted as conspicuously drafted by and representing the city of Homer. This action has further caused economic harm and financial loss to the city of Homer.

### Councilmember Reynolds' statement:

I urge you to vote no to this recall effort.

In 2014 I was elected to City Council out of a field of four candidates and received 597 votes from 1059 voters; I was humbled by this show of confidence in my abilities and have worked hard to represent those who voted for me, along with the entire community.

I have been diligent in following the Open Meetings Act and making sure that my communications are transparent and honest.

I voted for Resolution 16-121 and co-sponsored Resolution 17-019 with the knowledge that my views on these social issues mirror those of many in our community. As an elected official, I am obliged to represent my constituents' viewpoints as well as at liberty to state my own. Who will serve in a very time-consuming volunteer role if they may face recall for voicing an opinion that others disagree with?

I did not share the draft Resolution 17-019 on social media, nor did I intend that anyone else would do so. Regardless, it is spurious to claim that businesses were negatively impacted.

There is an election in October; that is the appropriate time to decide whether I should retain my seat.

**Shall Catriona Reynolds be recalled from the office of Homer City Council?**

Yes

No

VOTE BOTH SIDES

BACK Card 1 SEQ# 1

Exhibit 2

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

DONNA ADERHOLD, DAVID LEWIS,  
and CATRIONA REYNOLDS,

Plaintiffs,

vs.

CITY OF HOMER,

Defendant.

And

HEARTBEAT OF HOMER,

Intervenor.

Case No. 3AN-17-06227 CI

**ORDER DENYING MOTION FOR  
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

This matter comes before the Court on the Motion for Declaratory Judgment and Injunctive Relief filed by Donna Aderhold, David Lewis, and Catriona Reynolds (“Plaintiffs”), and the Court having heard all arguments in support and opposition thereto, and being fully advised in the premises, hereby

DENIES Plaintiffs’ motion, finding that the Homer City Clerk properly complied with the constitutional, statutory, and common laws governing the voters’ right to recall



in the state of Alaska and properly certified the recall petitions submitted against Plaintiffs. Accordingly, the Homer City Clerk properly scheduled a special election on June 13, 2017, submitting the question of recall to the voters.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2017.

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Erin B. Marston  
Superior Court Judge

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