

Patrick W. Munson  
Alaska Bar No. 1205019  
Boyd, Chandler, Falconer & Munson, LLP  
911 West Eighth Avenue, Suite 302  
Anchorage, Alaska 99501  
(907) 272-8401

**IN THE SUPREME COURT FOR THE STATE OF ALASKA**

KATHRYN DODGE,

Appellant,

vs.

LT. GOVERNOR KEVIN MEYER, et al.,

Appellees.

vs.

BARTON LeBON and ALASKA  
REPUBLICAN PARTY,

Intervenors/Cross-Appellants.

Supreme Court No. S-17301

**EMERGENCY  
MOTION FOR ORDER TO CORRECT OR SUPPLEMENT THE RECORD**

Under Appellate Rule 504, Appellant Kathryn Dodge moves this Court to direct the Division of Elections (the "Division") to correct or supplement the record by including documents that it has omitted from same. Because hearing briefs must be submitted to the master not later than December 17, Ms. Dodge requests a decision on this emergency motion by noon on December 13. An affidavit of counsel and proposed order are attached hereto.

**A. Facts**

On December 7, the Clerk of the Appellate Courts issued a Notice to Prepare the Record ordering the Division to:

[P]repare and forward the record in this matter including:

1. All challenged ballots at issue in this matter (the ballots of David Odom, Norma Jean Knapp, and Robert Beconovich, and the disputed, excluded over-voted ballot; and
2. All materials currently in the Division's possession relating to the above-noted voters and ballots.<sup>1</sup>

The above-quoted language was the result of a telephonic conference and apparent agreement between undersigned counsel, the Attorney General's office, and Madame Clerk of the Appellate Courts. Both parties had an opportunity to verbally propose language for the order and to object to the final result. The undersigned understood that the parties agreed on the language of the order proposed to the Court. The Court issued the Notice later that day. Pursuant to that Notice, on December 10, 2018, the Division transmitted, by email, three PDF files containing documents bearing Bates numbers STATE 000001 – 000141.<sup>2</sup>

The record prepared by the Division does not include “[a]ll materials currently in the Division's possession relating to the above-noted voters and ballots.” The Division currently has in its possession affidavits by two of three

---

<sup>1</sup> Notice: Prepare Record (December 7, 2018) (emphasis added).

<sup>2</sup> Kate Demarest emails to Clerk of Appellate Courts Marilyn May (December 10, 2018).



voters in question, but the Division has failed to include these affidavits in the record.

The first affidavit is by voter Dr. David Odom, wherein he attests that he does not reside in House District 1 and did not reside there for at least 30 days prior to the election on November 6, 2018.<sup>3</sup> The second affidavit is by voter Robert Beconovich, who attests that he resides in House District 1 and resided there for at least 30 days prior to the election.<sup>4</sup> Copies of these affidavits were emailed to Division of Elections Director Bahnke and Assistant Attorney General Paton-Walsh on December 5, 2018 at 2:14 p.m., along with a specific request that they be included in the record.<sup>5</sup> The Division has verbally acknowledged receiving these affidavits, but never responded to the written request that they be included in the record.

## **B. Governing Law**

### AS 15.20.510

. . . Upon order of the court, the director shall furnish the record of the recount taken, including all ballots, registers, and other election material and papers pertaining to the election contest. . . .

### Alaska Appellate Rule 210(i)

---

<sup>3</sup> Exh. 1 hereto, Affidavit of Dr. David M. Odom (December 4, 2018); AS 15.05.010(3).

<sup>4</sup> Exh. 2, Affidavit of Robert M. Beconovich (December 5, 2018).

<sup>5</sup> Exh. 3, Patrick Munson email to Josephine Bahnke (December 5, 2018). If and to the extent this Motion is considered a request to Supplement the Record, Appellant notes that the material was provided to the Division before the Notice of Appeal was filed. Alaska App. R. 210(i).

. . . If anything material to either party is omitted from the record on appeal by error or accident by court personnel, or is misstated therein, the parties by stipulation, the trial court, or the appellate court, on a proper suggestion or of its own initiative, may direct that the omission or misstatement shall be corrected. All other questions as to the content and form of the record shall be presented to the appellate court....

### **C. Argument**

The affidavits by two voters at issue in this case should be included in the record because they fall within the scope of AS 15.20.510 and the Court's Notice to the Division describing the materials to be transmitted to the Court and the parties. AS 15.20.510 contains little guidance on what is included within "election materials and papers pertaining to the election contest." In the one apparent instance this Court has opined on the phrase, the Court read it broadly to further the goal of ensuring that the Court "ha[d] access to such information" as it might need to determine, for example, whether a voter "was a resident of the district in which he or she voted".<sup>6</sup> The voters' affidavits should therefore be included in the record because they provide direct, concrete evidence on the determinative issue of whether those voters were qualified to cast ballots in House District 1.

The Division chose not to include the affidavits in the record at least in part because it believes that only material provided to the Director prior to the recount certification is required to be provided. While Appellant understands that may be the Division's legal position, a record on appeal commonly includes all materials



filed or submitted prior to filing an appeal, and may even include materials generated after that in certain circumstances.<sup>7</sup> Absent a clear statutory directive limiting the evidence that the Court should receive as part of the record,<sup>8</sup> Appellant submits that the more appropriate mechanism for the Division to exclude evidence from consideration is by obtaining a ruling to that effect, not unilaterally deciding what material should be provided to the Court. Inclusion in the record does not vouchsafe any particularly evidentiary value; it simply ensures the record is complete.

Moreover, the Court has previously ruled that its “obligation under AS 15.20.510 is to determine whether a vote was cast in compliance with the requirements of Alaska's election law,” not simply to engage in “a limited review of the Director's specific determinations...” If the Court is authorized to review ballots that the Director has not even made a specific determination on, then it

---

<sup>6</sup> *Willis v. Thomas*, 600 P.2d 1079, 1082 (Alaska 1979).

<sup>7</sup> See e.g., App. R. 210(a) (“Except as otherwise ordered by the appellate court, the record does not include documents or exhibits filed after, or electronic records or transcripts of proceedings occurring after, the filing date of the notice of appeal . . . Filings, exhibits, electronic recordings, or transcripts presented to the trial court after the filing date of the notice of appeal may be added to the record on appeal only upon motion pursuant to subsection (i).”) (emphasis added); App. R. 604(b)(1)(A) (“The record on appeal consists of the original papers and exhibits filed with the administrative agency, and a typed transcript of the record of proceedings before the agency.”); see also AS 44.62.570(d) (“The court may augment the agency record in whole or in part . . .”).

<sup>8</sup> Cf. *Fischer v. Stout*, 741 P.2d 217, 220 (Alaska 1987) (“[W]e will not imply from the legislative and administrative silence an intent to provide the Director with the authority to arbitrarily limit the scope of a recount.”)

follows that the material the Court can consider goes beyond that which the Director reviewed prior to the recount.

Finally, technical arguments about the composition of “the record” aside, there should be no dispute that these affidavits fall squarely within the Court’s December 7 Notice because they are “materials currently in the Division’s possession relating to” the two voters. Accordingly, these affidavits are part of the material that the Court already ordered to be transmitted to the Court. The Division does not have authority to unilaterally narrow the express language of the Court’s December 7 Notice. If the Division wishes to challenge the authenticity, admissibility,<sup>9</sup> or relevance of any of the election materials, or object to any evidence at the master’s hearing or in this Court, it may raise those objections in due course. It may not unilaterally decide to withhold portions of the record.

#### **D. Conclusion**

Compiling and transmission of the record is not an opportunity to advance evidentiary objections or a theory of the case. At this juncture, it is essential that the record before the Court is complete and accurate. Because the materials identified in this motion are plainly relevant to the election contest under AS

---


<sup>9</sup> To the extent the Division objects to including these affidavits on the basis of admissibility, we note that an administrative record (including the one prepared by the Division here) is, by its very nature, full of documents that might be considered hearsay, for example, if they were offered in a trial court. An agency may not exclude documentary evidence in its records from the transmitted record based on its own determination that a document will be inadmissible in some future proceeding.



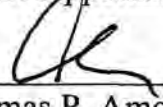
15.20.150 and are within the express scope of the Court's Notice defining the material to be transmitted to it, Ms. Dodge respectfully requests that the Court order the Division to correct or supplement the record by including the Odom and Beconovich affidavits, specifically, as well as any other "materials currently in the Division's possession relating to" the three voters in question that the Division may not have already provided.

Dated this 11<sup>th</sup> day of December 2018.

BOYD, CHANDLER, FALCONER  
& MUNSON, LLP  
Attorneys for Appellant

By:   
For: Patrick W. Munson  
AK Bar No. 1205019

REEVES AMODIO, LLC  
Attorneys for Appellant

By:   
For: Thomas P. Amodio  
AK Bar No. 8511142

BOYD, CHANDLER & FALCONER, LLP  
ATTORNEYS AT LAW  
911 WEST EIGHTH AVENUE, SUITE 302  
ANCHORAGE, ALASKA 99501  
TELEPHONE: (907) 272-8401  
FACSIMILE: (907) 274-3698

**CERTIFICATE OF SERVICE**

I hereby certify that on December 11, 2018,  
a true and accurate copy of the foregoing was  
sent via first class, regular U.S. Mail, as well  
as a courtesy copy via email, to:

LAURA FOX  
MARGARET PATON-WALSH  
KATHERINE DEMAREST  
Office of the Attorney General  
1031 W 4<sup>th</sup> Ave., Ste. 200  
Anchorage, AK 99501

STACEY C. STONE  
Holmes Weddle & Barcott, P.C.  
701 W. 8<sup>th</sup> Avenue, Suite 700  
Anchorage, AK 99501

BY: 

A courtesy copy of the forgoing was sent to  
the chambers of the Hon. Eric A. Aarseth,  
sitting as master in the above-captioned matter.

**BOYD, CHANDLER & FALCONER, LLP**  
ATTORNEYS AT LAW  
911 WEST EIGHTH AVENUE, SUITE 302  
ANCHORAGE, ALASKA 99501  
TELEPHONE: (907) 272-8401  
FACSIMILE: (907) 274-3698



Patrick W. Munson  
Alaska Bar No. 1205019  
Boyd, Chandler, Falconer & Munson, LLP  
911 West Eighth Avenue, Suite 302  
Anchorage, Alaska 99501  
(907) 272-8401

**IN THE SUPREME COURT FOR THE STATE OF ALASKA**

KATHRYN DODGE,

Appellant,

vs.

LT. GOVERNOR KEVIN MEYER, et al.,

Appellees.

vs.

BARTON LeBON and ALASKA  
REPUBLICAN PARTY,

Intervenors/Cross-Appellants.

Supreme Court No. S-17301

**NOTICE OF FILING FACSIMILE AFFIDAVIT**

Kathryn Dodge, by and through her counsel of record, hereby submits the  
facsimile Affidavit of Counsel. An original Affidavit will be submitted upon  
receipt of same.

NOTICE OF FILING FACSIMILE AFFIDAVIT  
*Kathryn Dodge v. Lt. Governor Kevin Meyer, et al.,*

Page 1 of 2  
Supreme Court Case No. S-17301

Dated this 11<sup>th</sup> day of December, 2018.

BOYD, CHANDLER, FALCONER  
& MUNSON, LLP

By: 

for: Patrick W. Munson

AK Bar No. 1205019

**CERTIFICATE OF SERVICE**

I hereby certify that on December 10, 2018,  
a true and accurate copy of the foregoing was  
sent via first class, regular U.S. Mail, as well  
as a courtesy copy via email, to:

LAURA FOX  
MARGARET PATON-WALSH  
KATHERINE DEMAREST  
Office of the Attorney General  
1031 W 4<sup>th</sup> Ave., Ste. 200  
Anchorage, AK 99501

THOMAS P. AMODIO  
Reeves Amodio LLC  
500 L Street, Suite 300  
Anchorage, AK 99501

STACEY C. STONE  
Holmes Weddle & Barcott, P.C.  
701 W. 8<sup>th</sup> Avenue, Suite 700  
Anchorage, AK 99501

BY: 

A courtesy copy of the forgoing was sent to  
the chambers of the Hon. Eric A. Aarseth,  
sitting as master in the above-captioned matter.

NOTICE OF FILING FACSIMILE AFFIDAVIT  
*Kathryn Dodge v. Lt. Governor Kevin Meyer, et al.,*

Page 2 of 2  
Supreme Court Case No. S-17301



Patrick W. Munson  
Alaska Bar No. 1205019  
Boyd, Chandler, Falconer & Munson, LLP  
911 West Eighth Avenue, Suite 302  
Anchorage, Alaska 99501  
(907) 272-8401

**IN THE SUPREME COURT FOR THE STATE OF ALASKA**

KATHRYN DODGE,

Appellant,

vs.

Lt. GOVERNOR KEVIN MEYER, et al.,

Appellees.

vs.

BARTON LeBON and ALASKA  
REPUBLICAN PARTY,

Intervenors/Cross-Appellants.

Supreme Court No. S-17301

**AFFIDAVIT OF COUNSEL**

I, Patrick Munson, being duly sworn, attest as follows:

1. I serve as legal co-counsel for the Appellant Ms. Dodge in this matter.
2. On December 5, 2018 at 2:14 p.m., I sent the email and attachments attached hereto as Exhibit 1. The recipients of the email were Josie Bahnke, Director of the Division of Elections, and Margaret Paton-Walsh, the Attorney General who had been advising the Director throughout the recount. In that email, I specifically requested that

the attachments (affidavits by voters Odom and Beconovich) be included as part of the record. I did not receive a written response to that email at any time, but the Division has verbally acknowledged receiving the affidavits.

2. On December 7, 2018, I participated in a teleconference that included myself, Ms. Paton-Walsh, and Ms. May, Clerk of the Appellate Clerk. I do not recall whether there were any additional participants.

3. The topic of the teleconference was the Supreme Court's forthcoming Notice to the Division of Elections to prepare the record. During that teleconference, the Clerk requested and received input from Ms. Paton-Walsh and myself regarding the precise language the Court should use to direct the Division to prepare and transmit the record. The Clerk transcribed the language that Ms. Paton-Walsh and myself discussed and, as I understood it, agreed upon, including the provision numbered "2" in the subsequent Notice that required the Division to include "All materials currently in the Division's possession relating to the above-noted voters and ballots." Neither party objected to the proposed language of the Notice.

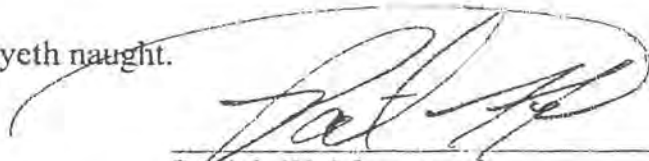
4. The Court issued the Notice later that day, December 7. The language in the Court's Notice was identical or substantially identical to the language transcribed by the Clerk during the December 7 teleconference.



5. Pursuant to that Notice, on December 10, 2018, the Division transmitted, by email, three PDF files containing documents bearing Bates numbers STATE 000001 - 000141. These files do not contain the affidavits attached here to as Exhibit 1.

6. I contacted counsel for the Division, Kate Demarest and Ms. Paton-Walsh, and counsel for Intervenor, Stacey Stone, on the morning of December 11 seeking a stipulation to correct or supplement the record by including these affidavits. The Division declined to so stipulate. I therefore advised that this Motion would be filed. I also left a voicemail for Ms. Stone advising her that this motion would be forthcoming today.

Further your affiant sayeth naught.

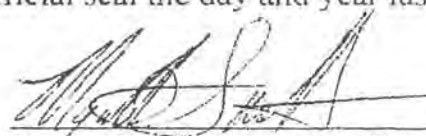
  
Patrick W. Munson

STATE OF TENNESSEE )  
COUNTY OF Shelby ) ss  
)

On this \_\_\_\_ day of December, 2018, before me, a Notary Public in and for the State of Tennessee, duly commissioned and sworn as such, personally appeared Patrick W. Munson, and acknowledged this instrument to be his/her free and voluntary act for the uses and purposes herein mentioned.

WITNESS my hand and official seal the day and year last above written.



  
Notary Public in and for Tennessee  
My Commission Expires: 10/27/2021

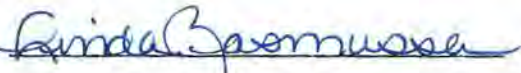
**CERTIFICATE OF SERVICE**

I hereby certify that on December 11, 2018,  
a true and accurate copy of the foregoing was  
sent via first class, regular U.S. Mail to:

LAURA FOX  
MARGARET PATON-WALSH  
KATHERINE DEMAREST  
Office of the Attorney General  
1031 W 4<sup>th</sup> Ave., Ste. 200  
Anchorage, AK 99501

THOMAS P. AMODIO  
Rceves Amodio LLC  
500 L Street, Suite 300  
Anchorage, AK 99501

STACEY C. STONE  
Holmes Weddle & Barcott, P.C.  
701 W. 8<sup>th</sup> Avenue, Suite 700  
Anchorage, AK 99501

BY: 



Patrick W. Munson  
Alaska Bar No. 1205019  
Boyd, Chandler, Falconer & Munson, LLP  
911 West Eighth Avenue, Suite 302  
Anchorage, Alaska 99501  
(907) 272-8401

**IN THE SUPREME COURT FOR THE STATE OF ALASKA**

KATHRYN DODGE,

Appellant,

vs.

LT. GOVERNOR KEVIN MEYER, et al.,

Appellees.

vs.

BARTON LeBON and ALASKA  
REPUBLICAN PARTY,

Intervenors/Cross-Appellants.

Supreme Court No. S-17301

**[LODGED] ORDER GRANTING MOTION TO CORRECT THE RECORD**

The Court, having considered Appellant Dodge's motion to correct the record, and any opposition thereto, hereby **GRANTS** the motion.

**IT IS THEREFORE ORDERED** that the Division shall transmit to the Court and the parties all material currently in its possession relating to the voter's identified in the Court's December 7 Notice to Prepare the Record, including but

not necessarily limited to, the affidavits provided by voters Odom and Beconovich.

Entered by direction of \_\_\_\_\_.

Clerk of the Appellate Courts

\_\_\_\_\_  
Marilyn May

cc: Supreme Court Justices  
Judge Aarseth

**BOYD, CHANDLER & FALCONER, LLP**  
ATTORNEYS AT LAW  
911 WEST EIGHTH AVENUE, SUITE 302  
ANCHORAGE, ALASKA 99501  
TELEPHONE: (907) 272-8401  
FACSIMILE: (907) 274-3698

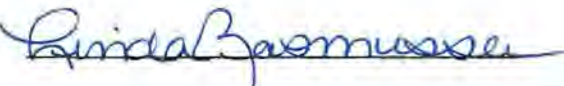
**CERTIFICATE OF SERVICE**

I hereby certify that on December 11, 2018,  
a true and accurate copy of the foregoing was  
sent via first class, regular U.S. Mail, as well  
as a courtesy copy via email, to:

LAURA FOX  
MARGARET PATON-WALSH  
KATHERINE DEMAREST  
Office of the Attorney General  
1031 W 4<sup>th</sup> Ave., Ste. 200  
Anchorage, AK 99501

THOMAS P. AMODIO  
Reeves Amodio LLC  
500 L Street, Suite 300  
Anchorage, AK 99501

STACEY C. STONE  
Holmes Weddle & Barcott, P.C.  
701 W. 8<sup>th</sup> Avenue, Suite 700  
Anchorage, AK 99501

BY: 

A courtesy copy of the forgoing was sent to  
the chambers of the Hon. Eric A. Aarseth,  
sitting as master in the above-captioned matter.



---

**From:** Patrick Munson  
**Sent:** Tuesday, December 11, 2018 2:14 PM  
**To:** Linda Rasmussen  
**Subject:** FW: HD1 - Voter Affidavits  
**Attachments:** 20181205.Beconovich Residence Aff.pdf; 20181205.Odom Residence Aff.pdf

---

**From:** Patrick Munson  
**Sent:** Wednesday, December 05, 2018 2:14 PM  
**To:** Bahnke, Josephine H (GOV) <josie.bahnke@alaska.gov>  
**Cc:** Paton-Walsh, Margaret A (LAW) <margaret.paton-walsh@alaska.gov>  
**Subject:** HD1 - Voter Affidavits

Good afternoon –

Two voters have provided statements regarding their residences at the time of the election. Please include these with your records, along with the material we previously provided at the recount that you indicated would be part of the election material and papers forwarded to the court pursuant to AS 15.20.510.

Courtesy copies of our pleadings will follow shortly. Thank you for your assistance on this matter.

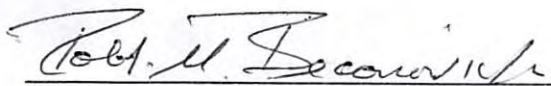
Patrick W. Munson  
Boyd, Chandler, Falconer & Munson, LLP  
(907) 272-8401

STATE OF ALASKA                    )  
  ) ss.  
FOURTH JUDICIAL DISTRICT    )

I, Mr. Robert M. Beconovich, being first duly sworn upon oath, deposes and states as follows:

1.       My name is Mr. Robert Michael Beconovich. The facts in this affidavit are based on my personal knowledge.
2.       I am a resident of Fairbanks, Alaska. My current residential address in Fairbanks is 1214 20<sup>th</sup> Ave., No. C, in House District 1. This has been my residential address in Fairbanks for many years, including for the 30 days prior to the election on November 6, 2018.
3.       My office and mailing address is 104 Kutter Road, Fairbanks, Alaska 99701. I did not reside at that address at any time in 2018, including for the 30 days prior to the election on November 6, 2018, and do not intend to reside at that address in the future.

Further your affiant sayeth naught.


  
Mr. Robert M. Beconovich

SUBSCRIBED AND SWORN to before me this 5 day of December, 2018.

STATE OF ALASKA  
NOTARY PUBLIC  
Asta Reh



My Commission Ends July 9, 2022


  
Notary Public in and for Alaska  
My Commission Expires: July 9, 2022

STATE OF CALIFORNIA       )  
  ) ss.  
RIVERSIDE COUNTY        )

I, Dr. David M. Odom, being first duly sworn upon oath, deposes and states as follows:

1. My name is Dr. David M. Odom. The facts in this affidavit are based on my personal knowledge.
2. I work in both southern California and Fairbanks, Alaska. My residential address in Fairbanks is 1319 Summit Drive, in House District 4. This was my only residential address in Fairbanks from at least February 2018 to the present, including for the 30 days prior to the election on November 6, 2018.
3. My mailing address in Fairbanks is 3419 Airport Way, Number D, Fairbanks, Alaska 99709. I did not reside at that address in 2018.
4. I previously maintained an office at 3514 International Street in Fairbanks. I did not reside at this address at any time in 2018, including for the 30 days prior to the election on November 6, 2018, and do not intend to reside at that commercial address in the future.

Further your affiant sayeth naught.

  
Dr. David M. Odom



## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Riverside

On 12/4/2018 before me, Marco J Contreras, Notary Public  
(insert name and title of the officer)

personally appeared David M. Odom  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)

