

BEFORE THE STATE OF ALASKA PERSONNEL BOARD

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In the Matter of
SARAH PALIN, Governor

Case No. _____

MOTION FOR DETERMINATION OF NO PROBABLE CAUSE

Pursuant to AS § 39.52.320, the Honorable Sarah Palin (the “Governor”) respectfully moves the Personnel Board for a determination of no probable cause to pursue an Ethics Act claim with respect to the allegations before the Personnel Board concerning the replacement of former public safety commissioner Walt Monegan.

I. INTRODUCTION

The Governor commenced this proceeding¹ to secure an independent and lawful review² of the evidence relating to recent allegations concerning her decision to replace former public safety commissioner Walt Monegan in July 2008. The evidence demonstrates that the decision to replace Mr. Monegan had nothing to do with any concerns about the continued employment of state trooper Mike Wooten, an individual who had previously been found by

¹ The Governor maintains that *only* the Personnel Board can investigate, review and adjudicate alleged ethics act violations against the Governor, the Lt. Governor, or the Attorney General.

² This Board has determined that:

When an ethics complaint is filed against the governor, lieutenant governor or attorney general, the complaint is referred to the Personnel Board, which retains Independent Counsel to perform the duties ordinarily performed by the attorney general. Independent Counsel reviews the complaint to determine whether it contains factual allegations which, if true, would constitute a violation of the Act. If so, Independent Counsel is charged with investigating the complaint to determine whether there is probable cause to believe that a violation of the chapter has occurred.

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1 the Division of State Troopers in an official disciplinary review in 2006 to have committed
2 criminal acts of violence. On the contrary, the Governor decided to replace Mr. Monegan
3 based on his refusal to execute her Administration's policy on fiscal and budget matters, a
4 refusal that between late 2007 and the middle of 2008 blossomed into outright insubordination.
5 As detailed below, Mr. Monegan apparently disagreed so strongly with the Governor's fiscal
6 policies that he sought out the Governor's political opponents behind her back to support
7 initiatives that she had previously vetoed, sought out support in Washington, D.C. from the
8 Alaska Congressional delegation for public safety projects the Governor did not believe were in
9 the best interests of the State, and otherwise failed to implement policies that the Governor, as
10 the State's chief executive, had the exclusive constitutional authority to make. The Alaska
11 Constitution provides that the Governor has exclusive and unfettered authority to dismiss
12 department heads such as Mr. Monegan for any reason, and the suggestion that she should have
13 retained Mr. Monegan despite his overt hostility to her Administration's most fundamental
14 policies is as untenable as it is unconstitutional. The Governor presents these issues for
15 resolution with the Board since "[e]thical allegations must be considered independent of
16 politics, policy, and strategy."³

18 Apart from the baselessness of the allegations against the Governor as a factual matter,
19 the allegations would not cause concern under the Ethics Act even if they were true. The
20 Ethics Act prohibits state officials from using state resources to further their personal financial
21 interests. The Governor obviously would have received no financial benefit from the dismissal
22 of Mr. Wooten, who is still employed as a state trooper despite the 2006 administrative findings
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25 ³ *Re Investigation of Ethics Complaint Dated August 3, 2005*, Final Decision p. 3.
26 Motion to Establish No Probable Cause
In Re: Sarah Palin, Governor
Page 2 of 19

1 against him, and she did not receive any financial benefit from the replacement of Mr.
2 Monegan in 2008 – nor is any such financial benefit alleged. Where the Public Officer’s
3 “financial interest in the matter” appears to be “non-existent” or “speculative” then this Board
4 has traditionally dismissed the complaint.⁴ To the extent the Governor is alleged to have
5 sought a non-financial personal benefit from an attempt to have Mr. Wooten dismissed, that
6 benefit would have been a benefit shared generally with the public – namely, the benefit of a
7 trooper force free from rogue officers who have been found guilty of acts of violence and
8 recklessness against the public. The Ethics Act specifically permits state officials to act in such
9 circumstances, and thus even if the allegations were true – which they assuredly are not – there
10 would be no probable cause to pursue a claim in this matter.

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12 For these reasons and those discussed more fully below, the Governor respectfully
13 requests a finding that there is no probable cause to support the allegations concerning her
14 replacement of Mr. Monegan and that the complaint be dismissed. The Governor further posits
15 and reaffirms the very principles that this Board has already adopted for itself and should be
16 applied here:

17 [T]hose responsible for interpreting and applying the Ethics Act should guard
18 against frivolous complaints and attempts to use the Act as a political or strategic
19 tool to attack policy decisions with which they disagree, but which are not
20 unethical. This is especially so at the highest levels of government. If not
21 administered carefully, the Ethics Act could create a system that harms the public
22 by distracting government officials from their public duties in order to respond to
23 complaints and investigations.

24 ⁴ *In Re Investigation of Ethics Complaint Dated August 3, 2005*, Final Decision p. 1 (“the complaint should be
dismissed because Public Officer’s financial interest in the matter appeared non-existent or too speculative to give
rise to a violation of the Act”).

1 *Re Investigation of Ethics Complaint Dated August 3, 2005*, Final Decision p. 3. At its core,
2 Monegan’s allegations of unethical conduct by the Governor is in fact a “political or strategic
3 tool” he is using to “attack policy decisions” with which he disagreed, namely, budget priorities
4 for the DPS. The facts supporting this are laid bare below.

5 **II. ARGUMENT**

6 **A. THERE IS NO PROBABLE CAUSE FOR PURSUING AN ETHICS ACT
7 CLAIM RELATING TO THE REPLACEMENT OF WALT MONEGAN AS
8 PUBLIC SAFETY COMMISSIONER.**

9 **1. THE EVIDENCE DEMONSTRATES THAT NEITHER THE GOVERNOR NOR
10 ANYONE ACTING AT HER DIRECTION PRESSURED MR. MONEGAN TO
11 TERMINATE MR. WOOTEN.**

12 On August 30, 2008, Mr. Monegan told the *Anchorage Daily News* that, “[f]or the
13 record, no one ever said fire Wooten. Not the governor. Not Todd [Palin]. Not any of the
14 other staff...”⁵ That statement constitutes a complete recantation of Mr. Monegan’s prior
15 allegations and alone suffices to demonstrate that no probable cause exists to pursue an Ethics
16 Act claim on the allegations reported in the media in recent weeks. This conclusion is
17 underscored by documents that have been reported publicly. The one communication between
18 the Governor and Mr. Monegan that has been referenced publicly in connection with claims
19 that the Governor’s office improperly pressured Mr. Monegan, for example, provides no
20 support for such a claim. That communication came on July 17, 2007, when the Governor
21 asked Mr. Monegan to comment on a bill sponsored by Representative Les Gara that would
22 have banned the sale of guns to individuals who had been judicially determined to be a threat to
23 public safety. The Governor explained that the bill brought to mind her “ex brother-in-law, the

24 ⁵ Lisa Deemer, ANCHORAGE DAILY NEWS, Aug. 30, 2008 (available at
25 <http://www.adn.com/sarahpalin/story/510080.html>).
26 Motion to Establish No Probable Cause
In Re: Sarah Palin, Governor
Page 4 of 19

1 trooper, who threatened to kill my dad yet was not even reprimanded by his bosses and still to
2 this day carries a gun, of course.” (PB0001.) The Governor went on to explain:

3 Remember when that death threat was reported, and follow-on
4 threats from Mike that he was going to ‘bring Sarah and her
5 family down’ - instead of any reprimand WE were told by
6 trooper union personnel that we’d be sued if we talked about
7 those threats. Amazing. And he’s still a trooper, and he still
8 carries a gun, and he still tells anyone who will listen that he will
9 ‘never work for that b*itch’ (me) because he has such anger and
10 disdain towards my family.

11 So consistency is needed here. No one’s above the law. If the law
12 needs to be changed to not allow access to guns for people
13 threatening to kill someone, it must apply to everyone.

14 (Exh. A, PB0001.)

15 Far from reflecting a request that action be taken against Mr. Wooten, that
16 communication reflects the Governor’s recognition that the Wooten issue had been resolved in
17 the past, and that in a world where a renegade trooper is allowed to remain on the job with
18 access to his firearm, consistency requires reciprocal treatment of firearms regulations that
19 apply to ordinary citizens. The fact that the Governor shared her personal experiences with a
20 violent and abusive state trooper as an example of the public safety risks implicated by
21 Representative Gara’s proposed legislation cannot reasonably be interpreted as pressure on Mr.
22 Monegan to terminate Mr. Wooten. Further, it is both lawful and ethical for a publicly elected
23 official to rely on personal life experiences when evaluating public policy. Indeed, such life
24 experiences are often used as benchmarks for public officials.

25 Because there is no evidentiary basis to conclude that the Governor or any member of
26 the Governor’s office pressured Mr. Monegan to fire Mr. Wooten, there is no probable cause
for initiating an investigation.

1 **B. THE EVIDENCE UNAMBIGUOUSLY SHOWS THAT THE GOVERNOR REPLACED**
2 **MR. MONEGAN BECAUSE OF AN INTOLERABLE PATTERN OF**
3 **INSUBORDINATION ON BUDGET AND OTHER KEY POLICY ISSUES.**

4 The evidentiary record further demonstrates that the reason Mr. Monegan was replaced
5 by the Governor was an escalating pattern of insubordination and refusal to implement
6 Administration policy on fiscal and budget matters, which reached a crescendo in July 2008.
7 As a political appointee who served at the pleasure of the Governor, Mr. Monegan was
8 appropriately replaced under these circumstances.

9 **1. *Mr. Monegan Refused To Honor The Governor's Budget Priorities And***
10 ***Consistently Subverted Formal Departmental Channels To Pursue His***
11 ***Own Initiatives That Were Inconsistent With Administration Policy.***

12 Mr. Monegan's refusal to pursue the Governor's policy objectives in the Department of
13 Public Safety surfaced as early as October 2007, when DPS was involved in formulating a 10-
14 year strategic plan. That planning process was intended to be closely integrated with other
15 state-wide planning and budgeting processes coordinated by the Office of Management and
16 Budget (OMB), the agency tasked with overseeing interdepartmental resource allocation and
17 expenditures. From the beginning, however, Mr. Monegan made clear that "[r]ather than plan
18 to a budget, we want to budget to a plan." (Exh. C, PB0003.) OMB Director Karen Rehfeld
19 was "stunned" at Monegan's approach. (Exh. B, PB0002). In an October 18, 2007
20 communication to senior budget officials, Mr. Monegan acknowledged that this approach was
21 at odds with the Governor's budget priorities, stating that he "understands that funds can and
22 will become tight(er)." (Exh. C, PB0003.) In response, OMB Director Karen Rehfeld made
23 very clear that the Governor "does not want to increase the budget/position count -- this is
24 going to be a real balancing act." (Exh. C, PB0003.) And, with that, the stage was set for an

1 internal disagreement over budget priorities that would last and escalate for the next eight
2 months.

3 Notwithstanding the Administration's concerns, Monegan unilaterally orchestrated a
4 press conference on December 6, 2007 pushing "his" budget plan, along with Sen. Hollis
5 French. By early January 2008, Mr. Monegan's vision for expanding the DPS and its operating
6 budget came into more direct conflict with that of the Administration. Increasingly dissatisfied
7 with the Administration's budget priorities and the formal interdepartmental budgeting process,
8 Mr. Monegan again struck out on his own. On January 29, 2008, Randy Ruaro, then-special
9 assistant to the Governor, reported to Ms. Rehfeld that Mr. Monegan was circumventing the
10 normal interdepartmental channels for making budget requests. Among other things, Mr.
11 Ruaro observed that "the more we can redirect Walt [Monegan] and Audie [Holloway of DPS]
12 to work through Dan [Spencer] [DPS, Administrative Services Director] the better. I get the
13 sense that because Dan voices an opinion that may not be exactly what they want to hear, they
14 start going around him." (Exh. D, PB0005.) In an effort to encourage Mr. Monegan to work
15 within the formal budgeting process, Ms. Rehfeld requested that he submit formal estimates to
16 OMB for DPS projects, cautioning Mr. Monegan that "there are significant challenges already
17 with keeping to the governor's overall spending goals." (Exh. E, PB0010.) Ignoring this
18 directive from the state's top budget official, Mr. Monegan quipped that he only wanted "to
19 fight just one of you at a time... ok?" (Exh. E, PB0010.) Sensing that his actions were at odds
20 with Administration objectives, Mr. Monegan asked Ms. Rehfeld if he or DPS "caused you
21 concern." Rehfeld responded, "yes," and pointedly asked: "What can we reasonably do to
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1 tackle some of these very difficult issues and still maintain the budget discipline the governor is
2 committed to?" (Exh. E, PB0009.)

3 Despite the Administration's repeated calls for budget discipline in the major state
4 agencies, Mr. Monegan continued to press his own expansive agenda without regard for either
5 the formal budgeting process or the Governor's clear policy priorities. In February 2008, for
6 example, Mr. Monegan released a letter to the Governor supporting a \$1.8 million increase in
7 the state budget for the Anchorage Community Land Trust, a line item the Governor previously
8 had vetoed – an act of public insubordination that is almost unbelievable coming from a
9 political appointee. (Exh. F, PB0012.) Ms. Rehfeld was "stunned and amazed" and
10 subsequently admonished Monegan for sending the letter, explaining that this type of public
11 statement by a sitting cabinet member would likely frustrate the Administration's efforts to
12 achieve its budget objectives with the Legislature. (Exh. F, PB0012.) As Ms. Rehfeld
13 explained: "I expect we will see your letter appear as justification for funding to be included in
14 the capital budget as the legislature makes changes to our budget, which is a bit awkward.
15 Bottom line is, let's talk about this rather than writing letters to the governor." (Exh. G,
16 PB0014.)

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18 Mr. Monegan's February 2008 letter on the Anchorage Community Land Trust issue
19 only highlighted growing concerns about his willingness to coordinate his department agenda
20 with that of the Administration. In March 2008, Mr. Ruaro and Ms. Rehfeld agreed that it was
21 critical for the departments to coordinate their agendas internally before making any public
22 announcements: "I have spoken to Walt, [DPS Deputy Commissioner] John Glass, and Audie
23 [Holloway] about working through issues *internally first* several times. Mike Nizich has
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1 spoken with them, and COS has spoken directly with . . . Commissioner [Monegan].”
2 Referring to DPS, Ruaro explained that “[t]hey seem to just ***not want to accept that concept.***”
3 (Exh. G, PB0013) (emphasis added).

4 OMB Director Rehfeld voiced similar concerns about Mr. Monegan’s efforts to increase
5 trooper recruitment without first coordinating with the Division of Personnel, stating that she
6 “wouldn’t want DPS getting out in front without knowing how this impacts the other agencies .
7 . . given that the governor is not inclined to want to ‘grow’ government.” (Exh. H, PB0015.)
8 In response, Mr. Ruaro explained that this type of unilateral action by Mr. Monegan had “been
9 the problem for the last 6 months,” and that ***he did not believe DPS was “working with anyone***
10 ***but themselves and maybe Megan Peters from Channel 2 and Hollis French*** when it comes
11 to pay raises and the need for more troopers.” (Exh. H, PB0015) (emphasis added).] Mr.
12 Ruaro further noted his repeated efforts to have Mr. Monegan coordinate DPS planning and
13 budgeting activities with the other departments had come to naught: “I have told them 4-5
14 times to work with OMB first. Mike [Nizich] talked to them as well.” (Exh. H, PB0015.)

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16 Again in May 2008, state budget officials worried that Mr. Monegan would publicly
17 release a new DPS study to gain public support for his initiative to add “a net 25 new troopers
18 each year for 5 years” without first discussing the budget implications of such a proposal with
19 the Administration. (Exh. I, PB0017-19.) Mr. Ruaro noted that this type of initiative “cannot
20 be done in isolation.” (Exh. I, PB0018.) Ms. Rehfeld agreed: “I have told Walt, Audie, and
21 John Glass ***not to work this way. It doesn’t seem to sink in very well.*** Is working through the
22 recruitment and retention group, then OMB and getting Governor approval on budget issues
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1 BEFORE going public a topic that could be mentioned at the next cabinet meeting without
2 directing it only at DPS?" (Exh. I, PB0018.) (emphasis added).

3 **2. Mr. Monegan Unilaterally Contacted the Alaska Congressional**
4 **Delegation To Secure Additional Funds For Pet DPS Projects Not**
5 **Approved By The Administration.**

6 On June 26, 2008, Mr. Ruaro reported that "Walt [Monegan] and DPS want to make a
7 trip back to DC....to see if the [Alaska Congressional] delegation could provide assistance to
8 get funding" for a new statewide sexual assault initiative run by his Department of Public
9 Safety at an estimated cost of \$10 million to \$20 million dollars per year. (Exh. J, PB0020.)
10 According to Ruaro, the Governor previously had made clear that she "did not want this to
11 move forward until after DPS had presented her all the estimated costs and a plan for how it
12 would be funded." (Exh. J, PB0020.) Ms. Rehfeld was incredulous:

13 *This is exactly the type of program that needs to be discussed*
14 *internally* - If the governor decides that we should go down this
15 road and that we understand the impact on the other agencies
16 involved, and the cost of sex offender treatment or whatever else
17 needs to go along with this - we would be considering this in our
18 budget for FY2010 and requesting federal earmark dollars to
19 help. *Is Walt trying to seek existing competitive grant funds*
20 *through a federal agency for this project?*

21 (Exh. J, PB0020) (emphasis added).

22 On July 7, 2008, Mr. Ruaro reported to a group within the Office of the Governor,
23 including the Governor's special counsel John Katz, that Mr. Monegan did not have "OMB's
24 approval to pursue this plan" and that, nevertheless, Mr. Monegan had made the plan "at least
25 partially public by talking to the delegation on previous trips (Liz Cannell) and reps of certain
26 native organizations." (Exh. M, PB0027.) Mr. Katz warned of "two problems" with Mr.

Monegan's proposed Washington trip :

Motion to Establish No Probable Cause

In Re: Sarah Palin, Governor

Page 10 of 19