

SUPREME COURT OF ALASKA

Pebble Limited Partnership v. Lake and Peninsula Borough

Pebble Ltd. P'ship v. Lake & Peninsula Borough, 262 P.3d 598 (Alaska 2011) · No. S-14404 · Decided August 17, 2011

SUMMARY

The Alaska Supreme Court denied Pebble Limited Partnership’s emergency petition for review concerning a pre-election challenge to the certification of a Lake and Peninsula Borough ballot initiative. The dissent argued that the superior court should have ruled before the election on all of Pebble’s statutory and constitutional challenges, while the concurrence agreed in principle but considered expedited review impractical. The opinions address judicial review of municipal initiatives, including subject-matter restrictions and the controlling-authority standard for enforceability.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Chief Justice Carpeneti; Justice Winfree; Justice Christen; Justice Stowers
JURISDICTION	Alaska
DECIDED	August 17, 2011
DOCKET	S-14404
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Pebble sought discretionary review of a superior court order concerning its pre-election challenge to the certification of a municipal ballot initiative. The Supreme Court of Alaska denied the emergency petition for review.
STANDARD OF REVIEW	The opinion's separate writings discuss discretionary review of pre-election initiative challenges and the controlling-authority standard under AS 29.26.110(a)(4), but the court's order denying review does not announce a majority standard of review.
PRECEDENTIAL VALUE	Published order; no majority merits opinion
PARTIES	Pebble Limited Partnership, acting through its general partner, Pebble Mines Corp. v. Lake and Peninsula Borough, Kate Conley, in her official capacity as Clerk of the Lake and Peninsula Borough, George G. Jacko, Jackie G. Hobson, Sr.

TOPICS

writ of certiorari

appellate procedure

ballot access

election law

municipal law

PRACTICE AREAS

appellate procedure

election law

municipal law

constitutional law

QUESTIONS PRESENTED

1. Whether the Supreme Court of Alaska should grant emergency discretionary review of Pebble's pre-election challenge to the borough clerk's certification of the initiative.
2. Whether the superior court was required to resolve Pebble's remaining pre-election challenges before the election.
3. Whether the controlling-authority rule applicable to AS 29.26.110(a)(4) challenges also applies to constitutional subject-matter challenges and AS 29.26.110(a)(3) administrative-matter challenges.

HOLDINGS

1. The Supreme Court of Alaska denied Pebble Limited Partnership's emergency petition for review.

KEY QUOTATIONS

"The Petition for Review is DENIED." (598)

"I would grant the petition for review and treat it as an appeal from a final order disposing of Pebble's pre-election challenge to the Borough Clerk's certification of the Initiative." (601)

FACTUAL BACKGROUND

In April 2011, the Lake and Peninsula Borough clerk certified the Save Our Salmon Initiative No. 2 as satisfying Alaska statutory and constitutional requirements. Pebble challenged the certification, arguing that the initiative involved constitutionally prohibited local or special legislation, addressed an administrative rather than legislative matter, and would be clearly unlawful or unenforceable. The superior court allowed the initiative to proceed to the ballot while expressly rejecting only the clearly-unlawful challenge and not substantively addressing the other two grounds.

PROCEDURAL HISTORY

The Lake and Peninsula Borough clerk certified the Save Our Salmon Initiative No. 2. Pebble filed a judicial action challenging the certification and seeking to prevent placement of the initiative on the ballot. The superior court rejected the challenge that the initiative was clearly unlawful under AS 29.26.110(a)(4), deferred or otherwise failed to substantively resolve the remaining challenges, and allowed the initiative to proceed to the election. Pebble then filed an emergency petition for review, which the supreme court denied.

DISPOSITION

CASES CITED

- Brooks v. Wright, 971 P.2d 1025, 1027 (Alaska 1999)
- Boucher v. Engstrom, 528 P.2d 456, 460 (Alaska 1974)
- McAlpine v. Univ. of Alaska, 762 P.2d 81 (Alaska 1988)
- Kodiak Island Borough v. Mahoney, 71 P.3d 896, 898-901 (Alaska 2003)
- Whitson v. Anchorage, 608 P.2d 759, 762 (Alaska 1980)
- Griswold v. City of Homer, 186 P.3d 558, 563 (Alaska 2008)
- Municipality of Anchorage v. Frohne, 568 P.2d 3, 8 (Alaska 1977)
- Swetzof v. Philemonoff, 203 P.3d 471, 475-482 (Alaska 2009)
- Surina v. Buckalew, 629 P.2d 969, 972 n. 5 (Alaska 1981)
- Pebble Ltd. P'ship v. Parnell, 215 P.3d 1064, 1072, 1078-1081 (Alaska 2009)
- Croft v. Parnell, 236 P.3d 369, 371-374 (Alaska 2010)
- Carmony v. McKechnie, 217 P.3d 818, 821-823 (Alaska 2009)
- Miller v. Treadwell, 245 P.3d 867, 867, 874 (Alaska 2010)
- Keller v. French, 205 P.3d 299, 299, 301-302 (Alaska 2009)