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September 18, 2008

Stephen Branchflower, Esq.

VIA EMAIL [sebranchflower@gmail.com](mailto:sebranchflower@gmail.com)

Dear Steve:

On behalf of Todd Palin, and in response to the Senate Judiciary Committee Subpoena dated September 12, 2008 executed by Sen. French and Sen. Green, and accepted on Mr. Palin's behalf by me on September 12, 2008, please know the following:

We maintain our general objections that the Legislative Council investigation, besides being pursued for partisan purposes, is being conducted in violation of all accepted norms of due process. We further maintain our standing objection that the Legislative Council is acting unconstitutionally and in violation of the separation of powers. Nothing in this document shall constitute a waiver of any other applicable privilege or defense.

**Objections of Respondent Todd Palin To Subpoena Dated September 12, 2008**

COMES NOW respondent Todd Palin and, through undersigned counsel, hereby objects to the subpoena issued by the Senate Judiciary Committee on September 12, 2008 ("Subpoena"), as follows:

1. Mr. Palin objects to the Subpoena on the ground that the Judiciary Committee lacks authority to issue subpoenas or otherwise investigate matters relating to the Office of the Governor, the Department of Administration, or the Department of Public Safety. Pursuant to Rule 20 of the Uniform Rules of the Alaska Legislature, the Judiciary Committee's jurisdiction is limited to "the programs and activities of the Alaska Court System and the Department of Law, and the legal and substantive review of bills referred to it for that purpose." Pursuant to Rule 20, the State Affairs Committee is the legislative committee with jurisdiction over the Office of the Governor, the Department of Administration, and the Department of Public Safety.

2. Mr. Palin objects to the Subpoena on the ground that the subject matter of the Governor's compliance with applicable ethics laws in terminating a public safety commissioner is within the exclusive jurisdiction of the Personnel Board. Pursuant to AS § 39.52.310(c),

complaints alleging a violation of the Alaska Executive Branch Ethics Act “*shall be* referred to the personnel board.” (Emphasis added.) A proceeding was commenced before the Personnel Board on September 1, 2008, before the issuance of the Subpoena.

3. Mr. Palin objects to the Subpoena on the ground that the decision to appoint and terminate department heads is committed to the Governor’s discretion by the Alaska Constitution *see* Alaska Const. art. III, § 25, and may not be inquired into by the legislature under the separation of powers doctrine.

4. Mr. Palin objects to the Subpoena on the ground that the special counsel engaged by the Legislative Council to pursue the investigation of which the Subpoena is a part has a conflict of interest. On information and belief, former public safety commissioner Monegan was the supervisor of Special Counsel Branchflower’s spouse when both worked at the Anchorage Police Department. Ms. Branchflower publicly praised Mr. Monegan’s appointment as public safety commissioner. Special Counsel Branchflower functioned as Mr. Monegan’s attorney when Mr. Branchflower was a district attorney in Anchorage and Mr. Monegan was Anchorage police chief.

5. Mr. Palin objects to the Subpoena on the ground that the subject matter of the Subpoena is unconstitutionally vague in its request for information concerning the “circumstances and events surrounding the termination of former Public Safety Commissioner Walt Monegan and potential abuses of power and/or improper actions by members of the executive branch.” The Subpoena fails to provide Mr. Palin with fair notice of the meaning of “potential abuses of power” and “improper actions by members of the executive branch,” and thus violates the due process requirements of the Alaska and United States Constitutions. AK. CONST. Art. 1, Sec. 7.

6. Mr. Palin objects to the Subpoena to the extent it purports to request the production of documents. The motion pursuant to which the Subpoena was issued sought authority to subpoena the attendance of certain named individuals including Mr. Palin, but only sought authority to subpoena one category of documents – namely, the “cell phone records for Frank Bailey for the period of February 1, 2008 through March 31, 2008.” The motion pursuant to which the Subpoena was issued did not seek authority to subpoena documents from Mr. Palin, nor was any such authority granted.

7. Mr. Palin objects to the Subpoena on the ground that it is unconstitutionally vague in its request for the production of “any relevant material and proper books, papers, or documents . . . .” Because the investigation pursuant to which the Subpoena was issued is not governed by any complaint or other initiating document, and because the Subpoena fails to specify any other standard by which “relevance” or “propriety” could be determined, Mr. Palin has no way of ascertaining what is requested by this portion of the Subpoena.

8. Mr. Palin objects to the Subpoena on the ground that, consistent with the purpose of AS § 39.52.310(j)-(k), it violates principles of due process under the Alaska Constitution to proceed with an ethics investigation involving the Governor during a period in which she is involved in a campaign for public office.

9. Mr. Palin objects to the Subpoena on the ground that the Legislative Council lacked jurisdiction to authorize the investigation pursuant to which the Subpoena was issued.

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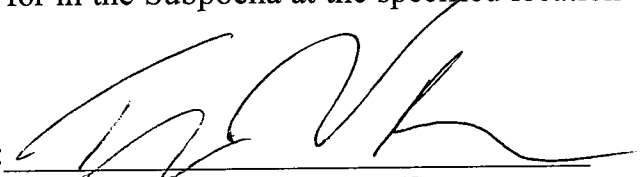
The Legislative Council's authority to conduct investigations is limited to investigations in support of its statutory purpose to assist the legislature in reviewing, assessing, drafting, and revising legislation and providing administrative services to the legislature in connection with the development of legislation. *See* AS §§ 24.20.010, 24.20.060(2).

10. Mr. Palin objects to the Subpoena on the ground that the "project director" of this investigation, Senate Judiciary Committee chairman Hollis French, has either engaged in impropriety or has created the appearance of impropriety by public statements appearing to prejudge the outcome of the investigation before it had even commenced. Mr. French has been quoted in the media as stating his belief that the results of the investigation would be "damaging" to the Governor's administration, could lead to "impeachment," and could result in an "October surprise." Such statements evidence a prejudgment of the merits that violates Article I, Section 7 of the Alaska Constitution – a provision drafted in the wake of the abusive McCarthy investigations – which provides that "the right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed."

11. Mr. Palin objects to the Subpoena on the ground that it is unduly burdensome. Mr. Palin has preexisting travel plans requiring him to be out of state on the return date of September 19, 2008. Moreover, because his spouse is her party's nominee for Vice President of the United States, his scheduling obligations over the next two months will make it virtually impossible for him to prepare for and present the testimony called for in the Subpoena at the specified location during that time period.

Dated: 9-18-08

By:



THOMAS VAN FLEIN, Esq.

*Counsel for Respondent  
Todd Palin*