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E M E R G E N C Y

IN THE SUPREME COURT FOR THE STATE OF ALASKA

STATE OF ALASKA, DIVISION OF ELECTIONS, and Gail Fenumiai, Director of the Division of Elections,	)	
Petitioners,	)	
v.	)	
ALYSE S. GALVIN,	)	
Respondent.	)	Supreme Court No. **S-** _____

Trial Court Case No. **3AN-20-07991 CI**

EMERGENCY MOTION FOR EXPEDITED DECISION ON THE STATE'S PETITION FOR REVIEW
(Appellate Rule 504)

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Petitioners, State of Alaska, Division of Elections, and Gail Fenumiai make this Emergency Motion For Expedited Decision on their Petition for Review filed this same day. Expedited action is necessary because the dispute concerns the design of the 2020 general election ballot, which must be sent out to uniformed and overseas voters no later than Saturday, September 19, 2020, in order to comply with the Uniformed and Overseas Citizens Absentee Voting Act. 52 U.S.C. § 20302. Because bulk mailing is not available on Saturdays, the Division must mail these ballots on Friday. A decision on whether the State must reprint the general election ballot is therefore needed before by 3:00 p.m. on Friday, September 18, 2020.

The undersigned notified Respondent Alyse Galvin on Thursday, September 17, 2020, of the state's intention to file this motion and the petition for review.

Alyse Galvin
c/o Kevin Feldis
Perkins Coie
1029 West Third Avenue, Suite 300
Anchorage, AK 99501-1981
(202) 654-3346
KFeldis@perkinscoie.com

This motion is based upon Alaska Rules of Appellate Procedure 402 and 504, and is supported by an affidavit, a written statement of facts, and a petition for review.

DATED September 17, 2020.

CLYDE "ED" SNIFFEN
ACTING ATTORNEY GENERAL

By: Margaret Paton-Walsh
Alaska Bar No. 0411074
Laura Fox
Alaska Bar No. 0905015
Assistant Attorneys General

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WRITTEN STATEMENT OF FACTS IN SUPPORT OF EMERGENCY MOTION FOR EXPEDITED ACTION

Petitioners provide the following statement of facts in support of this emergency motion:

1. On Monday, September 14, 2020, when the general election ballots were received from the printer, the Division of Elections posted the sample ballot on its website.

2. On Tuesday, September 15, 2020, Alyse Galvin filed the complaint in case no. 3AN-204-07991 CI in superior court to require the Division of Elections to reprint the general election ballot so as to include candidate party registration information.

3. The superior court scheduled a hearing on Ms. Galvin's motion for temporary restraining order on Wednesday, September 16, and issued an order this morning, enjoining the State from "printing ballots that do not include candidates'

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voter registration affiliation," finding that Ms. Galvin had raised significant questions regarding whether the Division's ballot design violates AS 15.15.030(5).

4. Absentee ballots have to be sent to uniformed and overseas voters by September 19, 2020 to comply with the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). 52 U.S.C. § 20302.

5. The UOCAVA ballots and State Advance ballots are processed through the USPS bulk mail facility in Anchorage. Bulk mail is not available on Saturdays, so in order to meet the September 19, 2020 UOCAVA deadline, those ballots must be mailed by 6 p.m. on Friday, September 18.

6. It would not be possible for the division to meet this deadline using a different mailing method as this would involve an extraordinary amount of man hours printing postage on tapes and adhering to the ballot envelope.

7. Although 800,000 general election ballots have already been printed—and therefore, the express terms of the court's injunction have no immediate effect—the State does not believe that it is free to mail out existing ballots tomorrow. Immediate review is therefore essential. What is more, the court's timeframe in which it now intends to rule on the motion for preliminary injunction will compromise the Division's ability to timely mail ballots in accordance with federal law, requiring emergency relief from this Court.

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AFFIDAVIT OF COUNSEL

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Margaret Paton Walsh, state after being duly sworn and based upon my personal knowledge that:

1. I am an Assistant Attorney General and one of the Assistant Attorneys General assigned to represent petitioners in this petition for review.

2. On September 17, 2020, I contacted counsel for respondent Alyse Galvin by telephone to advise that the State would be filing this petition for review and emergency motion. Neither Kevin Feldis nor Sarah Schirack was available to take my call, so I left voice mails for both of them.

3. I advised that the motion would be filed on Thursday, September 17, 2020, and that I would request a decision from the Court before 3 p.m. September 18, 2020.

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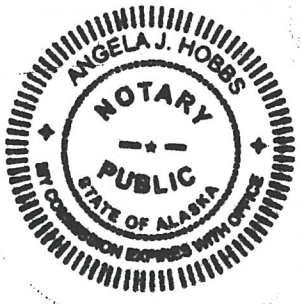
4. The affidavit of Gail Fenumiai filed in support of the petition for review provides information regarding the deadlines that apply for mailing absentee ballots to uniformed and overseas voters under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 52 U.S.C. § 20302, and the Division's inability to meet those deadlines if new ballots must be printed. The affidavit further explains that the Division's ability to successfully conduct the November general election may be fatally compromised if it is ordered reprint 800,000 ballots and reprogram voting machines to read those ballots.

M. A. Paton Walsh

Margaret Paton Walsh

SUBSCRIBED AND SWORN TO before me this 17th day of September, 2020, at Anchorage, Alaska.



Angela J. Hobbs

Notary Public in and for State of Alaska
My commission expires: w/m office

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Trial Court Case No. **3AN-20-07991 CI**

ORDER
(EMERGENCY MOTION)

Upon consideration of the emergency motion filed by Petitioners State of Alaska, Division of Elections, and Gail Fenumiai and the opposition to it, if any is filed, we find that the UOCAVA mailing deadline provides good cause to expedite action on the petition for review and to justify issuance of a decision on or before 3 p.m. Friday, September 18, 2020. Therefore, the emergency motion is GRANTED.

Respondent Alyse Galvin may have until close of business on September 17, 2020, to file any opposition to the petition.

_____
Supreme Court for the State of Alaska

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Trial Court Case No. **3AN-20-07991 CI**

MOTION TO ACCEPT OVERLENGTH PETITION FOR REVIEW

Petitioners, State of Alaska, Division of Elections, and Gail Fenumiai respectfully request the Court accept the attached overlength emergency petition for review under Appellate Rule 503(a). This request is warranted given the critical significance of the issue at hand—the design of the 2020 general election ballot, the extraordinarily expedited nature of this matter, the fact that the Division has not yet been able to provide any written briefing in this case, and the need to assure the Court is fully apprised of both the merits of the legal issues and the impacts and risks to the Division's administration of the upcoming election if the superior court's TRO is not reversed.

Under Appellate Rule 403(b)(2), petitions for review are limited to fifteen pages. The Division's petition is 19 pages. In most circumstances counsel for the state would devote further resources to editing the brief. But given the highly expedited nature of this matter—the complaint and request for a TRO was filed late Tuesday of

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this week, and the superior court's decision was issued only hours ago—and the Division's interest in having the Court review this matter as promptly as possible, counsel for the Division lacked sufficient time to further edit the brief to meet the page limit requirement.

The Division requests the Court grant this motion and accept the overlength emergency petition for review as filed.

DATED September 17, 2020.

CLYDE "ED" SNIFFEN
ACTING ATTORNEY GENERAL

By: Margaret Paton-Walsh
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Laura Fox
Alaska Bar No. 0905015
Assistant Attorneys General

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Trial Court Case No. **3AN-20-07991 CI**

ORDER

Upon consideration of the request of Petitioners State of Alaska, Division of Elections, and Gail Fenumiai to file an overlength petition, the petitioners' request is GRANTED and the petition is accepted for filing.

_____
Supreme Court for the State of Alaska

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PETITION FOR REVIEW

INTRODUCTION

Two days before the Division of Elections must begin sending ballots to voters, the superior court has issued an order that will throw the Division—and thus the November 2020 general election—into chaos. This Court must step in to prevent this unwarranted chaos by granting the Division's emergency petition and immediately reversing this erroneous order. The 2020 general election ballot design is consistent with the Division's reasonable and longstanding interpretation of the ballot design statute—as well as this Court's decision in *State v. Alaska Democratic Party*[1]—and does not violate the associational rights of candidates or voters.

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[1] 426 P.3d 901 (Alaska 2018).

BACKGROUND

Near the close of business on September 15, 2020, Galvin sued Director Gail Fenumiai and the Alaska Division of Elections, alleging that the general election ballot design violates AS 15.15.030(5) and article I, sec. 5 of the Alaska Constitution by listing her as the Democratic nominee without also listing her personal voter registration status as "Non-Partisan." [Appx. A at 10-14] She sought a temporary restraining order and preliminary injunction, asking the court to unilaterally halt the Division's final-stage ballot preparation and distribution just weeks before the general election. [Appx. B]

Galvin's complaint acknowledges that she won the Democratic Party primary and is in fact that party's nominee. [Appx. A at 1-2 ¶7] But she claims that she does not personally identify as a Democrat and that since 2018, the Division has "consistently" identified candidates' voter registration status on the ballot in addition to the nominating party—a practice she alleges is required by AS 15.15.030(5). [*Id.* at 3-5, 11 ¶¶8-9, 14, 35] She alleges that by not listing her voter registration status on the ballot, the Division has undermined her right to associate with voters. [*Id.* at 10 ¶¶31-32]

Galvin also raises serious, unsupported factual allegations about the Division's motives in designing the ballot: she claims that the Division "omitted" Galvin's voter registration status in order to "inappropriately affect the outcome of the election," and mislead voters by depriving them of "essential information" about how Galvin "self-identifies" as a voter. [*Id.* at 8-9 ¶¶ 21, 27] She further claims that the Division purposely sought to avoid a court challenge by making and announcing this purported "eleventh

hour decision" only days before the deadline to mail ballots to overseas service personnel and civilian voters. [*Id.* at 7-8 ¶¶19, 21]

As relief, Galvin asked the court to enjoin the Division from printing or mailing ballots without Galvin's personal voter registration status, to require the Division to immediately print over 800,000 new ballots, and to award costs and fees. [*Id.* at 15]

The following morning, the superior court scheduled a hearing with 90 minutes notice on Galvin's request for a TRO. At the outset of the hearing, the court acknowledged that Galvin's pleadings had only recently arrived in chambers, and invited counsel for both parties to present their positions. Galvin's counsel claimed—with no evidence—that the situation could be "easily fixed" by simply "adding" each candidates' personal party registration status or "re-printing" ballots. The State—with no opportunity to provide a written opposition—explained why the ballot design was legal and consistent with past division practice. The State also explained that Galvin had vastly understated the harm to the Division of an injunction given that it had already printed roughly 800,000 ballots and was poised to mail a subset of them to federal voters—as required by federal law—within days. The State explained that it was unclear whether the printer could even reproduce the high volume of new ballots that would be required fifteen days before the election for absentee and early voting under the state's election schedule.[2]

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[2] AS 15.20.061(a)(1) (providing that "a qualified voter may apply in person for an absentee ballot . . . on or after the 15th day before an election up to and including the date of the election).

The next day, September 17, without taking any evidence or providing the State any opportunity to submit written briefing, the superior court granted Galvin's request for a TRO. [Appx. C] The court found that based on the limited information before it that Galvin's legal claims "raise serious questions for litigation," that Galvin was likely to be irreparably harmed if the Division was not enjoined from printing ballots without Galvin's personal voter registration, that the Division could be adequately protected, and that the balance of hardships favored Galvin. [Appx. C at 2]

ARGUMENT

I. The Court should grant the petition for review.

This Court's discretionary review is warranted under at least two sections of Appellate Rule 402(b). Although the superior court's current order appears only to enjoin further printing of ballots—a task that is already complete—Galvin sought to enjoin the Division from beginning to mail the ballots, and the court appears poised to grant the request. [Appx. B, C] The Division thus cannot wait to seek this Court's intervention. Without review, the Division will miss a federal deadline and will be forced to divert enormous resources in a desperate scramble to comply with superior court orders without compromising its ability to run the election.[3] Thus, under (b)(1), postponement of review will result in injustice because of unnecessary delay, expense, and hardship. And under

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[3] *See* Affidavit of Gail Fenumiai ¶¶ 2, 10-17. Given the extremely truncated nature of the superior court proceedings, the Division had no opportunity to make a factual record or submit any briefing. The Division thus relies on the attachments to this petition, including the affidavit of Gail Fenumiai (which was not submitted to the superior court) to support its factual assertions.

(b)(2), the superior court's decision involves important questions of law on which there is substantial ground for difference of opinion (as explained below), and immediate review will advance important public interests.

II. The Court should immediately reverse the temporary restraining order.

The Court should immediately reverse the temporary restraining order because both of Galvin's claims lack legal merit and the balance of hardships overwhelmingly favors allowing the Division to conduct the 2020 general election unimpeded.

A. The ballot design is consistent with the Division's reasonable and longstanding interpretation of the ballot design statute.

Galvin's first claim is that the ballot design violates AS 15.15.030(5), which instructs that "[t]he names of the candidates and their party designations shall be placed in separate sections on the state general election ballot under the office designation to which they were nominated. The party affiliation, if any, shall be designated after the name of the candidate." The Division interprets "party affiliation" in this statute to mean the way in which a candidate reached the general election ballot; thus the ballot properly describes Galvin as the Democratic nominee. Galvin argued below that because the statute uses two different terms—"party designation" and "party affiliation"—it "clearly contemplates two party indicators when applicable," thus requiring the Division to list both her voter registration ("Non-Partisan") and the way she reached the ballot. [Appx. B at 3] The superior court agreed with her. [Appx. C] But this cannot be right.

This is because historically, a candidate could not have a party affiliation that differed from her personal voter registration status. Until this Court's decision in *State v.*

Alaska Democratic Party, no candidate could have had two different party indicators,[4] so the Legislature cannot have contemplated mandating two distinct identifiers when it drafted this statute. The statute's second sentence can therefore only be understood as a positional directive: the party information should be placed "*after* the name of the candidate" rather than before it. This interpretation is confirmed when one considers the legislative history of the ballot preparation statute. The original version of the statute, enacted in 1960, mandated a party column format:

> The general election ballot shall be printed on white paper with the names of candidates placed in separate columns for each political party as indicated by column headings. Candidates shall be grouped according to offices, with each office except the secretary of state, having a separate section… .The left column shall be that of the political party receiving the largest vote at the preceding general election. Provision shall be made for voting for write-in and no-party candidates.[5]

Thus, the original ballot format indicated a candidate's party association by placing the candidate's name in the party's column. The legislature scrapped this party column format when it adopted the current language in 1962,[6] so it included the second sentence to explain *where* the candidate's party information should go on the ballot now that the ballot would no longer have separate columns for the parties. But the legislature

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[4] Although AS 15.25.030(16)—the party affiliation statute invalidated in *Alaska Democratic Party*—was not enacted until 1980, *see* § 126 ch. 100 SLA 1980, before then, the statute required a declaration of party candidacy to "state in substance … "(12) that the candidate if nominated and elected will support the principles of the party he seeks to represent…." § 5.04 ch. 83 SLA 1960.

[5] § 3.03 ch. 83 SLA 1960. [Appx. D]

[6] *See* § 6 ch. 125 SLA 1962. [Appx. E]

did not contemplate that a candidate could have two different party designations or affiliations, because the statutes did not permit this at the time.

Even if Ms. Galvin's reading of the statute could be correct such that "party affiliation" could mean something different from "party designation," Ms. Galvin's only *party* affiliation—as the Democratic Nominee—is included in the ballot. Her personal voter registration—"Non-Partisan"—is not a "party affiliation." The statute's plain language indicates that "party affiliation" means affiliation *with a political party*, because later in the same subsection, it directs that "[p]rovision shall be made for voting for write-in *and no-party candidates* within each section."[7] Because Ms. Galvin is registered as "non-partisan," the only "party affiliation" she has is with the Democratic Party as its nominee. Otherwise, she would be a "no-party candidate," to whom the direction of the first two sentences of AS 15.15.030(5) would not apply at all.

In *Alaska Democratic Party*, the Court invalidated the requirement that a candidate be registered to vote as a member of a party before seeking that party's nomination—thus creating the possibility that a candidate might be both the Democratic nominee and registered "Non-Partisan"—but the decision did not change the meaning of other statutes. Nor did it create a new statutory mandate on the Division where none previously existed. Alaska Statute 15.15.030(5) can thus only be read to require that a candidate's party affiliation be placed "after the name of the candidate," not before.

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[7] AS 15.15.030(5) (emphasis added).

Contrary to Galvin's claims, the Division has long interpreted "party affiliation" in AS 15.15.030(5) to mean the way in which a candidate reached the general election ballot, not the candidate's personal voter registration. [*See* Affidavit of Gail Fenumiai, at ¶ 4] So, for example, on the 2016 ballot, in the race for United States Senator, the three candidates who won party primaries—Ray Metcalfe, Joe Miller, and Lisa Murkowski—had their parties' names—Democrat, Libertarian, and Republican—printed next to their names. The three petition candidates—Margaret Stock, Breck Craig, and Ted Gianoutsos—each had the term "Non Affiliated" printed next to their names, indicating that they had reached the ballot through a nominating petition rather than by affiliating with a party. [*See* Affidavit of Gail Fenumiai, Ex. A at ¶ 4] Significantly, "Non Affiliated" is not an option for voters to select on their voter registration form[8]—it is a term that the Division uses solely to mean that the candidate did not reach the ballot via a party primary. The Division did not also include the candidate's personal voter registration on the ballot, despite the additional information that it might have provided to voters. Thus, the 2020 ballot design is consistent with AS 15.15.030(5) and the Division's historical interpretation and application of that statute.

In her complaint, Galvin emphasizes the fact that the 2018 general election ballot included both the candidates' personal voter registration and a separate indicator of their route to the ballot. She suggests that the 2020 general election ballot was a sudden departure from a consistent practice or interpretation of AS 15.15.030(5). But a single

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[8] *See* AS 15.07.075.

example—the 2018 general election ballot—does not constitute a consistent practice. And Galvin disregards the reality that the 2018 general election ballot was designed in the midst of the *Alaska Democratic Party* litigation. Although this Court issued an ordering affirming the superior court and invalidating the party membership statute on April 4, 2018, that order did not address ballot design, even though the State had raised concerns about the issue. The Division thus had to design the ballot without the benefit of the Court's opinion, which did not issue until August 24, 2018, just a few weeks before the general election ballot had to be sent to the printer. [*See* Fenumiai Affidavit at ¶¶3, 5; Exh. A]

Galvin notes that the State argued in *Alaska Democratic Party* that its current ballot design would be confusing, but the State's argument in that case was that *any* possible ballot design—including the 2018 general election ballot design—would be confusing if a party's nominee was not registered with the party.[9] The Court, however, rejected the State's voter confusion concerns.[10] And the Court said that the very ballot design employed here would be valid.[11] At any rate, the 2018 general election ballot was a departure from Division practice, born of a unique set of circumstances, and does not represent the Division's interpretation of what AS 15.15.030(5) requires.

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9 *See* 426 P.3d at 913.

10 *Id.*

11 *Id.* ("On the general election ballot, the State could simply print the nominating party's name next to the candidate's name.").

Galvin's further observation that the primary election ballots in 2018 and 2020 listed the candidates' voter registration status and identified the primary in which a candidate was competing is irrelevant for two reasons. First, AS 15.15.030(5) applies only to the general election ballot by its plain terms. Second, in the context of the primary, both pieces of information are needed to comply with the directive of AS 15.15.030 to "prepare all official ballots to facilitate fairness, simplicity, and clarity in the voting procedure," given the requirements that (1) parties be allowed to share a combined primary ballot (as mandated by *Green Party of Alaska*)[12] and that (2) parties be allowed to permit candidates who are not registered party members to run in their primaries (as mandated by *Alaska Democratic Party*). Without the party primary label, voters may not know which party's primary they are voting in because multiple parties are sharing a primary ballot. And without the candidate's voter registration, voters are likely to be misled into thinking that candidates running in a party's primary are party members. These considerations do not exist for the general election ballot. Identifying Ms. Galvin as the Democratic nominee is not misleading because she is the Democratic nominee—notably, the ballot does not identify her as a "Democrat." The general election ballot also involves a countervailing concern: identifying the personal voter registrations of candidates on the general election ballot might imply a party endorsement in situations where none exists, which is not an issue in a primary.

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[12] *State, Div. of Elections v. Green Party of Alaska*, 118 P.3d 1054 (Alaska 2005).

The Division's interpretation of AS 15.15.030(5) is thus reasonable and consistent with the legislative history and past practice. The superior court erred in concluding that Galvin was likely to succeed on the merits of her statutory claim.

B. The ballot design is constitutional because candidates have no associational right to have particular information printed on the ballot.

Galvin's second claim is that the ballot design violates her constitutional freedom of association. But although Galvin and the voters whose support she seeks certainly have the right to freely associate with each other, the Division's ballot design does not burden that associational right at all, let alone injure it to an unconstitutional degree.

The Court has recognized that "states must be granted some leeway" in running elections and has adopted the U.S. Supreme Court's "flexible standard" for examining election laws, which "involves a careful balancing" of interests.[13] Under this Court's formulation of the test, it must (1) "determine whether the claimant has in fact asserted a constitutionally protected right," (2) "assess 'the character and magnitude of the asserted injury to the rights,'" (3) "weigh 'the precise interests put forward by the State as justifications for the burden imposed by its rule,'" and (4) "judge the fit between the challenged legislation and the state's interests in order to determine 'the extent to which those interests make it necessary to burden the plaintiff's rights.' "[14]

Galvin's constitutional claim fails on the first and second prongs of this test: she has not identified any "constitutionally protected right" that is injured or burdened.

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13 *Green Party of Alaska,* 118 P.3d at 1059-60.

14 *Id.* at 1061.

Galvin's motion for a TRO asserted that the Division's ballot design "impinge[s] upon Galvin's constitutionally-protected right to associate politically as a voter as well as through her party nomination," and "burden[s] the associational rights of the non-partisan and independent Alaska voters who support Galvin, or who prefer to support other non-partisan or unaffiliated candidates." [Appx. B at 5] But her motion offered no explanation whatsoever of this burden. [*Id.*] In fact, there is none: Galvin's name is on the general election ballot, she remains free to seek (and receive) the votes of any voters she wants, and she may campaign for those votes in any way she wishes. She does not identify anyone with whom she has been prevented from associating.

This case is thus unlike the many state and federal associational rights cases in which candidates were denied ballot access[15] or parties were denied the freedom to associate with candidates[16] or voters.[17] In *Alaska Democratic Party*, for example, candidates were prevented from running in a party's primary, and thus prevented from associating with the party's voters (and the party was likewise prevented from associating

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[15] *See, e.g.*, *Vogler v. Miller*, 651 P.2d 1, 6 (Alaska 1982) (striking down a statute denying ballot access to a candidate, observing that ballot access restrictions impinge on the associational rights of candidates and voters).

[16] *See, e.g.*, *Eu v. San Francisco Cty. Democratic Cent. Comm.*, 489 U.S. 214, 229, (1989) (striking down a statute banning political parties from associating with candidates by endorsing them in a primary election).

[17] *See, e.g.*, *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 229 (1986) (striking down a closed primary statute that prevented parties from associating with undeclared voters by letting them vote in their primaries); *Green Party*, 118 P.3d at 1070 (striking down prohibition on combined party primary ballots that prevented parties from associating with voters of other parties by preventing voters from voting in different political parties' primaries for different political offices).

with those candidates).[18] Here, by contrast, Galvin and voters are not prevented from associating with each other, nor has Galvin been prevented from associating with the Democratic Party. There is no cognizable burden on Galvin's freedom of association.

Galvin's complaint claims that her "personal voter registration affiliation as Non-Partisan, and formerly as Undeclared, has been an important part of her identity, her campaign platform, and her relationship with her supporters." [Appx. A at ¶29] But that does not mean that she has a constitutional right to have this information printed on the ballot. There are doubtless many facts about Galvin that are important to her identity, her campaign platform, and her relationship with supporters: for example, her professional experience and her positions on major policy issues. These are matters that Galvin may communicate to voters through her campaign. But the ballot is not a forum for Galvin's campaign expression, so the Division does not infringe on her rights simply by failing to include information that she considers important to her campaign.[19]

Galvin's complaint further claims that "[o]mitting Galvin's personal voter registration affiliation from the ballot will mislead voters by wrongly suggesting that Galvin's personal voter registration affiliation is Democratic." [Appx. A at ¶30] But the

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[18] *See* 426 P.3d at 906 ("The Democratic Party … amended its bylaws to allow independent voters to participate as candidates in its primary elections. The Democratic Party petitioned the Division of Elections to allow these candidacies, but the Division denied the request because it conflicted with the party affiliation rule.").

[19] *Cf. Rubin v. City of Santa Monica*, 308 F.3d 1008, 1016 (9th Cir. 2002) ("While there is no denying the importance of a ballot, the Supreme Court has recognized that '[b]allots serve primarily to elect candidates, not as forums for political expression.' … A ballot is a ballot, not a bumper sticker.") (quoting *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 363 (1997)).

ballot provides only the entirely accurate piece of information that Galvin is the Democratic Party's nominee—i.e., the reason Galvin's name is on the general election ballot is because she ran for, and won, the Democratic Party's nomination. This is the same simple and accurate piece of information that the Division has historically included for all candidates on the general election ballot.[20]

This Court rejected essentially the same voter confusion concern that Galvin now raises when the Division raised it in *Alaska Democratic Party*.[21] In that case, the Division argued that allowing a candidate who is not registered with a party to run in that party's primary would result in a confusing general election ballot no matter how the ballot was designed—whether the ballot listed the candidate's nominating party, her voter registration, or both.[22] But the Court disagreed that voter confusion would be a problem, and in doing so it explicitly authorized the ballot design that the Division chose here:

> On the primary election ballot, the State could simply print next to each candidate's name the political party whose primary election the candidate is running in. On the general election ballot, the State could simply print the nominating party's name next to the candidate's name.[23]

In explaining its lack of concern about voter confusion, the Court observed that there are many means by which voters can learn about the views of a candidate who is a party nominee but not a registered party member, including the election pamphlet:

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20 *See supra* discussion of Galvin's statutory claim.

21 *See* 426 P.3d at 913.

22 *Id.*

23 *Id.* at 913.

> The candidate's party affiliation as distinct from nominating party could be explained in the candidate's statement in the general election pamphlet. The political party could also promote or distance its platform, tenets, and philosophy from a candidate's through a paid advertisement in the pamphlet. And the State could choose to educate the public about new ballots through advertising or explanatory materials, such as the general election pamphlet.[24]

The outcome of the Court's decision in *Alaska Democratic Party* is that candidates who are not registered to vote as Democrats are nonetheless free to associate with the Democratic Party by seeking (and winning) its nomination.[25] But this does not mean that the Division is constitutionally required to try to explain to voters, via the ballot, why a candidate and a party have chosen to associate in this way, and the extent of their association. To the extent that voters might not understand the limits of Galvin's association with the Democratic Party via its nomination, this is a matter for Galvin and the Democratic Party to explain to voters through their campaign materials.

Because the Division's ballot design does not burden either Galvin's or voters' associational rights in any way, the Division need not offer any justification to weigh against a burden. But to the extent the Court perceives a modest burden, it is justified by the State's interests. In the election context, the State's important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions.[26]

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24 *Id.*

25 *Id.* at 915.

26 *See Alaska Democratic Party*, 426 P.3d at 909 ("modest or minimal burdens require only that the law is reasonable, non-discriminatory, and advances 'important regulatory interests.'").

Here, the Division's ballot design is neutral, generally applicable, and reasonable. For all candidates, the general election ballot identifies the manner in which the candidate reached the ballot; the ballot does not identify any candidate's personal voter registration. This design is consistent with historical practice, with the exception of the 2018 general election ballot that was prepared in the midst of ongoing litigation.[27] And this design makes sense: a candidate's personal voter registration can change at any time, while the way in which the candidate qualified for the general election cannot change and explains to voters the presence of the candidate on the ballot. The design is supported by the Division's reasonable desire to create a simple and manageable general election ballot that fits on the page and includes no more information than necessary.[28]

The ballot design is further supported by the Division's reasonable desire to consider the associational rights of political parties. A ballot design that identifies the personal voter registration of candidates on the general election ballot in the manner Galvin suggests might imply a party endorsement in situations where none exists—for example, if a registered Democrat reached the general election ballot via nominating petition rather than via the primary and then was listed on the ballot as a Democrat.

Finally, in the current context, maintaining the ballot design rather than changing it at this late date is supported by the Division's compelling interest in ensuring that the November 2020 general election can actually happen according to schedule.

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27 *See supra* discussion of Galvin's statutory claim.

28 Fenumiai Affidavit at ¶¶ 4-6, 18.

Galvin has thus failed to show that the Division's ballot design burdens her associational rights at all, much less to an impermissible degree.

C. Galvin did not meet the standard for obtaining a TRO.

Galvin has failed to demonstrate a probability of success on the merits of her legal claims. But even if this Court believes that either AS 15.15.030(5) or the Alaska Constitution—or both—require the Division to include both a candidate's voter registration information and a designation to show which party's nominee—if any—they are, the Court should grant only prospective relief, because the superior court's order threatens to derail the 2020 general election.

First, the Division cannot print new ballots and prepare them for mailing in time to meet the deadline in the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA),[29] which requires certain ballots to be mailed 45 days in advance of the general election, i.e. by Saturday, September 19, 2020. So if the Court upholds the superior court's TRO, the State will be unable to avoid violating federal law. That deadline exists to ensure that overseas voters receive and return ballots in time for them to be counted. Delay in sending those ballots could disenfranchise those voters.

Second, the Division has already printed 800,000 ballots, programmed and tested the scanners on the voting machines, and sent those machines to the regional offices. [Fenumiai Affidavit at ¶¶ 2-3, 7] Changing the ballot would require this entire process to begin again. Redesigning and proofing new ballots would take several days because there

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[29] 52 U.S.C. § 20302. *See also* Fenumiai Affidavit at ¶¶ 10-11, 16.

are 47 different ballots that are required for the general election. [Fenumiai Affidavit at ¶¶ 2, 12] And although the existing ballots were printed in ten days, the printer had notice of the job and was thus able to obtain in advance the special ballot paper and additional staff necessary to accomplish this. The printer has approximately half the paper necessary to reprint all the ballots and believes it could obtain more from Seattle, but the paper would take a week to arrive. [Fenumiai Affidavit at ¶ 16] And the printer is not certain that it could rehire the necessary staff to reprint ballots as quickly as it did earlier. The Division plans to begin mailing absentee ballots before the end of September, and ballots and election supplies are distributed about three weeks before election day so that early voting and absentee in-person voting can begin 15 days in advance of the election.[30] Given these deadlines, the Division may not be able to reprint the ballots in time to ensure that they get to absentee voters and to polling places in time for the election. And that is not the only problem.

Third, in addition to reprinting the ballots, the voting machines will have to be reprogrammed and retested. Reprogramming can occur only in Juneau, where the necessary staff and the main server are located, so the machines would first have to be returned to Juneau from the regional offices where they are now located, and would have to be reprogrammed and then sent back out to the regional offices. Two rounds of testing have been conducted, each one taking four or five days. [Fenumiai Affidavit at ¶ 14] The machines then need to be sent out to polling places across the State, some of which are

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30 *See* AS 15.20.061 and AS 15.20.064.

extremely remote. There is no way to predict whether the Division could repeat the programming and testing process and get the machines out to polling places before November 3.

The Division is already faced with the difficult task of running an election in the midst of a pandemic, with a vastly increased number of absentee ballots requested—and is running the REAA election in early October in a number of places also. Ordering the Division at this point to reprint ballots and reprogram and test voting machines threatens to turn this election into a debacle. However important this Court finds Galvin's interest in communicating to voters her non-partisan status alongside her identity as the Democratic Party's nominee, it cannot outweigh the State's and all Alaskans' interest in avoiding the wholesale disenfranchisement of voters that could occur if ballots do not reach voters in time and/or if voting machines fail on election day.

DATED September 17, 2020.

CLYDE "ED" SNIFFEN
ACTING ATTORNEY GENERAL

By: Margaret Paton-Walsh
Alaska Bar No. 0411074
Laura Fox
Alaska Bar No. 0905015
Assistant Attorneys General

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALYSE S. GALVIN, Plaintiff, v. GAIL FENUMIAI, in her official capacity as DIRECTOR OF THE DIVISION OF ELECTIONS; and STATE OF ALASKA, DIVISION OF ELECTIONS, Defendants, Defendants.	Case No. 3AN-20-_____CI

VERIFIED COMPLAINT SEEKING DECLARATORY JUDGMENT AND PRELIMINARY INJUNCTION PURSUANT TO ALASKA RULE OF CIVIL PROCEDURE 65

Plaintiff ALYSE S. GALVIN, by her undersigned counsel, states:

PARTIES

1. This is an action for declaratory and injunctive relief against Gail Fenumiai, in her official capacity as the Director of the Division of Elections, and the State of Alaska, Division of Elections.

2. Alyse S. Galvin, who is registered as a Non-Partisan voter, is the Democratic Nominee to represent Alaska in the United States House of Representatives. While Galvin

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won the Alaska Democratic Primary, she does not self-identify as a Democrat, and that she is Non-Partisan is a critical aspect of her identity and her political platform.

3. Gail Fenumiai is the Director of the Alaska Division of Elections, and she is sued in her official capacity only. Under AS 15.15.010, Fenumiai is the chief elections official for the State and is responsible for the "general administrative supervision over the conduct of state elections, and may adopt regulations under AS 44.62 (Administrative Procedure Act) necessary for the administration of state elections." She is also responsible for the printing and preparation of ballots. *See* AS 15.15.035.

4. The State of Alaska, Division of Elections is an executive branch agency responsible for the administration of Alaska's elections and enforcement of Alaska's election laws.

JURISDICTION AND VENUE

5. This Court has jurisdiction to award declaratory and injunctive relief under AS 22.10.020 (a, b, c & g).

6. Venue is proper in this Court under Alaska Rule of Civil Procedure 3 and AS 22.10.030.

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SINCE 2018, CANDIDATE VOTER AFFILIATION HAS BEEN A FEATURE OF THE ALASKA BALLOT

7. In 2018, the Alaska Supreme Court held that the Division of Elections violated Article 1, Section 5 of the Alaska Constitution when it prohibited the Alaska Democratic Party from allowing independent voter candidates to participate in Democratic primary elections. *See generally State v. Alaska Democratic Party*, 426 P.3d 901 (Alaska 2018).

8. Since then, independent, non-partisan, and unaffiliated voter candidates have been permitted to participate in Democratic primary elections, and Fenumiai and the Division of Elections have consistently indicated each candidate's voter affiliation on the ballot, parenthetically after her name.

9. This approach was consistent with and required by statute. Namely, AS 15.15.010(5) requires that "[t]he names of the candidates and their party designations shall be placed in separate sections on the state general election ballot under the office designation to which they were nominated," and that "[t]he party affiliation, if any, shall be designated after the name of the candidate."

10. Thus, in prior elections, Fenumiai and the Division of Elections prepared and printed ballots consistent with AS 15.15.010(5) to indicate the party affiliation (if

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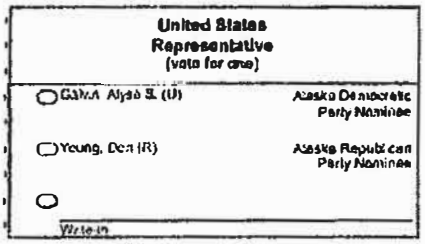
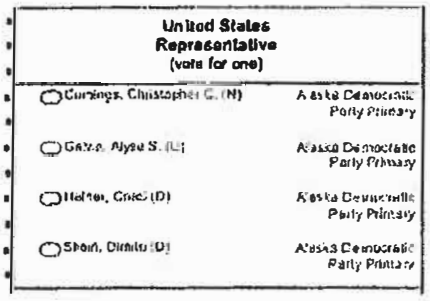
any) of the candidate and the party by which the candidate was nominated, as shown in the excerpt from the 2018 federal sample ballot below:



[1]

11. This was how Defendants have interpreted and applied AS 15.15.010(5) in primary elections as well as in general elections, as shown in the excerpt below from the 2018 Primary sample ballot:



[2]

12. And this remained true during the 2020 Primary election:

[1] https://elections.alaska.gov/election/2018/General/SampleBallots/GEN%2018%20FEDERAL%20Sample.pdf.
[2] https://www.elections.alaska.gov/election/2018/Primary/SampleBallots/HD1%20ADL%20Sample.pdf.

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United States Senator (vote for one)	
○ Bletchford, Edgar - D	Democratic
○ Cummings, Chris C. - N	Democratic
○ Gross, Al - N	Democratic
○ Howe, John Wayne - A	AK Indep.
United States Representative (vote for one)	
○ Galvin, Alyse S. - N	Democratic
○ Hibler, William "Biff" - D	Democratic
○ Tugatuk, Ray Sean - D	Democratic

[3]

YESTERDAY, WITHOUT WARNING, DEFENDANTS MATERIALLY CHANGED THE WAY CANDIDATES APPEAR ON THE BALLOT

13. On September 14, without warning or explanation, Defendants published sample ballots for the 2020 general election, which do not follow AS 15.15.010(5), nor are they consistent with Defendants' past practice in implementing the statute.

14. Specifically, in stark contrast to their prior practice and contrary to the clear statutory requirements, Defendants have suddenly omitted candidate voter registration affiliation information from the ballot.

15. The 2020 sample federal ballot, which Defendants published yesterday, lists candidate names as follows:

[3] https://www.elections.alaska.gov/election/2020/Primary/SampleBallots/FED%20AD.pdf

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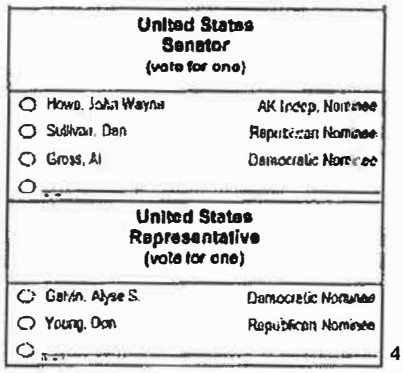

United States Senator (vote for one)	
○ Howe, John Wayne	AK Indep. Nominee
○ Sullivan, Dan	Republican Nominee
○ Gross, Al	Democratic Nominee
○	

United States Representative (vote for one)	
○ Galvin, Alyse S.	Democratic Nominee
○ Young, Don	Republican Nominee
○	

[4]

DEFENDANTS HAVE FAILED TO OFFER ANY EXPLANATION FOR THIS SUDDEN CHANGE

16. Galvin first learned of Defendants' abrupt and unexplained change yesterday, through a report first published on Twitter as seen below:

[4] https://www.elections.alaska.gov/election/2020/General/SampleBallots/FED.pdf

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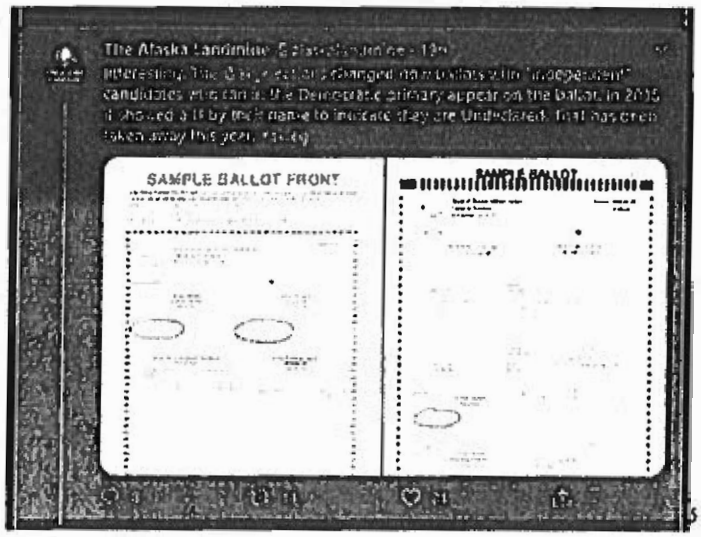

17. In response, Galvin's campaign reviewed the sample ballot recently published on the Division of Elections website and confirmed that it was consistent with the sample ballot posted on Twitter.

18. News outlets reported that "[t]he change was made unilaterally on Monday by Alaska Division of Elections Director Gail Fenumiai."[6]

19. On information and belief, Defendants failed to announce their abrupt decision to change the ballot until Monday September 14 to avoid a court challenge,

[5] https://twitter.com/alaskalandmine/status/1305590538314289152?s=21.
[6] James Brook and Aubrey Weiber, *A late change to the 2020 General Election ballot sparks outcry from Alaska Democrats*, Anchorage Daily News (Sept. 14, 2020), https://www.adn.com/politics/2020/09/14/a-late-change-to-the-2020-general-election-ballot-sparks-outcry-from-alaska-democrats/ (reporting that "[l]ooking at the ballot alone, there's no way to tell that [candidates are] independents or non-partisan").

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because federal law requires that absent stateside and overseas uniformed service members and overseas civilian voters be sent their ballots by no later than 45 days before election day. *See* 42 U.S.C. § 1971, *et seq*. For the November 3, 2020 general election, that deadline is this Saturday, September 19.

20. On information and belief, Defendants intend to respond to this challenge by alleging there is no time for them to change the ballot at this time while still complying with federal law to construct a defense against being forced to comply with their obligations under AS 15.15.010(5) and the Alaska Constitution.

21. Upon information and belief, Defendants made this eleventh-hour change to inappropriately affect the outcome of the election by misleading and confusing Alaska voters and depriving them of essential information.

CANDIDATE VOTER AFFILIATION IS IMPORTANT TO ALASKA VOTERS

22. More than half of all Alaska voters are registered as Non-Partisan or Undeclared.

23. Specifically, only 13% of Alaska voters self-identify as Democrats in voter registration records, and only 24% self-identify as Republicans. In contrast, and unlike in most other states, over 58% of Alaska voters are registered as Non-Partisan or Undeclared.

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24. More than half of Alaska voters chose not to affiliate with any political party and therefore exercise their freedom of association by explicitly registering with the state as *not* affiliated with any political party.

GALVIN'S NON-PARTISAN VOTER AFFILIATION IS A CRITICAL COMPONENT OF HER CAMPAIGN AND HER IDENTITY

25. Galvin was registered and identified as an Undeclared voter for well over a decade.

26. In 2019, Galvin changed her registration from Undeclared to Non-Partisan.

27. Galvin changed her registration because Non-Partisan best represents her beliefs and political objectives, and it is how she self-identifies as a voter.

28. That Galvin has won her second Democratic Primary election and, for the second time, is running as the nominee of the Alaska Democratic Party has not changed or altered how Galvin identifies as a voter.

29. Galvin's personal voter registration affiliation as Non-Partisan, and formerly as Undeclared, has been an important part of her identity, her campaign platform, and her relationship with her supporters.

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30. Omitting Galvin's personal voter registration affiliation from the ballot will mislead voters by wrongly suggesting that Galvin's personal voter registration affiliation is Democratic.

31. Omitting Galvin's personal voter registration affiliation from the ballot will undermine Galvin's constitutionally-protected right to associate and identify as a Non-Partisan voter.

32. Omitting Galvin's personal voter registration affiliation from the ballot will undermine the constitutionally-protected right of Alaska voters to associate with and support a candidate who best reflect their values and personal political associations and identities, should they so choose.

33. Because of Defendants' unlawful actions, Galvin—and the electorate—will be imminently harmed in a manner that cannot be measured or compensated in economic damages unless the actions of Defendants are enjoined immediately.

COUNT I

VIOLATION OF AS 15.15.030(5)

34. AS 15.15.030(5) requires that "[t]he names of the candidates and their party designations shall be placed in separate sections on the state general election ballot under

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the office designation to which they were nominated," and that "[t]he party affiliation, if any, shall be designated after the name of the candidate."

35. Based on Defendants' prior conduct since 2018, when the Supreme Court ordered them to permit independent and unaffiliated voters to run in Alaska Democratic Party primaries, Defendants have interpreted AS 15.15.030(5) to require that they list not only the candidate's party nomination, but also the candidate's personal voter registration affiliation on the ballot.

36. Defendants decided they would no longer include the information required by AS 15.15.030(5) in eleventh-hour decision that Fenumiai reportedly made "unilaterally on Monday" of this week.

37. Defendants do not have the authority to act outside the law or in direct violation of the Alaska Election Code, and specifically in direct contravention of AS 15.15.030(5).

COUNT II

VIOLATION OF ALASKA CONST. ART. I, § 5

38. The Alaska Constitution grants every person the right to "freely speak, write, and publish on all subjects, being responsible for the abuse of that right." Alaska Const. art. I, § 5. This inherently guarantees the rights of people, and political parties, to

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associate together to achieve their political goals. *See State, Div. of Elections v. Green Party of Alaska*, 118 P.3d 1054, 1064-65 (Alaska 2005) ("*Green Party*"); *Vogler v. Miller*, 651 P.2d 1, 3 (Alaska 1982). Both the First Amendment to the federal constitution and the Alaska Constitution protect "the rights of voters to band together as parties to pursue political ends." *Green Party*, 118 P.3d at 1064. But, as the Alaska Supreme Court has recognized, the Alaska Constitution is even more protective of political associational rights than the federal constitution. *Alaska Democratic Party*, 426 P.3d at 911.

39. When an election law or procedure is challenged, Alaska courts first determine whether the claimant has asserted a constitutionally protected right. *Green Party I*, 118 P.3d at 1061 (footnotes omitted) (quoting *O'Callaghan v. State*, 914 P.2d 1250, 1254 (Alaska 1996)). Next, the court must weigh and assess "the character and magnitude of the asserted injury to the rights," against "the precise interests put forward by the State as justifications for the burden imposed by its rule." *Id.* Finally, courts must "judge the fit between the challenged legislation and the [S]tate's interests in order to determine 'the extent to which those interests make it necessary to burden the plaintiff's rights.'" *Id.* "This is a flexible test: as the burden on constitutionally protected rights becomes more severe, the government interest must be more compelling and the fit between the challenged legislation and the [S]tate's interest must be closer." *Id.*; *see also*

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Alaska Democratic Party, 426 P.3d at 907 (applying this test to hold that the Division of Elections' prohibition on allowing independent and unaffiliated voters to run in Democratic primary elections imposed an unjustifiable burden on the Alaska Democratic Party's rights to freedom of association under Alaska Const. Art. I, § 5).

40. The Supreme Court has struck down election laws that impinged upon the freedom of association in the political context on multiple occasions. For example, in striking a law that required voters to "fully affiliate themselves with a single political party or to forgo completely the opportunity to participate in that party's primary," the Court found this "place[d] a substantial restriction on the political party's associational rights." *Green Party*, 118 P.3d at 1065.

41. Defendants' actions in omitting Galvin's voter registration affiliation from the ballot impinge upon Galvin's constitutionally-protected right to associate politically as a voter and through her party nomination.

42. Defendants have offered no justification for their actions, let alone one that might justify the burdens their actions have imposed on Galvin's constitutionally-protected right to associate politically as a voter and through her party nomination.

43. Defendants' actions in omitting Galvin's voter registration affiliation from the ballot burden the associational rights of the non-partisan and independent Alaska

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voters who support Galvin, or who simply prefer to support other non-partisan or unaffiliated candidates based on their own political associations and affiliations.

44. Defendants have offered no justification for their actions, let alone any that might justify the burdens imposed on the constitutionally-protected rights of Alaska voters.

45. Because Defendants' interests in or justifications for omitting Galvin's voter registration affiliation from the ballot, to the extent they exist, are vastly outweighed by the burdens Defendants' actions impose on the rights to freedom of political association enjoyed by Galvin and all Alaska voters, Defendants' actions are unconstitutional and must be enjoined.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, Plaintiff respectfully requests that the Court:

(a) Declare that Defendants' actions violate AS 15.15.030(5)'s clear mandate that a candidate's voter registration political affiliation be included on the ballot;

(b) Declare that Defendants' actions impose an undue burden on the right to freedom of association guaranteed by Article I, Section 5 of the Alaska Constitution;

(c) Vacate and set aside Defendants' actions;

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(d) Restore the *status quo* and prohibitively enjoin Defendants' from printing ballots that violate the requirements of AS 15.15.030(5) and Article I, Section 5 of the Alaska Constitution;

(e) Restore the *status quo* and mandatorily enjoin Defendants by requiring them to prepare and print ballots that comply with the requirements of AS 15.15.030(5) and Article I, Section 5 of the Alaska Constitution;

(f) Award Plaintiff her fees, costs, and other expenses to the extent provided by law; and

(g) Issue such other relief as the Court may deem just, proper, and equitable.

DATED: September 15, 2020.

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By: _____
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VERIFICATION

I, Alyse S. Galvin, having been duly sworn depose and state that I have read the foregoing Verified Complaint for Seeking Declaratory Judgment and Preliminary Injunction Purusant to Alaska Rule of Civil Procedure 65, and that the information stated therein is factual and true.

Dated: 9/15/20

Alyse S. Galvin

Subscribed and sworn to or affirmed before me in _____ on September 15, 2020.

_____
Clerk, Notary Public, or other person authorized to administer oaths.
My commission expires: _____

KEVIN FELDIS
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

ALYSE S. GALVIN, Plaintiff, v. GAIL FENUMIAI, in her official capacity as DIRECTOR OF THE DIVISION OF ELECTIONS; and STATE OF ALASKA, DIVISION OF ELECTIONS, Defendants.	Case No. 3AN-20-_____CI

MOTION FOR TEMPORAY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AND MEMORANUM IN SUPPORT

The plaintiff moves for a temporary restraining order and preliminary injunction enjoining Defendants from printing ballots in direct contravention of (a) AS 15.15.030(5), which requires a candidate's party affiliation to be designated after the candidate's name, in addition to the candidate's nominating party; and (b) Article I, Section 5 of the Alaska Constitution, which guarantees the right to freedom of political association.

This lawsuit concerns the Alaska Division of Elections' abrupt decision to break from its established interpretation and application of AS 15.15.030(5) by omitting candidate party affiliation information from the ballot for the 2020 general election. The Plaintiff, congressional candidate Alyse Galvin, became aware of the change through a

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report published on Twitter on September 14, 2020. Her campaign then contacted the Division of Elections to inquire about the change after confirming the same on the Division of Elections website.

A failure to act now will not only result in thousands of illegally and unconstitutionally printed ballots being mailed to uniformed and overseas voters within the next few days, as detailed below, but also put Alaska's congressional election at risk of long, drawn-out post-election contest proceedings that could themselves reach the U.S. Congress. *See Edmondson v. Bellmon*, S. Rep. 94-597 (Senate Committee on Rules and Administration recommended declaring vacancy and holding special election due to irregularities and violations of Oklahoma law, including that U.S. Senate race was listed too low on ballot and thus may have altered election results).

ARGUMENT

A. The omission of candidates' voter registration party affiliations contravenes AS 15.15.030(5). .

Alaska law mandates that the Director of the Division of Elections "prepare all official ballots to facilitate fairness, simplicity, and clarity in the voting procedure, to reflect most accurately the intent of the voter, and to expedite the administration of elections." AS 15.15.030. To that end, "[t]he names of the candidates and their party designations shall be placed in separate sections on the state general election ballot under the office designation to which they were nominated," and "[t]he party affiliation, if any,

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shall be designated after the name of the candidate." AS 15.15.030(5). The statute clearly contemplates two party indicators where applicable.

The Alaska Supreme Court's decision in *State v. Alaska Democratic Party*, 426 P.3d 901 (Alaska 2018) required the Defendants to permit independent, non-partisan, and unaffiliated voter candidates to participate in Democratic primary elections. Since then, the Division of Elections has consistently followed AS 15.15.030(5) by indicating both the party by which each candidate was nominated—in a "separate section[]"—and the voter registration party affiliation of each individual candidate with a parenthetical "after the name of the candidate." *Id.*

Omitting candidates' voter registration affiliation constitutes a clear violation of this directive, which "shall be followed when applicable." AS 15.15.030. There is no statutory or legal basis for including only the nominating party, particularly when the statute specifically mandates that the "party affiliation, if any, shall be designated after the name of the candidate." AS 15.15.030(5). Indeed, Defendants reportedly decided they would no longer include the information required by AS 15.15.030(5) in an eleventh-hour decision that Director Fenumiai made "unilaterally on Monday," September 14, 2020.

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B. The omission of candidates' voter registration party affiliations violates both Galvin and Alaska voters' constitutional right to freedom of political association.

The Alaska Constitution grants every person the right to "freely speak, write, and publish on all subjects, being responsible for the abuse of that right." Alaska Const. art. I, § 5. This inherently guarantees the rights of people—and political parties—to associate together to achieve their political goals. *See State, Div. of Elec. v. Green Party of Alaska*, 118 P.3d 1054,1064-65 (Alaska 2005); *Vogler v. Miller*, 651 P.2d 1, 3 (Alaska 1982).

When an election law or procedure is challenged, Alaska courts first determine whether the claimant has in fact asserted a constitutionally protected right. *Green Party I*, 118 P.3d at 1061 (footnotes omitted) (quoting *O'Callaghan v. State*, 914 P.2d 1250, 1254 (Alaska 1996)). Next, the court must weigh and assess "the character and magnitude of the asserted injury to the rights," against "the precise interests put forward by the State as justifications for the burden imposed by its rule." *Id.* Finally, courts must "judge the fit between the challenged legislation and the [S]tate's interests in order to determine 'the extent to which those interests make it necessary to burden the plaintiff's rights.'" *Id.* "This is a flexible test: as the burden on constitutionally protected rights becomes more severe, the government interest must be more compelling and the fit between the challenged legislation and the [S]tate's interest must be closer." *Id.*; *see also Alaska Democratic Party*, 426 P.3d at 907 (applying this test to hold that the burden imposed by

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the Division of Elections' prohibition on allowing independent and unaffiliated voters to run in Democratic primary elections was not justified given the Alaska Democratic Party's right to freedom of association pursuant to Alaska Const. Art. I, § 5).

As the Alaska Supreme Court has clarified, the Alaska Constitution is more protective of political associational rights than the federal constitution. *Id.* at 911. And the Supreme Court has struck down election laws that impinged upon the freedom of association in the political context on multiple occasions. For example, in striking a law that required voters to "fully affiliate themselves with a single political party or to forgo completely the opportunity to participate in that party's primary," the Court found that this "place[d] a substantial restriction on the political party's associational rights." *Green Party*, 118 P.3d at 1065.

Defendants' actions in omitting Galvin's voter registration affiliation from the ballot impinge upon Galvin's constitutionally-protected right to associate politically as a voter as well as through her party nomination. Defendants' actions also burden the associational rights of the non-partisan and independent Alaska voters who support Galvin, or who prefer to support other non-partisan or unaffiliated candidates based on their own political associations and affiliations. Defendants have failed to offer any justification for their actions, let alone any justification for the burdens imposed on the constitutionally-protected rights of Galvin and Alaska voters.

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Because Defendants' interests in or justifications for omitting Galvin's voter registration affiliation from the ballot (to the extent they exist) are vastly outweighed by the burdens Defendants' actions impose on the rights to freedom of political association enjoyed by Galvin and all Alaska voters, Defendants' actions are unconstitutional and must be enjoined.

C. Galvin is entitled to a temporary restraining order and preliminary injunctive relief.

The legal standards governing temporary restraining orders and preliminary injunctions in Alaska are straightforward and set forth by rule. Under Alaska Rule of Civil Procedure 65(b):

> A temporary restraining order may be granted without written or oral notice to the adverse party or the party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or the party's attorney can be heard in opposition, and (2) the applicant's attorney certified to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the party's claim that notice should not be required.

The Alaska Supreme Court applies two different tests, depending on the "the nature of the threatened injury," to determine whether a plaintiff is entitled to a preliminary injunction. *State, Division of Elections v. Metcalfe*, 110 P.3d 976, 978

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(Alaska 2005).

> If the plaintiff faces the danger of irreparable harm and if the opposing party is adequately protected, then we apply a balance of hardships approach in which the plaintiff must raise serious and substantial questions going to the merits of the case; that is, the issues raised cannot be frivolous or obviously without merit. If, however, the plaintiff's threatened harm is less than irreparable or if the opposing party cannot be adequately protected, then we demand of the plaintiff the heightened standard of a clear showing of probable success on the merits.

Id. (internal quotation marks and citations omitted). "The balance of hardships is determined by weighing the harm that will be suffered by the plaintiff if an injunction is not granted, against the harm that will be imposed upon the defendant by the granting of an injunction." *State v. Kluti Kaah Native Village,* 831 P.2d 1270, 1273-73 (Alaska 1992), *quoting A.J. Industries, Inc., v. Alaska Public Service Comm'n*, 470 P.2d 537, 540 (Alaska 1970), *modified in other respects*, 483 P.2d 198 (Alaska 1971).

Under either the "balance of the hardships" or "probable success on the merits" test, Plaintiff is likely to prevail because the requirements of AS 15.15.030(5) are clear and are not met on Defendants' current ballot, as detailed above and in Plaintiff's Complaint.

Galvin will suffer irreparable harm unless the illegal and unconstitutional printing of ballots is enjoined immediately because, under federal statute, Defendants must mail ballots to uniformed and overseas voters within the next four days. *See Benesch v. Miller*,

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446 P.2d 400, 401-02 (Alaska 1968). Federal law requires that absent stateside and overseas uniformed service members and overseas civilian voters be sent a ballot by no later than 45 days before election day. *See* 42 U.S.C. § 1971, *et seq*. For the November 3, 2020 general election, that deadline is this Saturday, September 19. Once the election has come and gone, serious injuries to Galvin's candidacy cannot be undone through monetary remedies. *See Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2010); *Fla. Democratic Party v. Detzner*, No. 4:16-cv-607, 2016 WL 6090943, at *8 (N.D. Fla. Oct. 16, 2016).

If Defendants have already begun the process of printing military and overseas ballots, the number of ballots that Alaska prints and sends to this limited category of voters is a relatively small number of ballots, overall. For example, in 2018, Alaska had 4,216 registered and eligible military and overseas voters, and only transmitted 4,173 military and overseas ballots. *See* U.S. Election Assistance Commission, *The Election Administration and Voting Survey 2018 Comprehensive Report* at Appendix B at 102 (June 2019), https://www.eac.gov/sites/default/files/eac_assets/1/6/2018_EAVS_Report.pdf; *see also* U.S. Election Assistance Commission, *The Election Administration and Voting Survey 2016 Comprehensive Report* at Appendix B, 102 (2017), https://www.eac.gov/sites/default/files/eac_assets/1/6/2016_EAVS_

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Comprehensive Report.pdf (In 2016, Alaska sent out 9,647 military and overseas ballots). To the extent that Defendants must incur some expense or burden as a consequence of their brazen attempt to circumvent the law in violation of Plaintiff's and Alaska voters' rights to freedom of association, that expense or burden is justified to prevent a manifest injustice.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court enter a temporary restraining order and preliminary injunction to preserve the status quo and prevent the irreparable harm described herein before the parties can be heard on the merits.

DATED: September 15, 2020.

PERKINS COIE LLP
Attorneys for Plaintiff
Alyse S. Galvin

By: _____
Kevin R. Feldis, Alaska Bar No. 9711060
KFeldis@perkinscoie.com

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALYSE S. GALVIN, Plaintiff, v. GAIL FENUMIAI, in her official capacity as DIRECTOR OF THE DIVISION OF ELECTIONS; and STATE OF ALASKA, DIVISION OF ELECTIONS, Defendants.	Case No. 3AN-20-_____ CI.

AFFIDAVIT OF KEVIN R. FELDIS IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER

STATE OF ALASKA)
) *ss.*
THIRD JUDICIAL DISTRICT)

I, Kevin R. Feldis, being first duly sworn, deposes and says:

1. I am an attorney with Perkins Coie, attorneys for Plaintiff Alyse S. Galvin in this action. I have personal knowledge of the facts relating to Plaintiff's Motion for Temporary Restraining Order ("Motion for TRO"), dated September 15, 2020.

2. I certify that I sent an email to Ms. Cori Mills, Chief Assistant Attorney General, regarding the subject matter of this suit on Tuesday, September 15, 2020, at 8:44 a.m. I did not receive a response.

3. Upon information and belief, Ms. Mills is the appropriate attorney to

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communicate with regarding this matter.

4. At 2:17 p.m., I sent another email to Ms. Mills following up on my earlier message and advising that Plaintiff intended to file a complaint and TRO.

5. At 3:10 p.m., Ms. Mills responded via email with an explanation of how the Ballot was modified. The explanation does not resolve the legal issues raised in Plaintiff's Motion or alter the basis presented for granting the TRO.

6. On information and belief, Defendants are currently printing ballots that violate AS 15.15.030(5) and Art. I, § 5 of the Alaska Constitution—as detailed in Plaintiff's Complaint and Motion for Temporary Restraining Order and Preliminary Injunction—to be mailed beginning September 19, 2020 in compliance with 42 U.S.C. § 1971, *et seq.*

7. Plaintiff requests that this Court take immediate action and schedule a hearing for September 16, 2020, to avoid irreparable injury and maintain the status quo.

Dated: September 15, 2020

Kevin R. Feldis

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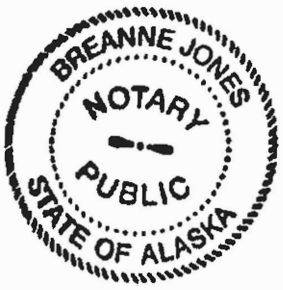
Kevin Feldis | KFeldis@perkinscoie.com

SUBSCRIBED, SWORN TO OR AFFIRMED before me this 15th day of September 2020.



Notary Public in and for Alaska
My commission expires: 03/08/2022

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALYSE S. GALVIN, Plaintiff, v. GAIL FENUMIAI, in her official capacity as DEIRCTOR OF THE DIVISION OF ELECTIONS; and STATE OF ALASKA, DIVISION OF ELECTIONS, Defendant.	) Case No. 3AN-20-07991CI

TEMPORARY RESTRAINING ORDER

TO: Gail Fenumiai, Director, Division of Elections
State of Alaska, Division of Elections

Plaintiff has moved, pursuant to Alaska Rule of Civil Procedure 65(b), for a temporary restraining order in this action. Plaintiff requests this relief pending determination of Plaintiff's motion for preliminary injunction.

Upon the motion and memorandum of Plaintiff and the verified complaint of Plaintiff Alyse S. Galvin, the Court finds, based upon the information currently before it, that Plaintiff has shown that immediate and irreparable injury will occur to Plaintiff if Defendants are not enjoined from printing ballots that do not include candidates' voter registration affiliation. This order is granted after notice to Defendants, in order to preserve the status quo pending a hearing on Plaintiff's

motion for preliminary injunction. The Court further finds that the pleadings present serious questions for litigation, that Defendants can be adequately protected during the short period of time that this order is in effect, and that the balance of hardships at this stage favors Plaintiff.

At this stage in the litigation, the Court is not in a position to make conclusions related to Plaintiff's constitutional claims. The Court does note that the constitutional claims and potential harms asserted by Plaintiff in this case differ in nature and context from the associational claims and interests at issue in the precedent cited by both parties. *See State v. Alaska Democratic Party*, 426 P.3d 901 (Alaska 2018); *State v. The Green Party of Alaska*, 118 P.3d 1054 (Alaska 2005). Although the Alaska Supreme Court has alluded to a constitutional dimension to impacts on "the ideological cast of . . . nominated candidates," *State v. Alaska Democratic Party*, 426 P.3d at 909, it is not clear to the Court at this point in the litigation that Plaintiff has a constitutional right to have her voter affiliation stated on the general election ballot, as opposed to being presented in other election or campaign materials. The Court does not at this time reach conclusions one way or the other on Plaintiff's constitutional claims.

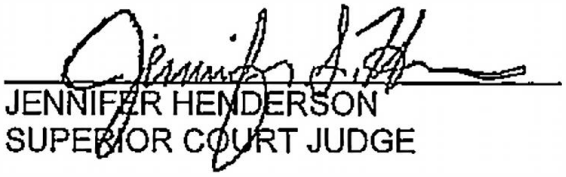
Plaintiff raises clear and very significant questions, however, regarding what appears to be a departure by Defendants from the plain language of the statutory requirements stated in AS 15.15.030(5). The statute requires, among other things, that "the [candidate's] party affiliation, if any, shall be designated after the name of the candidate." Defendants, through counsel, have urged the Court to interpret "party affiliation" as representing essentially the mechanism by which a candidate came to be on the general election ballot; however, given the information currently before the Court, which certainly may evolve, the statutory scheme surrounding this particular section, and significant precedent addressing that term "party affiliation," support Plaintiff's interpretation of the meaning of that phrase. The Court does appreciate that prior to the litigation leading to the Alaska Supreme Court's 2018 decision of the *Alaska Democratic Party* case, a candidate's "party designation" and "party affiliation" were expected to be the same; however, the fact remains that the plain language of the statute requires that a candidate's "party affiliation" be included, and the statutory scheme and precedent appear to treat "party affiliation" as one's voter registration affiliation. The Division of Elections has included this "party affiliation" information on prior ballots since 2018, and has not thus far asserted any meaningful or cogent reason for not including this information on the current general election ballot.

In making this determination, the Court is mindful that this is a very newly filed lawsuit, and that parties likely have additional information and legal argument that will impact the Court's analysis. The Court is also aware of the

significant repercussions that would come with keeping this temporary restraining order in place without a very prompt hearing on preliminary injunction. As noted by Defendants' counsel during the hearing on temporary restraining order, the relief ultimately requested by Plaintiff involves much more than the re-printing of a few thousand, or a small portion of, ballots. To that end, the Court schedules a further hearing, to address Plaintiff's motion for preliminary injunction, as well as whether there exist adequate alternative forms of relief to re-printing of ballots, on Friday, September, 18, 2020, at 10:30 A.M. Participants may call into the hearing at 1-800-768-2983, access code 2640772#. The Court requests additional briefing from both parties regarding the above points on September 17, 2020, by 4:00 P.M., and briefing and exhibits, if any, may be filed by email to jisaako@akcourts.us. Any request to alter the scheduling of briefing and/or the September 18th hearing shall be filed as immediately as possible.

Based on the above-described analysis of Plaintiff's motion for a temporary restraining order, IT IS HEREBY ORDERED that Defendants are enjoined from printing ballots that do not include candidates' voter registration affiliation. Plaintiff is further ordered, pursuant to Alaska Rule of Civil Procedure 65(c), to post security in the amount of $10,000. The Court notes that this requirement of security may be modified following further hearing and assessment of potential costs and damages as referenced by the Court Rule.

DATED at Anchorage, Alaska this 17th day of September, 2020.



JENNIFER HENDERSON
SUPERIOR COURT JUDGE

I certify that on 09.17.2020
a copy of the above was mailed to each of
the following at their addresses of record:
K. Feldis, SOA, G. Fenumiai, P. Galvin, M. Walsh

Jessica Isaako
Judicial Assistant

counters are appointed, the clerks may not be of the same poitical party. If more than two counters are appointed, no more than two counters may be of the same political party.

Sec. 2.15. **Appointment of Nominees for Judges and Clerks.** Whenever the appointment of election judges or clerks is required, the party district committee of the political party of which the governor is a member may present in writing at least 45 days before the party nomination or election, to the election supervisor, the names of two party nominees for judges, and one for clerk, in any or all election precincts, and the election supervisor shall appoint the party nominees to the respective precinct election boards. The party district committee of the political party which received the second largest number of votes in the preceding general election may present in writing at least 45 days before the party nomination or election to the election supervisor the name of one party nominee for judge and one for clerk for any or all election precincts and the election supervisor shall appoint the party nominees to the respective precinct election boards. If any party district committee fails to present the names prescribed by this section, the election supervisor may appoint any qualified person.

Sec. 2.16. **Date and Notice of Appointment of Election Board.** The election supervisor shall make his appointments and give notice thereof at least 30 days prior to the date of any party primary or election. Appointees shall accept their appointments in writing at least ten days before the party primary or election.

Sec. 2.17. **Appointment and Privileges of Watchers.** The district party committee may appoint one person as watcher in each precinct for any primary nomination or election. Each candidate not representing any political party may appoint a watcher for each precinct in his respective district or the state for any election. The watcher may be present at a position within the place of voting which affords a full view of all action of the election board taken from the time the polls are opened until the ballots are finally counted and the result certified by the election board. The election board may require each watcher to present a certificate showing him to be the watcher appointed by the district party committee or candidate he represents and signed by the chairman of district committee or candidate representing no party. The secretary of state may prescribe regulations governing the conduct of watchers to assure the privileges of watchers and the proper conduct of the election.

Sec. 2.18. **Appointment of Party Representatives for State Canvass.** The secretary of state shall appoint two persons from each political party to participate in the canvassing of the vote. Each person who was appointed and serves, receives the same rate of compensation paid election judges. Each political party may present to the secretary of state a list of three or more names from which he shall select the persons to represent the party. The list of names may be submitted in writing at least 30 days before the date of the election. The persons to represent the party on the canvassing board may be selected by the state party central committee or in any other manner prescribed by the by-laws of the party. The list of names shall be certified by the chairman of the state central committee of the party or by the person authorized by the party by-laws to act in the absence of the chairman.

Article III

General Procedure for Elections

Sec. 3.01. **General Administrative Supervision by Secretary of State.** The secretary of state shall provide general administrative supervision over the conduct of state elections and may issue any regulations pursuant to the Administrative Procedure Act necessary for the administration of elections to protect the interest of the voter and assure administrative efficiency.

Sec. 3.02. **Date of General Election.** The general election is held on the Tuesday after the first Monday in November in every even numbered year.

Sec. 3.03. **Preparation of Official Ballot.** The secretary of state shall prepare all official ballots to facilitate fairness, simplicity, and clarity in the voting procedure, to reflect most accurately the intent of the voter, and to expedite the administration of elections. The following directives shall be followed when applicable.

(1) The secretary of state shall determine the size of the ballot, the type of print, any necessary additional instruction notes to voters, and other similar matters of form not provided by law.

(2) The secretary of state shall determine the manner of numbering ballots to assure simplicity and secrecy and to prevent fraud.

(3) The secretary of state may contract for the preparation of the ballots on a regional basis if necessary and may contract for the preparation of ballots without obtaining competitive bids.

(4) The secretary of state may not include on the ballot as a part of a candidate's name, any honorary or assumed title or prefix but may include in the candidate's name any nickname or familiar form of a proper name of the candidate.

(5) The general election ballot shall be printed on white paper with the names of candidates placed in separate columns for each political party as indicated by column headings. Candidates shall be grouped according to offices, with each office except the secretary of state, having a separate section. The secretary of state and governor shall be included in the same section. The left column shall be that of the political party receiving the largest vote at the preceding general election. Provision shall be made for voting for write-in and no-party candidates and for voting a straight party ticket by marking only one designated square.

(6) The general election ballot shall be designed with the position of names of the candidates changed in each section as many times as there are candidates in the section in which there are the most names. As nearly as possible, an equal number of ballots shall be printed after each change. In making the changes of position, the name of the candidate at the head of each section shall be taken and placed at the bottom of the section and the column moved up so that the name that before was second is first after the change. After the ballots are printed, they shall be placed in separate stacks, one stack for each change of position. The ballots shall then be gathered by taking one from each stack, the intention being that every other ballot in the accumulated stack of ballots shall have the names of the candidates in a different position.

(7) The general election ballot shall be designed with the names of candidates of each political party for the office of president and vice-president of the United States placed in the same section on the ballot rather than the names of electors of president and vice-president.

(8) The general or special election ballot shall be designed with the title and proposition for any initiative, referendum, or constitutional amendment formulated as prescribed by law and placed on the ballot in the manner prescribed by the secretary of state. Provision shall be made for marking the proposition "For" or "Against."

(9) The general or special election ballot shall be designed with the question of whether a constitutional convention shall be called placed on the ballot in the following manner: "Shall there be a constitutional convention?" Provision shall be made for marking the question "Yes" or "No."

(10) A separate statewide or judicial district-wide ballot shall be designed with the question of whether a justice or judge seeking to succeed himself shall be approved or rejected in substantially the following manner: "Shall _____ be retained as justice of the supreme court for ten years?" or "Shall _____ be retained as judge of the superior court for six years?" Provision shall be made for marking the question "Yes" or "No."

(11) When the legislature by law authorizes a state debt for capital improvements, the secretary of state shall place the question of whether the specific authorization shall be ratified by placing the ballot title and question on the next general election ballot. Unless specifically provided otherwise in the act authorizing the debt, the ballot title shall, by the use of a few words in a succinct manner, indicate the general subject of the act. The question shall, by the use of a few sentences in a succinct manner, give a true and impartial summary of the act authorizing the state debt. Provision shall be made for marking the question substantially as follows: "Bonds — Yes"

or "Bonds — No," followed by an appropriate square.

Sec. 3.04. **Preparation of Other Election Materials.** The secretary of state shall prescribe the form of and prepare tinted sample ballots, the original and duplicate registers, oaths of office of judges, challenge oaths, tally sheets, instructions to voters, warning notices and other forms and supplies required for the election.

Sec. 3.05. **Distribution of Election Materials.** The secretary of state shall distribute an adequate supply of sample and official ballots, registers, oaths, and other forms and supplies required for the election to the election supervisors for distribution to chairmen of election boards in precincts not less than 25 days before the date for the election.

Sec. 3.06. **Procurement of Polling Places and Other Supplies.** At least 10 days before the date of the election, the election supervisor shall secure polling places for holding the election, including alternate emergency locations, suitable ballot boxes which will assure security and an adequate number of voting booths or screens, national flags, pens, and pencils. Not less than one voting booth or screen shall be furnished for each 100 votes or fractional part thereof, cast in the previous election. The secretary of state may issue rules prescribing the type of polling place for holding the election and the requirements regarding ballot boxes, voting booths, screens, national flags, and other supplies to assure administrative economy and to protect the secrecy of the ballot. The state, through the office of secretary of state, shall pay the cost of any necessary election expenses incurred in securing a place for holding the election, a suitable ballot box, and an adequate number of voting booths, screens, national flags, and other supplies.

Sec. 3.07. **Public Notice of Election Required.** At least 10 days before the date of the election the secretary of state shall give, and is authorized to contract to give, full public notice of the election and may select any manner reasonably calculated to give actual knowledge of the election to the voters. Public notice shall include, but is not limited to, the posting of written notice in three conspicuous places in each precinct and printed notice for three days in a newspaper of general circulation in each major senate district. The secretary of state shall prescribe the manner of notice which shall be given by election boards. The notice shall specifically include, but is not limited to, the date of the election, the boundary of the precinct, the location of the polling place, the hours between which the polling places will be open, the offices to which candidates are to be nominated or elected, and the subject of the propositions and of questions which are to be voted upon. Additional notice may be given by use of newspapers, television, radio, printed posters, and any similar means of communication. The state, through the office of secretary of state, shall pay the cost of any necessary election expenses incurred in giving notice of any election.

Sec. 3.08. **Time for Opening and Closing Polls.** On the day of election, the election boards shall open the polls at eight o'clock in the morning, shall close the polls at eight o'clock in the evening, and shall keep them open during the time between these hours. The hour shall be determined by the standard time, or daylight saving time, that is applicable to the polling place.

Sec. 3.09. **Voting in Person Only at Resident Precinct.** On election day a qualified voter voting in person shall vote only at the polling place in the precinct of his residence.

Sec. 3.10. **Time Off for Voting.** Any qualified voter who does not have sufficient time outside his working hours within which to vote at any state election may, without loss of pay, take off as much working time as will enable him to vote. If any employee has two consecutive hours in which to vote, either between the opening of the polls and the beginning of his regular working shift, or between the end of his regular working shift and the closing of the polls, he shall be deemed to have sufficient time outside his working hours within which to vote.

Sec. 3.11. **General Duties and Oath of Election Board.** The election board shall supervise the election in the precinct. Before entering upon the duties of office, each election judge shall take an oath to honestly, faithfully, and promptly perform the duties of his office. Any appointed judge, whether or not having

himself subscribed to the oath, may administer the oath to another judge. The chairman of the election board shall rotate the time at which judges and clerks may be relieved for meals.

Sec. 3.12. **Filling Vacancies in Election Board.** If any appointed judge or clerk fails to appear and subscribe to the oath on election day or becomes incapacitated during the time of the election or canvass, the qualified voters present shall elect, by a majority voice vote, any qualified voter present to fill the vacancy.

Sec. 3.13. **Majority Decision of Election Board.** The decision of the majority of judges determines the action that the election board shall take regarding any question which arises during the course of the election.

Sec. 3.14. **Permitted Use of Unofficial Ballots.** If no official ballots or election supplies are received, or if an insufficient number of either are received, or if either have been destroyed or lost, the election board shall provide, and the voters may use, unmarked substitute ballots and other election materials to indicate the intent of the voter. The election board shall certify to the facts which prevented the use of the official ballots and materials and shall include the certificate in the election returns to the secretary of state. The initial failure to certify to the facts, or include the certificate as required, does not invalidate any ballots. Upon disclosure that unofficial ballots have been used without a certification as required, the secretary of state shall notify the chairman of the election board by telephone or telegraph of his failure to properly certify the ballots. The secretary of state may accept the required certificate made by telegraph and count the ballots if the certificate is proper and actually delivered to the secretary of state within 10 days of the date that the chairman of the election board was notified.

Sec. 3.15. **Official Opening of Polls.** On the day and hour of election, the election board shall announce that the polls are open and receive the voters.

Sec. 3.16. **Prohibition of Political Discussion by Election Board.** During the hours that the polls are open, no judge or clerk may discuss any political party, candidate or issue while on duty.

Sec. 3.17. **Prohibition of Political Persuasion Near Election Polls.** During the hours the polls are open, no person who is in the polling place or within 100 feet of any entrance thereto, may attempt to persuade any person to vote for or against any candidate, proposition or question. The election judges shall post warning notices at the required distance in the form and manner prescribed by the secretary of state.

Sec. 3.18. **Keeping of Original Register.** The judges shall keep an original register in which each voter before receiving his ballot shall sign his name and give both his resident and mailing address. The signing of the register constitutes a declaration by the voter that he is qualified to vote.

Sec. 3.19. **Keeping of Duplicate Register.** Clerks shall keep the duplicate register and shall write in the duplicate register the names of persons who vote, the names of persons who offer to vote but are refused, and a brief statement of the basis of the refusal.

Sec. 3.20. **Questioning of Voter of Doubtful Qualification.** Any election judge may question any person of doubtful qualification attempting to vote and may require identification. Upon a satisfactory showing that the person is qualified to vote, the election judge shall allow the person to vote. If an election judge is doubtful as to the ability of a person to speak the English language, a satisfactory showing is made by the person briefly conversing with the election judge by the use of simple English words. If an election judge is doubtful as to whether there is a physical disability preventing the speaking or reading of the English language, a satisfactory showing is made by a written statement made by a licensed physician that the person is so disabled.

Sec. 3.21. **Challenging of Voters of Suspect Qualification.** Every election judge and election clerk shall challenge, and every watcher and other person qualified to vote in the precinct may challenge any person attempting to vote if the challenger has good reason to suspect that the challenged person is not qualified to vote. Any challenged person before voting shall subscribe to an oath and affidavit provided by the secretary of

state attesting to the fact that in each particular the person meets all the qualifications of a voter or that the person legally voted in the general election of November 4, 1924 and meeting the residency requirements of a qualified voter, that he is not disqualified, that he has not voted at the same election and stating the place from which the person came immediately prior to living in the precinct in which he now offers to vote and the length of time of his residence in the former place. After the challenged person has taken the oath and signed the affidavit, the person may vote. If the challenged person refuses to take the oath or sign the affidavit, the person may not vote.

Sec. 3.22. **Administration of Oaths.** Any judge may administer to a voter any oath that is necessary in the administration of the election.

Sec. 3.23. **Providing Ballot to Voter.** When the voter has qualified to vote, the election judge shall give him an official ballot. The voter shall retire to a booth or screen to mark the ballot for the candidates of his choice.

Sec. 3.24. **Assisting Voter by Judge.** Any qualified voter who is incapable of reading, of marking the ballot or of signing his name may request any judge to assist him, and the judge shall assist the voter as requested.

Sec. 3.25. **Disposition of Improperly Marked Ballot.** If any voter improperly marks or otherwise damages a ballot, the voter may request and the election board shall provide him with another ballot, with a maximum of three, and the board shall retain the improperly marked or damaged ballot.

Sec. 3.26. **Returning Ballot by Voter.** When the voter has marked his ballot, he shall fold the ballot and return it to the judge who shall deposit it in the ballot box in the presence of the voter. Separate ballot boxes may be used for separate ballots.

Sec. 3.27. **Prohibiting the Leaving of the Polling Place With Ballot.** No voter may leave the polling place with the official ballot that he received to mark.

Sec. 3.28. **Prohibiting the Exhibition of Marked Ballots.** Subject to Sec. 3.24, no voter may exhibit his ballot to an election official or any other person so as to enable any person to ascertain how the voter marked his ballot.

Sec. 3.29. **Prohibiting the Identification of Ballots.** No election official may, while the polls are open, open any ballot received from a voter, or mark a ballot by folding or otherwise so as to be able to recognize it, or otherwise attempt to learn how any voter marked his ballot, or allow the same to be done by any other person.

Sec. 3.30. **Prohibiting the Count of Exhibited Ballots.** No election official may place in the ballot box any ballot known to have been unlawfully exhibited by the voter. Any ballot unlawfully exhibited shall be retained and placed with the improperly marked or damaged ballots.

Sec. 3.31. **Official Closing of Polls.** Fifteen minutes before and at the time of closing the polls, the election board shall announce the present time and the time of closing the polls.

Sec. 3.32. **Voters in Line When Polls Close.** Every qualified voter present and in line at the time prescribed for closing the polls may vote.

Sec. 3.33. **Immediate Commencement of Canvass.** When the polls are closed and the last vote has been cast, the election board and clerks or counters shall immediately proceed to open the ballot box and to count and canvass the votes cast. The election board shall cause the canvass to be continued without adjournment until the canvass is complete.

Sec. 3.34. **Report, Oath, and Vacancies of Counters.** Counters shall report to the election board at the time the polls close to assume their duties to assist the election board in counting and canvassing the vote. Before undertaking any duties of office, each counter shall subscribe to an oath to honestly, faithfully, impartially, and promptly carry out the duties of his position. Any election judge may administer the oath. If an appointed counter fails to appear and subscribe to the oath at the time the polls close, the election board shall appoint any qualified voter present to fill the vacancy.

Sec. 3.35. **General Procedure for Canvass.** The secretary of state shall issue rules prescribing the manner in which the

precinct canvass is accomplished so as to assure accuracy in the count and to expedite the process. The election board or counters shall canvass the ballots in a manner that allows watchers to see the ballots when opened and read. No person handling the ballot after it has been taken from the ballot box and before it is placed in the envelope for mailing may have a marking device in hand.

Sec. 3.36. **Rules for Determining Mark on Ballots.** The election board shall canvass and count the votes according to the following rules:

(1) A voter may mark his ballot by the use of checks, cross marks or plus signs, or any other written mark that is clearly placed in the square opposite the name of the candidate and that indicates the intent of the voter to designate the candidate.

(2) A failure to properly mark a ballot as to one or more candidates does not itself invalidate the entire ballot.

(3) If a voter marks fewer names than there are persons to be elected to the office, a vote shall be counted for each candidate properly marked.

(4) If a voter marks more names than there are persons to be elected to the office, the votes for candidates for that office shall not be counted.

(5) The mark shall be counted only if it is substantially within the square provided, or touching the square and no other, or placed near the square so as to indicate clearly that the voter intended the particular square to be designated.

(6) Improper marks on the ballot shall not be counted and shall not invalidate marks for candidates properly made.

(7) Erasures and corrections do not invalidate the ballot.

(8) A vote marked for the candidate for president or vice-president of the United States is deemed and counted as a vote for the election of the presidential electors.

(9) Write-in votes are not invalidated by writing in the name of a candidate whose name is printed on the ballot unless the election board determines, on the basis of other evidence that the ballot was so marked for the purpose of identifying the ballot.

(10) If a voter marks in the square designated for voting a straight ticket for one political party and also marks in a square for a particular candidate or candidates of another party, a no-party candidate or a write-in candidate, the ballot is not invalid and a vote shall be counted for each candidate on the straight party ticket and no vote shall be counted for a candidate or candidates not on the straight party ticket.

Sec. 3.37. **Completion of Canvass.** When the canvass is completed, and in no event later than the day after the election, the election board or counters shall make a certificate of the results in duplicate. The certificate includes the number of votes cast for each candidate, for and against each proposition, yes or no on each question, and any additional information prescribed by the secretary of state. The election board shall send one copy of the certificate, the original register, all the ballots cast, all ballots improperly marked, damaged and unlawfully exhibited, properly identified, and all oaths and affidavits made, in one package to the secretary of state. Each board shall send the duplicate certificate and the duplicate register to its respective election supervisor. The secretary of state may authorize election boards in precincts in those areas of the state where distance and weather make mail communication unreliable to forward their election certificates by telegram or radio. The secretary of state may authorize the unofficial canvass of votes on a regional basis by election supervisors tallying the votes as indicated on duplicate certificates. The secretary of state shall prescribe the manner in which the ballots, registers and all other election records and materials are thereafter preserved, transferred and destroyed to assure adequate protection.

Sec. 3.38. **Remuneration of Election Judges, Clerks and Counters.** The state, through the office of secretary of state, shall pay each judge, clerk, and counter $2.00 per hour for time spent at their election duties, including the receiving of instructions, but in no event shall a judge or clerk receive compensation of less than $20.00.

Sec. 3.39. **Certifying Election Expenses.** The secretary of state shall prescribe the manner of certifying, auditing, and paying election expenses, including the cost of giving notice, renting polling places, emburs ing judges, clerks, and counters, securing a ballot box, postage, and stationery, and obtaining similar election necessities.

Sec. 3.40. **Preparation of Voter List.** The secretary of state shall prepare both a statewide list and a list by precinct of the names and addresses of all persons who voted in the election and their political party affiliation if the party affiliation was specifically declared by the voter. Any person may obtain a copy of the list, or a part thereof, by applying to the secretary of state and paying to the state treasury a fee therefor as determined by the secretary of state.

Sec. 3.41. **Plural Voting.** Upon a determination that a person has cast more than one general ballot, the secretary of state shall notify the attorney general to proceed to prosecute.

Sec. 3.42. **Duty to Canvass Vote.** The secretary of state shall canvass the vote with the assistance of and in the presence of the appointed representatives from the political parties.

Sec. 3.43. **Scope of Canvass.** The canvass by the secretary of state shall include (1) a review and comparison of the tallies of paper ballots in the election poll books with the precinct election certificates to correct any mathematical error in the count of paper ballots, (2) a review of the tallies of write-in ballots and a comparison of election certificates as provided by law from precincts using voting machines, and (3) the canvass of absentee ballots as prescribed by law.

Sec. 3.44. **Dates for Opening and Closing State Canvass.** The state canvass shall begin six days after the election and be continued daily, except Sundays, until completed. The secretary of state shall close the canvass when he is satisfied that no missing precinct certificate of election would, if received, change the result of the election. If no election certificate has been received from any precinct, the secretary of state may secure from the election supervisors and may count a certified copy of the duplicate election certificate of the precinct. If no election poll books have been received but an authorized election certificate has been received by telegram or radio, the secretary of state shall count the election certificate so received. If the secretary has reason to believe that a missing precinct certificate, if received, would affect the result of the election, the secretary of state shall await the receipt of the certificate until four o'clock in the afternoon on the 15th day after the date of election. Any certificate not actually delivered to the secretary of state by four o'clock on the 15th day after the election shall not be counted at the canvass.

Sec. 3.45. **Certification of State Canvass.** Upon completion of the canvass, the secretary of state shall certify the person receiving the largest number of votes for the office for which he was a candidate as elected to that office and shall certify the approval of any justice or judge not rejected by a majority of the voters voting on the question. The secretary of state shall issue to the elected candidates and approved justices and judges, a certificate of their election or approval. The secretary of state shall also certify the results of any proposition and other question.

Sec. 3.46. **Tie Votes.** If two or more candidates tie in having the highest number of votes for the same office for which there is to be elected only one candidate, the secretary of state shall so notify the candidates who are tied. The secretary of state shall immediately proceed with the recount of votes in the manner provided by Part 3, Article IV of this code.

Sec. 3.47. **Preservation of Election Ballots, Papers and Materials.** The secretary of state shall preserve all precinct election certificates, ballots and other election papers and materials for four years after the election. The secretary of state may permit the inspection of election materials upon call by Congress, the state legislature, or a court of competent jurisdiction.

Article IV

Special Procedures for Elections

Part 1. Absentee Voting

Sec. 4.01. **Persons Who May Vote Ab-**

to the holder of a federal lease a state shorelands lease covering any lands within the exterior boundaries of the federal lease which have been excluded therefrom on the basis of navigability or which may subsequently be administratively or judicially determined to be "Shore Lands" as defined in paragraph (n), Sec. 2, Art. I, Ch. 169, SLA 1959. The term of every shoreland lease shall conform to that of the adjacent federal lease including extended terms. The authority of the state to classify such lands as competitive or noncompetitive shall not be impaired.

Sec. 2. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

Approved April 16, 1962

CHAPTER 125

AN ACT

Relating to elections.

(H.C.S.C.S.S.B. 6)

Be it enacted by the Legislature of the State of Alaska:

Section 1. Sec. 1.01, Art. I, Ch. 83, SLA 1960, is repealed and re-enacted to read:

Article I

Qualification and Registration of Voters

Part I. Qualification of Voters

Sec. 1.01. **Voter Qualification.** Any person may vote at any election who

(1) is a citizen of the United States,

(2) is at least 19 years of age,

(3) has been a resident of the state for at least one year immediately preceding the election,

(4) has been a resident of the election district in which he seeks to vote for at least 30 days immediately preceding the election, and

(5) is able to speak or read the English language unless prevented by physical disability, or who voted in the general election of November 4, 1924.

Sec. 2. Sec. 1.02 (5), Ch. 83, SLA 1960, is amended to read:

(5) No member of the armed forces of the United States or his spouse or dependents is a resident of this state solely by reason of being stationed within the state.

Sec. 3. Sec. 2.08, Ch. 83, SLA 1960, is amended to read:

Sec. 2.08. **Dates for Designating Precinct Boundary.** The secretary of state shall designate boundaries of any election precinct which has been established or modified, not later than 40 days prior to any election.

Sec. 4. Sec. 2.11, Ch. 83, SLA 1960, is amended to read:

Sec. 2.11. **Appointment of Election Supervisors.** The secretary of state shall appoint an election supervisor for each of the four major senate districts described in Sec. 2, Article XIV, of the state constitution to assist in the administration of elections within their respective senate districts. The secretary of state may appoint as an election supervisor any person who is a qualified voter of the respective senate district and who does not hold an office in a political party. Election supervisors shall be appointed to serve for a term to begin not more than 90 days prior to the date of the primary nomination or special election and to end not more than 30 days after the date of the general or special election. Election supervisors shall receive compensation in an amount that is comparable to that received for similar type state employment as determined by the secretary of state. Executive department employees shall be appointed election supervisors whenever feasible and shall serve without additional compensation.

Sec. 5. Sec. 3.03 (2), Ch. 83, SLA 1960, is amended to read:

(2) The secretary of state shall

number ballots in series to assure simplicity and secrecy and to prevent fraud.

Sec. 6. Sec. 3.03 (5), Ch. 83, 1960, is repealed and re-enacted to read:

(5) The general election ballot shall be printed on white paper with the names of the candidates and their party designations placed in separate sections under the office designation to which they were nominated. The party affiliation, if any, shall be designated after the name of the candidate. The secretary of state and the governor shall be included under the same section. Provision shall be made for voting for write-in and no-party candidates within each section.

Sec. 7. Sec. 3.03, Ch. 83, SLA 1960, is amended by adding a new paragraph (12) to read:

(12) All propositions and questions, other than whether a judge or justice shall be accepted or rejected, shall be placed on a ballot other than the ballot containing the names of candidates.

Sec. 8. Sec. 3.07, Ch. 83, SLA 1960, is repealed and re-enacted to read:

Sec. 3.07. **Public Notice of Election Required.** The secretary of state shall give and is authorized to contract to give full public notice of the election, and may select any manner reasonably calculated to give actual knowledge of the election to the voters. Such notice shall be given by publication thereof at least twice in some newspaper or newspapers of general circulation in each of the four major election districts. Such printed notice shall specifically include but is not limited to the date of election, the hours between which the polling places will be open, the offices to which candidates are to be nominated or elected, and the subject of the propositions and of questions which are to be voted upon. Public notice shall also be given by posting notices in two or more conspicuous places in each election precinct. Said posted notice shall specifically include but is not limited to the date of election, the boundary of the precinct, the location of the polling place, the hours between which the polling places will be open, the offices to which candidates are to be nominated or elected, and the subject of the propositions and of questions which are to be voted upon. Said first publication or posting is to be made not less than 10 days prior to such election. The secretary of state may have published in a newspaper of general circulation a precinct map of densely populated precincts where need for such maps is established. It shall not be necessary for the secretary of state to post or publish any notice other than as hereinbefore provided. Additional notice may be given by use of newspapers, television, radio, printed posters, maps, and any similar means of communication deemed necessary. The state, through the office of the secretary of state, shall pay the cost of any election expenses incurred in giving notice of any election.

Sec. 9. Sec. 3.24, Ch. 83, SLA 1960, is amended to read:

Sec. 3.24. **Assisting Voter by Judge.** Any qualified voter who is incapable of reading, of marking the ballot, or of signing his name may request any judge or any one or not more than two other persons of his choice to assist him. If the judge is requested, he shall assist the voter. If any other person is requested, the person shall state upon oath before the election judge that he will not divulge the vote cast by the person whom he assists.

Sec. 10. Sec. 3.36 (1), Ch. 83, SLA 1960, is repealed and re-enacted to read:

(1) A voter may mark his ballot only by the use of cross marks, "X" marks, checks, or plus signs that are clearly placed in the square opposite the name of the candidate the voter desires to designate.

Sec. 11. Sec. 3.36 (7), Ch. 83, SLA 1960, is repealed and re-enacted to read:

(7) Erasures and corrections shall invalidate the ballot.

Sec. 12. 3.36 (10), Ch. 83, SLA 1960, is repealed.

Sec. 13. Sec. 3.44, Ch. 83, SLA 1960, is amended to read:

Sec. 3.44. **Dates for Opening and Closing State Canvass.** The state canvass shall begin six days after the election and be continued daily until completed. The secretary of state shall close the canvass when he is satisfied that no missing precinct certificate of election would, if received, change the result of the election. If no election certificate

has been received from any precinct, the secretary of state may secure from the election supervisors and may count a certified copy of the duplicate election certificate of the precinct. If no election poll books have been received but an authorized election certificate has been received by telegram or radio, the secretary of state shall count the election certificate so received. If the secretary has reason to believe that a missing precinct certificate if received would affect the result of the election, the secretary of state shall await the receipt of the certificate until four o'clock in the afternoon of the 15th day after the date of election. Any certificate not actually delivered to the secretary of state by four o'clock on the 15th day after the election shall not be counted at the canvass.

Sec. 14. Sec. 3.47, Ch. 83, SLA 1960, is amended to read:

Sec. 3.47. **Preservation of Election Ballots, Papers, and Materials.** The secretary of state shall preserve all precinct election certificates, tallies, and registers for four years after the election. All ballots and stubs may be destroyed 30 days after the certification of state canvass unless an application for recount has been filed and not completed, or unless their destruction is stayed by an order of the court. The secretary of state may permit the inspection of election materials upon call by Congress, the state legislature, or a court of competent jurisdiction.

Sec. 15. Sec. 4.73, Ch. 83, SLA 1960, is amended to read:

Sec. 4.73. **Requirement of Deposit.** The application shall include a deposit in cash, by certified check, or by bond with a surety approved by the secretary of state. The amount of the deposit is $50 for each precinct, $250 for each election district, $500 for each major senate district, and $2,000 for the entire state. However, if the recount includes an office for which candidates received a tie vote, or the difference between the number of votes cast for the two candidates receiving the largest number of votes was 10 or less or was less than .5 percent of the total number of votes cast for the two candidates for the contested office, or a question or proposition for which there was a tie vote on the issue, the application need not include any deposit. If, on the recount, a candidate other than the candidate who received the original election certificate is declared elected, or if the vote on recount is determined to be four percent or more in excess of the vote reported by the state canvass for the candidate applying for the recount or in favor or opposed to the question or proposition as stated in the application, the entire deposit shall be refunded. If the entire deposit is not refunded, the secretary of state shall refund any monies remaining after the cost of the recount has been paid from the deposit.

Sec. 16. Sec. 5.03, Ch. 83, SLA 1960, is amended to read:

Sec. 5.03. **Requirements of Declaration of Party Candidacy.** Any member of a political party who seeks to become a candidate of the party in the primary nomination shall execute and file a declaration of candidacy. The declaration shall be executed under oath before an officer authorized to take acknowledgments and shall state in substance: (1) the full name of the candidate and the manner in which he wishes his name to appear on the ballot; (2) the full resident address of the candidate; (3) the full mailing address of the candidate; (4) if the candidacy is for the office of state senator or state representative, the election or senate district of which the candidate is a resident; (5) the office for which the candidate seeks nomination; (6) the name of the political party of which he is a candidate for nomination; (7) the date of the primary nomination at which the candidate declares himself to be a candidate; (8) that the candidate meets the specific residency requirements of the office for which he is a candidate; (9) that the candidate will meet the specific citizenship requirements of the office for which he is a candidate; (10) that the candidate is a qualified voter as required by law; (11) that the candidate will meet the specific age requirements of the office for which he is a candidate; (12) that the candidate if nominated and elected will support the principles of the party he seeks to represent; (13) that the candidate requests that his name be placed on the party primary nomination ballot; and (14) that the required fee accompanies the declaration.

[illegible] the recount, a candi- [illegible] candidate who re- [illegible] election certificate [illegible], or if the vote on re- [illegible] to be four percent [illegible] of the vote reported [illegible] for the candidate [illegible] or in favor or [illegible] or proposition [illegible], the entire [illegible]. If the entire [illegible], the secretary of [illegible] ballots remaining [illegible] recount has been [illegible]

[illegible] 83, SLA 1960, [illegible]

[illegible] of Declara- [illegible] Any member [illegible] to become [illegible] in the primary [illegible] and file a [illegible] The declara- [illegible] oath before [illegible] acknowledg- [illegible] stances: (1) [illegible] and the [illegible] name to [illegible] will real- [illegible] (3) the [illegible] candidate; [illegible] office of [illegible], the [illegible] the [illegible] office [illegible] party [illegible] the [illegible] [illegible]

Sec. 17. Sec. 5.04, Ch. 83, SLA 1960, is amended to read:

Sec. 5.04. **Manner and Date of Filing Declaration.** The declaration is filed by either (1) the actual physical delivery of the declaration by mail or in person on or before 5:00 p.m. Alaska Standard time on the first day of May of the year in which a general election is held for the office, or (2) the actual physical delivery by telegram of a copy in substance of the statements made in the declaration on or before 5:00 p.m. Alaska Standard time on the first day of May of the year in which a general election is held for the office, and also the actual physical delivery of the original declaration postmarked on or before 5:00 p.m. Alaska Standard time on or before the first day of May of the year in which a general election is held for the office. Candidates for state-wide offices shall file with the secretary of state. Candidates for district-wide offices shall file with any clerk of the superior court in the major senate district of which the candidate is a resident. The clerk of the superior court shall immediately forward the declaration to the secretary of state. If the first day of May is a Sunday or holiday, declaration may be filed no later than 5:00 p.m. Alaska Standard time on the following day.

Sec. 18. Sec. 5.11, Ch 83, SLA 1960, is amended to read:

Sec. 5.11. **Filling Vacancies by Party Petition.** If any candidate nominated at the party primary nomination dies, withdraws, resigns, becomes disqualified from holding office for which he is nominated, or is certified as being incapacitated in the manner prescribed by this section after the primary nomination and 10 days or more before the general election, the vacancy may be filled by party petition. The central committee of any political party or any party district committee may certify as being incapacitated any candidate nominated by their respective party by presenting to the secretary of state a sworn statement made by a panel of three licensed physicians, not more than two of whom shall be of the same political party, that the candidate is physically or mentally incapacitated to an extent that would in his judgment prevent the candidate from active service during the term of office if elected. The secretary of state shall place the name of the person nominated by party petition on the general election ballot or, if the general election ballot has been prepared, the secretary of state or the election officials directed by the secretary of state shall prepare, print, and distribute a sufficient number of gummed labels or stickers bearing the name of the candidate to fill the vacancy to each voting precinct with instructions that the election judges shall place one of the stickers or labels on the appropriate place on each ballot before the ballot is handed to the voter. The name of any candidate disqualified under the provisions of this section shall not appear on the general election ballot.

Sec. 19. Sec. 8.25, Ch. 83, SLA 1960, is amended to read:

Sec. 8.25. **Date of Nominations.** Candidates for the special election shall be nominated by petition transmitted by either (1) the actual physical delivery of the petition in person, (2) by mail postmarked not later than midnight of the filing date, or (3) by telegram of a copy in substance of the statements made in the petition to the secretary of state on or before the 20th day after the vacancy occurs.

Sec. 20. Sec. 8.35, Ch. 83, SLA 1960, is amended to read:

Sec. 8.35. **Date of Nominations.** Candidates for the special election shall be nominated by petition transmitted by either (1) actual physical delivery of the petition in person, (2) by mail postmarked not later than midnight of the filing date, or (3) by telegram of a copy in substance of the statements made in the petition to the secretary of state on or before the 20th day after the vacancy occurs.

Sec. 21. Sec. 8.62, Ch. 83, SLA 1960, is amended to read:

Sec. 8.62. **Designation of Nominees by Petition.** If the vacancy occurs less than one calendar month before the filing date and more than three calendar months before the next general election, candidates shall be nominated by petition transmitted by either (1) the actual physical delivery of the petition in person, (2) by mail postmarked not later than midnight of the filing date, or (3)

by telegram of a copy in substance of the statements made in the petition to the secretary of state on or before the first of September immediately preceding the special election.

Sec. 22. Sec. 9.02, Ch. 83, SLA 1960, is amended to read:

Sec. 9.02. **Filing Application.** An initiative is proposed by filing an application with the secretary of state. A deposit of $100 shall accompany the application. This deposit will be retained if a petition is not properly filed. If a petition is properly filed, the deposit shall be refunded.

Sec. 23. Sec. 9.32, Ch. 83, SLA 1960, is amended to read:

Sec. 9.32. **Filing Application.** A referendum is proposed by filing an application with the secretary of state. A deposit of $100 shall accompany the application. This deposit will be retained if a petition is not properly filed. If a petition is properly filed, the deposit shall be refunded.

Sec. 24. Sec. 9.72, Ch. 83, SLA 1960, is amended to read:

Sec. 9.72. **Filing Application.** The recall of the governor or a member of the state legislature is proposed by filing an application with the secretary of state. The recall of the secretary of state is proposed by filing an application with the attorney general, who shall perform the duties imposed on the secretary of state in the recall of other elected state officials. A deposit of $100 shall accompany the application. This deposit will be retained if a petition is not properly filed. If a petition is properly filed the deposit shall be refunded.

Sec. 25. Art. XI, Ch. 83, SLA 1960, is amended by adding a new Sec. 11.26 to read:

Sec. 11.26. **Voting after Disqualification.** Any voter disqualified under Sec. 1.03 who votes or attempts to vote in any election shall be guilty of a misdemeanor.

Approved April 17, 1962

CHAPTER 126

AN ACT

Relating to the effective date for changes to the Alaska Election Code; and providing for an effective date.

(S.B. 297)

Be it enacted by the Legislature of the State of Alaska:

Section 1. The changes to the Alaska Election Code made by House Committee Substitute for Committee Substitute for Senate Bill No. 6, as amended (Ch. 125, SLA 1962), become effective April 15, 1962.

Sec. 2. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

Approved April 17, 1962

CHAPTER 127

AN ACT

Approving salary schedules for a pay plan for state employees pursuant to provisions of the State Personnel Act of 1960; and providing for an effective date.

(H.B. 472)

Be it enacted by the Legislature of the State of Alaska:

Section 1. The following monthly salary schedules are approved pursuant to provisions of Sec. 13(2) and Sec. 24, Ch. 144, SLA 1960, as the pay plan for employees of the State of Alaska:

IN THE SUPREME COURT FOR THE STATE OF ALASKA

STATE OF ALASKA, DIVISION OF ELECTIONS, and Gail Fenumiai, Director of the Division of Elections,	)	
Petitioners,	)	
v.	)	
ALYSE S. GALVIN,	)	
Respondent.	)	Supreme Court No. **S-** _____

Trial Court Case No. **3AN-20-07991 CI**

AFFIDAVIT OF GAIL FENUMIAI
IN SUPPORT OF PETITION FOR REVIEW

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

1. I am the director of the Division of Elections for the State of Alaska, and I have personal knowledge of the matters in this declaration. I was first appointed as director in January 2008 and had worked in the Division for approximately 10 years before my appointment. I ended my first tenure as director in July 2015 and then was reappointed by Lieutenant Governor Kevin Meyer in January 2019.

2. The following is a general timeline of events for the 2020 election cycle leading up to the printing of 800,000 general election ballots and preparing for the general election:

- June 8, 2020 – Division finalized the decision on how names and party affiliation would be listed on the general election ballot.

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- June 12, 2020 – Division finalized the decision on how names and party affiliation would be listed on the primary election ballot.
- Between July 1 and September 7 – Programming of the election project took place. The election project is needed to use the voting equipment, which involves creating the compact flash cards and USBs (media), for the general election ballots.
- August 31 – Final certification of the primary election. The Division must wait five days past certification of the primary to send the artwork for general election ballots to the printer, when the time has passed for requests for a recount.
- September 5 – General election ballot artwork sent to the printer. The printer sends back proofs and testing ballots as he prints. He prints test decks for the Division to use for the logic and accuracy test first, and then official and sample ballots. For the general election, Alaska has 47 different ballots. This is due to having a federal-only ballot (for overseas voters who qualify under AS 15.05.011), as well as districts that fall within multiple judicial districts. So when the printer sends proofs, he is sending proofs for 47 different ballots.
- Starting September 10 and continuing through September – Voting equipment is tested for accuracy for the general election ballot. This is first done at the Director's office in Juneau, Alaska, and then the voting equipment is tested a second time (to ensure proper scanning

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and identification of the house district ballots) at the regional offices, before being sent out to polling places.

- September 10 –The Division posted the sample ballot on its website.
- By September 15 – 800,000 ballots, including 47 different versions, had been printed.
- By September 18 – To comply with federal law on absentee ballots for uniformed and overseas voters, ballots have to be sent to these voters 45 days in advance of the general election. Division also has to send ballots to a subset of voters under Alaska law that are known as "State Advance" voters. The total combined for both of these for the 2020 general election is 11,631.
- By September 18 – Division plans to send the Official Election Pamphlet to the printer for printing so it can be distributed to all households with a registered voter not less than 22 days before the general election as required by AS 15.58.080.
- Week of September 28 – Begin sending absentee ballots to voters who have requested them.
- October 19 – Early voting starts.
- November 3 – Date of the general election.

3. Contrary to Galvin's unfounded assertions in the Complaint, the general election ballot was designed back in June 2020 at the same time the primary election ballot was designed. This is in line with historical practice by the Division.

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The Division then posted the 47 sample ballots once the ballots were finalized with the names and nominating party of the candidates. Before early September, the Division did not have final results from the primary election.

4. During my tenure as Director, candidates only have had one identifier on the general election ballot —either the political party that nominated them or "unaffiliated" or "nonaffiliated". The terms "unaffiliated" and "nonaffiliated" show that the candidate is not appearing on the ballot as the nominee of a political party and these terms are unrelated to how the candidate is registered. They may be registered as a member of a recognized political party, a political group, or as undeclared or nonpartisan. The relevant information for purposes of AS 15.15.030 is the candidate's affiliation for purposes of the election, not the voter registration, which can be changed at any time. Examples of general election ballots going back to 2008 are attached as Exhibit A.

5. The Division based its decision relating to design of the general election ballot on the language from the 2018 Alaska Supreme Court decision, *State v. Alaska Democratic Party*; historical practice; and the statutory goals of "fairness, simplicity, and clarity in the voting procedure." AS 15.15.030. The Alaska Supreme Court in *State v. Alaska Democratic Party* indicated that "On the general election ballot, the State could simply print the nominating party's name next to the candidate's name."

6. For purposes of the 2020 election and in light of the Alaska Supreme Court's decision and historical practice, the Division determined that the most

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pertinent information was how each candidate got to the ballot—in other words, how the candidate was nominated. Listing "Democratic Nominee" or "Republican Nominee" tells voters that the candidate won that party's primary election to appear on the general election ballot. We did the same for nominating petition candidates, by indicating that they got on the ballot by nominating petition.

7. Although the official general election ballots will only list the party that nominated the candidate, the Official Election Pamphlet that goes to all registered voter households will include a list of the applicable candidates for that region and the designation they included with their candidacy filing (i.e., nonpartisan, undeclared, Republican, Democrat, etc.). I have attached an example of a candidate list as Exhibit B. The Official Election Pamphlet also includes the candidate's statements, if timely submitted, which can include any information the candidate chooses to explain who they are and why they are running for office. For example, Alyse Galvin's candidate statement states: "I served Alaska under Republican and Independent governors and led a non-partisan grassroots movement to restore education funding and improve our schools. I'm running for Congress as an Independent to work for all Alaskans and build a strong economy that supports small business, keeps our kids here, and puts Alaskans first in line for good paying jobs."

8. In my tenure as Director, the Division has never shared sample ballots in advance with any of the parties or candidates. I understand this may have occurred in 2018 because of the pending Supreme Court opinion, but the statutes do

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not contemplate involvement from political parties or candidates. This is appropriate because the Division has to remain neutral and base its decisions on presenting the most objective information possible to voters. That is what drove the Division's decisions on the design of both the general election ballot and the primary election ballot.

9. Absentee ballots must be sent by September 19 under federal law for uniformed and overseas voters to comply with the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). 52 U.S.C. § 20302. The Division has approximately 8,000 UOCAVA ballots for the 2020 general election. Also, the Division has already processed over 70,000 absentee ballot applications for the general election and plans to begin sending those ballots to voters the last week in September. And early voting starts October 19. Ballot materials are sent out to many of Alaska's remote polling places two to three weeks in advance.

10. The UOCAVA ballots and State Advance ballots are processed through the USPS bulk mail facility in Anchorage. Bulk mail is not available on Saturdays, so in order to meet the September 19, 2020 UOCAVA deadline, those ballots must be mailed on Friday, September 18. It would not be possible for the Division to use a different mailing method as this would involve an extraordinary amount of worker hours printing postage on tapes and adhering the postage to the ballot envelope. Also, it is unknown at this time if the office has adequate postage on the office meter to meet this need.

11. In my opinion and based on years of experience running elections,

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there is not sufficient time to reprint the over 800,000 ballots that have already been printed and re-test the voting equipment.

12. In order to make changes to the ballot, we will have to "roll back" the election project (which is the programming for the voting equipment) to a point where these changes can be made in the system. Once all the changes to the ballots for each district are complete, we have to start the process of moving the project forward again and get it to where we are at today. Then we would send the new ballot images to the printer for printing, and the printer would create proofs of the ballots for us to approve before printing. We also would send the printer files for test ballots and the 47 sample ballots so that the printer can reprint those as well.

13. If we do not re-test and the voting equipment will not accept the new ballots, this would be a huge issue both on election day and on the post-election day counting of absentee and questioned ballots. The ballots that cannot be processed by the scanner would have to be hand counted.

14. The initial logic and accuracy tests that were performed in the Director's office for the general election took four days; the media then got sent out to the regional offices, which took various lengths of time depending on the distance to the regional office, and the second round of testing in the regional offices usually takes approximately five days. As mentioned above, the equipment needs to be sent out to many polling places two to three weeks in advance, so the regional offices (which send the equipment to the polling places) need the media required for testing as soon as possible. Additionally, these tests must be performed in the presence of

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election board members, so the Division would need to coordinate with all the election boards to schedule additional testing times.

15. Regardless of whether the logic and accuracy tests are performed, we will still need to reprogram the ballots that appear on the touch screen units since the change will affect how the candidate's name is presented on screen. First, we would have to retrieve all the media from the regional offices, where they are currently located for testing. The re-programming has to occur at the Director's office in Juneau because that is where the main server is and the only staff member trained to do this work. Retrieving the media would take a minimum of two to three days. Once the media have been returned to Juneau, re-programming the media will take a minimum of eight hours of work.

16. I spoke with the printer that is conducting the printing for us, and the printer has approximately 390,000 sheets of the required special ballot paper. The printer believes it could acquire more paper from a company in Seattle, but it would take one week to get the paper to the printer's location. The printer also hired extra staff in order to complete the printing that has already occurred, and the printer is uncertain whether it could hire additional staff with such short notice in order to complete the printing in ten days, as it did for the earlier print job. The printer not only prints the ballots but also folds ballots used for absentee voting. Therefore, it appears the printer could get a sufficient number of ballots printed for the UOCAVA ballots within a week, but this does not account for the 800,000 ballots that would also need to be replaced.

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17. We are currently a little over six weeks away from the general election, and considering that early voting starts October 19, we are really only four and a half weeks away from when in-person voting starts. In light of all the information above about the logistics of reprinting over 800,000 ballots and getting the equipment re-tested, I do not see how it would be possible to properly carry out the election if we are required to reprint the ballots.

18. I believe the Division has fully comported with the law and the Alaska Supreme Court precedent in the way the ballot was designed. I would never have finalized the design if I thought it was legally flawed. My entire goal is to have a smooth and successful election, where voters are able to safely vote in the way they are most comfortable.

19. If the court determines otherwise, I would prefer that the remedy not involve putting the entire election in jeopardy by reprinting 800,000 ballots. The Division could, for example, send out supplemental information to each registered voter providing the names of all the candidates and their registered party affiliation. The Division could also put up additional signage at polling places.

Gail Fenumiai

SUBSCRIBED AND SWORN to before me September 17, 2020.

STATE OF ALASKA
OFFICIAL SEAL
Stacy L. Stuart
NOTARY PUBLIC
My Commission Expires With Office

Notary Public in the and for Alaska
My Commission Expires: w/office

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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.**

HD1-JD4

State of Alaska Official Ballot
General Election
November 6, 2018

Candidate's registered affiliation: (D) Democrat (L) Libertarian (R) Republican (N) Non-partisan (U) Undeclared

Instructions: To vote, completely fill in the oval next to your choice, like this: ⬬

United States Representative
(vote for one)

⬭ Galvin, Alyse S. (U)	Alaska Democratic Party Nominee
⬭ Young, Don (R)	Alaska Republican Party Nominee
⬭ _____ Write-in	

Governor / Lieutenant Governor
(vote for one)

⬭ Begich, Mark (D) Call, Debra L. (D)	Alaska Democratic Party Nominee
⬭ Dunleavy, Mike J. (R) Meyer, Kevin G. (R)	Alaska Republican Party Nominee
⬭ Toien, William S. "Billy" (L) Clift, Carolyn C. "Care" (L)	Alaska Libertarian Party Nominee
⬭ Walker, Bill (U) Mallott, Byron I. (D)	Petition Nominee
⬭ _____ Write-in	

State Senator
District A
(vote for one)

⬭ Kawasaki, Scott (D)	Alaska Democratic Party Nominee
⬭ Kelly, Pete (R)	Alaska Republican Party Nominee
⬭ _____ Write-in	

State Representative
District 1
(vote for one)

⬭ LeBon, Barton S. "Bart" (R)	Alaska Republican Party Nominee
⬭ Dodge, Kathryn E. (D)	Alaska Democratic Party Nominee
⬭ _____ Write-in	

Continue Voting on Next Side

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.

Instructions: To vote, completely fill in the oval next to your choice, like this: ⬬

Ballot Measure No. 1 - 17FSH2
An act providing for the protection of wild salmon and fish and wildlife habitat

Ballot Measure No. 1

This act would amend Alaska's fish habitat permitting law. The act would require the Department of Fish and Game (ADF&G) to apply new standards to permitting activities and development projects that have the potential to harm fish habitat. The act would exempt existing projects, operations, or facilities that have received all state and federal permits until a new permit is needed. The act would create fish and wildlife habitat-protection standards. The standards would address water quality, temperature, streamflow, and more. The act defines "anadromous fish habitat." The act would allow ADF&G to apply the law to all habitat in Alaska that directly or indirectly supports salmon or other anadromous fish. The act would provide for three types of permits for development in anadromous fish habitat. ADF&G could issue a general permit-a single permit that applies to many people-for certain activities. For other activities that require a permit, the act would establish a two-track permitting system. Minor permits would be issued for activities that have little impact on fish habitat. Major permits would be issued for projects that have the potential to cause significant adverse effects on fish habitat. The act defines "significant adverse effects." The act would require ADF&G to avoid or minimize adverse effects through mitigation measures and permit conditions. It would provide public notice on all permits and a chance to comment on major permits. The act would create criteria, timeframes, and an appeals process for the permits by interested persons. The act would allow ADF&G to respond to specified conduct with tickets, civil fines, or criminal penalties. The act would repeal two current statutes. One is regarding mitigation from a dam. The other is regarding criminal penalties that are addressed elsewhere.

Should this initiative become law?

◯ YES ◯ NO

Fourth Judicial District
Superior Court

Judge Lyle
Shall Paul R. Lyle be retained as judge of the superior court for six years?

◯ YES ◯ NO

Judge McConahy
Shall Michael P. McConahy be retained as judge of the superior court for six years?

◯ YES ◯ NO

Fourth Judicial District
District Court

Judge Seekins
Shall Ben A. Seekins be retained as judge of the district court for four years?

◯ YES ◯ NO

BACK Card

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.**

State of Alaska Official Ballot
General Election
November 8, 2016

HD24-JD3

Instructions: To vote, completely fill in the oval next to your choice, like this: ⬬
Please be sure to vote both sides of the ballot

United States President Vice President
(vote for one)

- ◯ Castle, Darrell L. / Bradley, Scott N. — Alaska Constitution
- ◯ Clinton, Hillary / Kaine, Tim — Democrat
- ◯ De La Fuente, Roque "Rocky" / Steinberg, Michael — Non Affiliated
- ◯ Johnson, Gary / Weld, Bill — Libertarian
- ◯ Stein, Jill / Baraka, Ajamu — Green
- ◯ Trump, Donald J. / Pence, Michael R. — Republican
- ◯ _____ Write-in

United States Senator
(vote for one)

- ◯ Stock, Margaret — Non Affiliated
- ◯ Craig, Breck A. — Non Affiliated
- ◯ Gianoutsos, Ted — Non Affiliated
- ◯ Metcalfe, Ray — Democrat
- ◯ Miller, Joe — Libertarian
- ◯ Murkowski, Lisa — Republican
- ◯ _____ Write-in

United States Representative
(vote for one)

- ◯ Young, Don — Republican
- ◯ Lindbeck, Steve — Democrat
- ◯ McDermott, Jim C. — Libertarian
- ◯ Souphanavong, Bernie — Non Affiliated
- ◯ _____ Write-in

State Senator District L
(vote for one)

- ◯ McDonald, Forrest J. — Democrat
- ◯ Von Imhof, Natasha A. — Republican
- ◯ Johnson, Tom — Non Affiliated
- ◯ _____ Write-in

State Representative District 24
(vote for one)

- ◯ Levi, Sue — Democrat
- ◯ Kopp, Charles M. "Chuck" — Republican
- ◯ _____ Write-in

Ballot Measure No. 1- 15PFVR
An Act Allowing Qualified Individuals to Register to Vote When Applying for a Permanent Fund Dividend

Ballot Measure No. 1

This act would instruct the Division of Elections to register a qualified Alaskan to vote when applying for the permanent fund dividend (PFD). If a person registers to vote for the first time through a PFD application, the Division of Elections would compare the person's information to state records to ensure that the person is an eligible voter. The Division of Elections would let the citizen know if he or she has been added to the state registration list, or if the person's current voting address does not match the one provided on the PFD form. In that case, the person could change their voter registration address. The notice also would allow an applicant to request removal from the registration list. Thus, using the data from the PFD form, the Division of Elections would register a qualified Alaskan to vote unless he or she opts out. The notice would also allow a person to register with a political party. Voter information is already confidential under existing state law.

Should this initiative become law?

◯ YES ◯ NO

Ballot Measure No. 2
Allow Debt for Postsecondary Student Loans Senate Joint Resolution No. 2

Ballot Measure No. 2

This amendment to Article IX, section 8 of the Alaska Constitution would expand the State's authority to incur debt by letting the State issue general obligation bonds backed by the state for postsecondary student loans.

Should this constitutional amendment be adopted?

◯ YES ◯ NO

Continue Voting on Next Side

FRONT Card 71 SEQ# 1 English

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.

State of Alaska Official Ballot
General Election
November 4, 2014

HD1-JD4

Instructions: To vote, completely fill in the oval next to your choice, like this: ⬬

United States Senator
(vote for one)

- ◯ Begich, Mark — Democrat
- ◯ Fish, Mark S. — Libertarian
- ◯ Gianoutsos, Ted — Non Affiliated
- ◯ Sullivan, Dan — Republican
- ◯ Write-in _____

United States Representative
(vote for one)

- ◯ Dunbar, Forrest — Democrat
- ◯ McDermott, Jim C. — Libertarian
- ◯ Young, Don — Republican
- ◯ Write-in _____

Governor / Lieutenant Governor
(vote for one)

- ◯ Clift, Carolyn F. "Care" / Lee, Andrew C. — Libertarian
- ◯ Myers, J.R. / Rensel, Maria P. — Alaska Constitution
- ◯ Parnell, Sean R. / Sullivan, Dan — Republican
- ◯ Walker, Bill / Mallott, Byron — Non Affiliated
- ◯ Write-in _____

State Senator District A
(vote for one)

- ◯ Kelly, Pete — Republican
- ◯ Kruse Roselius, Tamara — Democrat
- ◯ Write-in _____

State Representative District 1
(vote for one)

- ◯ Bringhurst, Gregory Don — Republican
- ◯ Kawasaki, Scott J. — Democrat
- ◯ Write-in _____

Ballot Measure No. 2 - 13PSUM
An Act To Tax and Regulate the Production, Sale, and Use of Marijuana

Ballot Measure No. 2

This bill would tax and regulate the production, sale, and use of marijuana in Alaska.

The bill would make the use of marijuana legal for persons 21 years of age or older. The bill would allow a person to possess, use, show, buy, transport, or grow set amounts of marijuana, with the growing subject to certain restrictions. The bill would ban the public use of marijuana. The bill would prohibit a person under 21 years of age from using false identification to buy or try to buy marijuana or marijuana accessories.

The bill would allow validly registered marijuana-related entities and persons 21 years of age or older who own or are employed by these entities to make, possess, buy, distribute, sell, show, store, transport, deliver, transfer, receive, harvest, process, or package marijuana and marijuana products, subject to certain restrictions. Alaska Statute 17.30.020 (Controlled Substances) would not apply to these entities.

The bill would require the Alcoholic Beverage Control (ABC) Board to implement parts of the bill. But the bill would also let the legislature create a Marijuana Control Board to assume these duties. The bill would require the ABC Board to adopt regulations governing marijuana-related entities. The regulations would need to cover certain topics and be subject to certain restrictions. The bill would also create procedures for registering a marijuana-related entity. The procedures would be managed by the ABC Board and local governments.

The bill would allow a local government to prohibit the operation of marijuana-related entities. A local government could do that by enacting an ordinance or through voter initiative. The ordinances could cover the time, place, manner, and registration of a marijuana entity's operations.

The bill would allow a person 21 years of age or older to possess, use, show, buy, or transport marijuana accessories. Marijuana accessories are products individuals use to grow or consume marijuana. The bill would also allow persons 21 years of age or older to make marijuana accessories and to distribute or sell them to persons who are 21 years of age or older.

The bill states that it is not intended to require an employer to allow marijuana use, transportation, possession, sale, growth, or transfer or prevent an employer from prohibiting these activities. The bill does not intend to supersede laws prohibiting driving under the influence of marijuana. The bill does not intend to prohibit schools, correction facilities, hospitals, or private persons or entities from restricting marijuana on their property. The bill does not intend to limit the state's existing medical marijuana laws.

The bill would impose a $50 per ounce (or proportionate) excise tax on the sale or transfer of marijuana from a cultivation facility to a retail store or marijuana product manufacturing facility. The marijuana cultivation facility would pay the tax and send monthly tax statements to the Department of Revenue. The department of Revenue could exempt certain parts of the marijuana plant from the tax. It could also establish a lower tax rate for certain parts of the plant.

The bill defines numerous terms. The bill contains a statement of purpose and findings. The bill would impose civil fines and penalties for violations.

Should this initative become law?

◯ YES ◯ NO

Ballot Measure No. 3 - 13MINW
An Act to Increase Alaska's Minimum Wage

Ballot Measure No. 3

This bill would raise Alaska's minimum wage from $7.75 per hour to $8.75 per hour as of January 1, 2015. The bill would raise the minimum wage to $9.75 per hour as of January 1, 2016. The bill would adjust the minimum wage each year for inflation after 2016. The bill creates a method for this adjustment. Under the bill, if the adjusted minimum wage is less than one dollar over the federal minimum wage, Alaska's minimum wage will be one dollar over the federal minimum. Tips or gratuities would not count toward the minimum wage.

The bill has a statement of findings and declaration. This statement gives reasons for the bill. The reasons pertain to quality of life for low income workers, the effect of increases in the cost of living, the relationship of the Alaska minimum wage to the federal poverty level, and the minimum wage in other states.

Should this initative become law?

◯ YES ◯ NO

Continue Voting on Next Side

FRONT Card 1 SEQ# 1 English

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.**

State of Alaska Official Ballot
General Election
November 6, 2012

HD7-JD3

Instructions: To vote, completely fill in the oval next to your choice, like this: ⬬

United States President
Vice President
(vote for one)

- ◯ Johnson, Gary / Gray, James P. — Libertarian
- ◯ Obama, Barack / Biden, Joe — Democrat
- ◯ Romney, Mitt / Ryan, Paul — Republican
- ◯ Stein, Jill / Honkala, Cheri — Green
- ◯ _____ Write-in

United States Representative
(vote for one)

- ◯ McDermott, Jim C. — Libertarian
- ◯ Young, Don — Republican
- ◯ Cissna, Sharon M. — Democrat
- ◯ Gianoutsos, Ted — Non Affiliated
- ◯ _____ Write-in

State Senator
District D
(vote for one)

- ◯ Dunleavy, Mike J. — Republican
- ◯ _____ Write-in

State Representative
District 7
(vote for one)

- ◯ Keller, Wes — Republican
- ◯ _____ Write-in

Bonding Proposition A
State General Obligation
Transportation Project Bonds
$453,499,200

Bonding Proposition A

Shall the State of Alaska issue its general obligation bonds in the principal amount of not more than $453,499,200 for the purpose of paying the cost of state transportation projects?

◯ BONDS YES ◯ BONDS NO

Ballot Measure No. 1
Constitutional Convention Question

Ballot Measure No. 1

Shall there be a constitutional convention?

◯ YES ◯ NO

Supreme Court

Justice Winfree

Shall Daniel E. Winfree be retained as justice of the supreme court for ten years?

◯ YES ◯ NO

Court of Appeals

Judge Bolger

Shall Joel H. Bolger be retained as judge of the court of appeals for eight years?

◯ YES ◯ NO

Continue Voting on Next Side

FRONT Card 52 SEQ# 1 English

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.**

State of Alaska Official Ballot
General Election
November 2, 2010

Instructions: To vote, completely fill in the oval next to your choice, like this: ⬬

United States Senator
(vote for one)

- ◯ McAdams, Scott T. — Democrat
- ◯ Miller, Joe — Republican
- ◯ Carter, Tim — Non Affiliated
- ◯ Gianoutsos, Ted — Non Affiliated
- ◯ Haase, Fredrick "David" — Libertarian
- ◯ _____ Write-in

United States Representative
(vote for one)

- ◯ Young, Don — Republican
- ◯ Crawford, Harry T. Jr. — Democrat
- ◯ _____ Write-in

Governor / Lieutenant Governor
(vote for one)

- ◯ Wright, Donald R. — Alaskan Independence
- ◯ Berkowitz, Ethan A. / Benson, Diane E. — Democrat
- ◯ Parnell, Sean R. / Treadwell, Mead — Republican
- ◯ Tolen, William S. "Billy" / Brown, Jeffrey D. — Libertarian
- ◯ _____ Write-in

State Senator District L
(vote for one)

- ◯ Wanda, Richard M. — Republican
- ◯ Ellis, Johnny — Democrat
- ◯ _____ Write-in

State Representative District 24
(vote for one)

- ◯ Gardner, Berta — Democrat
- ◯ _____ Write-in

Bonding Proposition A
State Guaranteed Veterans Residential Mortgage Bonds
$600,000,000

Bonding Proposition A
Shall the State of Alaska unconditionally guarantee as a general obligation of the state the payment of principal and interest on revenue bonds of the Alaska Housing Finance Corporation issued in the principal amount of not more than $600,000,000 for the purpose of purchasing mortgages made for residences for qualifying veterans, as defined by law?

◯ BONDS YES ◯ BONDS NO

Bonding Proposition B
State General Obligation Library, Education, and Educational Research Facility Bonds
$397,200,000

Bonding Proposition B
Shall the State of Alaska issue its general obligation bonds in the principal amount of not more than $397,200,000 for the purpose of design and construction of library, education and educational research facilities?

◯ BONDS YES ◯ BONDS NO

Ballot Measure No. 1
Increase Number of Legislators and Districts
Senate Joint Resolution 21

Ballot Measure No. 1
This Act would amend the Alaska Constitution to increase the number of state legislators from 60 to 66. The Act would increase the number of senate members from 20 to 22. It would increase the number of house members from 40 to 44. Six new legislative districts would be created as a result - 4 in the House and 2 in the Senate. The changes proposed by the Act would go into effect on or after January 1, 2011, after a new redistricting plan based on the 2010 U.S. Census is adopted.

Should this constitutional amendment be adopted?

◯ YES ◯ NO

Supreme Court

Justice Fabe

Shall Dana A. Fabe be retained as justice of the supreme court for ten years?

◯ YES ◯ NO

Continue Voting on Next Side

FRONT Card 69 SEO# 1

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.**

State of Alaska Official Ballot
General Election
November 4, 2008

Instructions: To vote, completely fill in the oval next to your choice, like this: ⬬

United States President Vice President
(vote for one)

◯ Baldwin, Chuck Castle, Darrell	Alaskan Independence
◯ Barr, Bob Root, Wayne A.	Libertarian
◯ McCain, John Palin, Sarah	Republican
◯ Nader, Ralph Gonzalez, Matt	Independent
◯ Obama, Barack Biden, Joe	Democrat
◯ _____ Write-in	

United States Senator
(vote for one)

◯ Haase, Fredrick D. "David"	Libertarian
◯ Stevens, Ted	Republican
◯ Begich, Mark	Democrat
◯ Bird, Bob	Alaskan Independence
◯ Gianoutsos, Ted	Not Affiliated
◯ _____ Write-in	

United States Representative
(vote for one)

◯ Wright, Don R.	Alaskan Independence
◯ Young, Don E.	Republican
◯ Berkowitz, Ethan A.	Democrat
◯ _____ Write-in	

State Senator District G
(vote for one)

◯ Menard, Linda K.	Republican
◯ Cordero, Erick	Democrat
◯ _____ Write-in	

State Representative District 14
(vote for one)

◯ Smith, Rose	Democrat
◯ Keller, Wes	Republican
◯ _____ Write-in	

Continue Voting on Next Side

FRONT Card 60 SEQ# 1

Candidates for Elected Office

General Election Day is Tuesday, November 3, 2020

United States President and Vice President
Joseph R. Biden Jr. and Kamala Harris, Democrat
Don Blankenship and William Mohr, Constitution
Rocque "Rocky" De La Fuente and Darcy G. Richardson, Alliance*
James G. "Jesse Ventura" Janos and Cynthia McKinney, Green
Jo Jorgensen and Jeremy "Spike" Cohen, Libertarian
Brock Pierce and Karla Ballard, Non-Affiliated
Donald J. Trump and Michael R. Pence, Republican

United States Senate
Al Gross, Nonpartisan
John Howe, Alaskan Independence
Dan Sullivan, Republican

United States Representative
Alyse S. Galvin, Nonpartisan
Don Young, Republican

Alaska State Senate

Senate District P
Greg Madden, Alaskan Independence
Gary Stevens, Republican

Senate District R
Bert K. Stedman, Republican

Alaska State House

House District 29
Benjamin E. Carpenter, Republican*
Paul D. Dale, Nonpartisan

House District 30
James Baisden, Non-Affiliated*
Ronald D. Gillham, Republican

House District 31
Kelly Cooper, Non-Affiliated
Sarah L. Vance, Republican*

House District 32
Louise B. Stutes, Republican

House District 33
Sara Hannan, Democrat

House District 34
Edward M. "Ed" King, Nonpartisan
Andrea "Andi" Story, Democrat

House District 35
Jonathan S. Kreiss-Tomkins, Democrat
Kenny Skaflestad, Republican*

House District 36
Leslie Becker, Republican
Daniel H. "Dan" Ortiz, Undeclared

**Indicates candidate did not submit pamphlet materials, did not fulfill requirements to appear in pamphlet or failed to meet statutory filing deadlines for submission. (AS 15.58.030 and AS 15.58.060)*

IN THE SUPREME COURT OF THE STATE OF ALASKA

DOCKETING STATEMENT B

For Use With Petitions for Hearing, Petitions for Review, and Original Applications and as a Notice of Intent to File Sentence Petition

(for court system use)

No. _____

INSTRUCTIONS FOR MULTIPLE PARTIES OR ATTORNEYS: If there are multiple parties or attorneys, repeat the appropriate box. This may be done on a separate page. Please clearly indicate which attorney represents which party.

1. TYPE OF PETITION

Type of Petition	Court of Appeals or Superior Court Case Number	Date of Distribution of Decision or Order to be Reviewed	Superior Court Judge	Subsequent Proceedings
a. ☐ Petition for Hearing from Court of Appeals				Petition for Rehearing: ☐ not filed ☐ filed. Date filed: _____ ☐ Date of distribution of order denying petition: _____
b. ☐ Petition for Hearing from Superior Court				
c. ☒ Petition for Review ☐ Notice of Intent to file Sentence Petition	3AN-20-07991	9/17/20	Henderson	Motion for Reconsideration: ☒ not filed ☐ filed. Date filed: _____ ☐ denied by order distribution: _____ ☐ deemed denied under Civil Rule 77(k)(4).

d. ☐ Original Application
- ☐ from Court of Appeals case No. _____
- ☐ from trial court case. No._____ Judge_____.
- ☐ Other. Explain:_____.

2. PETITIONER

a. Name: Gail Fenumiai and State of Alaska, Division of Ele	b. Status in the Trial Court: ☐ Plaintiff ☒ Defendant ☐ Other. Specify:_____.
c. Petitioner Mailing Address (**not** attorney's address): PO Box 110117	
City: Juneau State: Alaska Zip Code: 99801	d. Telephone: (907) 465-4611

3. PETITIONER'S ATTORNEY

a. Name: Laura Fox	b. Bar Number: 0905015	
c. Attorney Mailing Address: 1031 W. 4th Avenue, Suite 200	d. Telephone: (907)269-5722	e. Fax: (907) 258-4978
City: Anchorage State: AK Zip Code: 99501	f. Firm/Agency: Department of Law	

4. PETITIONER'S ATTORNEY

a. Name: Margaret Paton-Walsh	b. Bar Number: 0411074	
c. Attorney Mailing Address: 1031 W. 4th Avenue, Suite 200	d. Telephone: (907)269-5072	e. Fax: (907) 258-4978
City: Anchorage State: AK Zip Code: 99501	f. Firm/Agency: Department of Law	

5. RESPONDENT

a. Name	b. Status in the Trial Court
Alyse Galvin	☒ Plaintiff ☐ Defendant
c. Respondent Mailing Address	☐ Other. Specify:_____.
City: Anchorage State: AK Zip Code: 99501	d. Telephone

6. RESPONDENT'S ATTORNEY

a. Name ☐ Court Apptd	b. Bar Number	
Kevin Feldis	9711060	
c. Attorney Mailing Address	d. Telephone	e. Fax
1029 W. 3rd Avenue, Suite 300	(907) 279-8561	(907) 276-3108
City: Anchorage State: AK Zip Code: 99501	f. Firm/Agency	
	Perkins Coie LLP	

7. RESPONDENT'S ATTORNEY

a. Name ☐ Court Apptd	b. Bar Number	
Sarah L. Schirack	1505075	
c. Attorney Mailing Address	d. Telephone	e. Fax
1029 W. 3rd Avenue, Suite 300	(907) 279-8561	(907) 276-3108
City: Anchorage State: AK Zip Code: 99501	f. Firm/Agency	
	Perkins Coie LLP	

8. CONSTITUTIONAL ISSUES

Is the constitutionality of a state statute or regulation at issue in this proceeding? ☐ Yes ☒ No

If yes, cite statute or regulation: _____

9. SENTENCE PETITIONS ONLY

a. ☐ Excessiveness of the sentence is the ONLY issue.

b. ☐ A transcript of the sentencing proceeding is requested because Petitioner is indigent. (If petitioner has not been adjudicated indigent by the trial court, a completed, financial statement affidavit form must be attached.)

10. ATTACHMENTS

The following items are submitted with this form (**a, b, or c must be check unless this is a notice of intent to file sentence petition):**

a. ☒ The original petition for review and SIX copies or ☐ petition for hearing from the superior court and SIX copies; OR

b. ☐ The original petition for hearing from the court of appeals and NINE copies; OR

c. ☐ The original application and SIX copies.

d. ☒ A copy of the judgment or order from which relief is sought attached to the original petition and EACH copy.

e. ☐ A $250 filing fee or ☐ a motion to appeal at public expense (financial statement affidavit form must be included).

☐ a motion to waive filing fee (if basis for motion is inability to pay, financial statement affidavit form must be included).

☒ no filing fee is required because appellant is ☐ represented by court-appointed counsel.

☒ the state or an agency thereof.

☐ an employee appealing denial of benefits under AS 23.20 (Employment Security Act)

f. A motion for expedited action ☒ submitted ☐ not submitted.

g. A motion for stay of trial court proceedings ☐ submitted ☐ not submitted

September 17, 2020
Date

/s/ Margaret Paton-Walsh
Signature of Petitioner or Petitioner's Attorney

anc.law.ecf@alaska.gov

IN THE SUPREME COURT FOR THE STATE OF ALASKA

STATE OF ALASKA, DIVISION OF ELECTIONS, and Gail Fenumiai, Director of the Division of Elections,	)	
Petitioners,	)	
v.	)	
ALYSE S. GALVIN,	)	
Respondent.	)	Supreme Court No. **S-** _____

Trial Court Case No. **3AN-20-07991 CI**

CERTIFICATE OF SERVICE

I certify that on September 17, 2020 a true and correct copy of the **Emergency Motion for Expedited Decision on the State's Petition for Review (Appellate Rule 504), Written Statement of Facts in Support of Emergency Motion for Expedited Action, Affidavit of Counsel, Order (Emergency Motion), Docketing Statement B, Motion to Accept Overlength Petition for Review, Order, Petition for Review, Appendix A – E, Affidavit of Gail Fenumiai in Support of Petition For Review, Exhibits A and B,** and this **Certificate of Service** were served by email to the following:

Kevin Feldis
Perkins Coie, LLP
Email: KFeldis@perkinscoie.com

Sarah L. Schirack
Perkins Coie, LLP
Email: SSchirack@perkinscoie.com

Honorable Jennifer S.Henderson
Superior Court Judge
Email: jisaako@akcourts.us

Angela Hobbs
Law Office Assistant

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
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