IN THE SUPREME COURT OF THE STATE OF ALASKA

THE ALASKA CENTER EDUCATION FUND, ALASKA PUBLIC INTEREST RESEARCH GROUP, and FLOYD TOMKINS, Petitioners, v. GAIL FENUMIAI, in her official capacity as the Director of the Alaska Division of Elections, KEVIN MEYER, in his official capacity as the Lieutenant Governor of Alaska; and THE STATE OF ALASKA, DIVISION OF ELECTIONS, Respondents.	Superior Court Case No. 3AN-20-08354 CI Supreme Court No. S-

PETITION FOR EMERGENCY REVIEW

Petitioners moved for preliminary injunctive relief seeking to prevent the irreparable and avoidable disenfranchisement of the hundreds of eligible Alaska voters who will inadvertently forget to sign or provide a voter identifier on the envelopes of their timely mail-in ballots in the 2020 General Election, and for whom Respondents discover the omission before election results are finalized. By failing to provide these affected voters with notice of and an opportunity to cure these simple mistakes, Respondents are applying the relevant Alaska Statutes—which do not prohibit notice and an opportunity to cure—in a manner that unduly burdens the right to vote and violates due process protections.

In denying relief, the Superior Court mischaracterized Petitioners' claims, overlooked binding precedent, misapplied the law, and clearly erred to the extent it made any findings of fact to support its ruling under both the balance of the hardships and probable success on the merits tests. Rather than evaluate the constitutional claims

presented, the Superior Court wrongly suggested that such analysis is not required based on its perception of the purported "statutory interpretation" question before it, and based on its assessment that no relief is warranted where a voter "disenfranchises him or herself." Appendix A at 69:8, 73:16-17. But this is not the law. Instead, this Court has repeatedly held that voter mistake cannot justify disenfranchisement when an eligible voter's intent is clear, or where the governing statutes can reasonably be interpreted to avoid disenfranchisement—both of which are present here. The Superior Court's failure to address this Court's binding precedents, and failure to apply the proper constitutional analysis, are errors of law, which must be reviewed *de novo*.

In addition, the Superior Court erred and abused its discretion by disregarding the factual record before it. The Division's own data indicates that hundreds of voters will be disenfranchised in the 2020 General Election based on undisputed past rates of disenfranchisement for exactly the reasons challenged here. Respondents did not (and could not) argue that the 2020 General Election—in which four times the number of Alaska voters have applied to vote absentee by mail than ever before—has any likelihood of resulting in fewer voters being disenfranchised than in prior years due to the honest mistakes at issue here. The Superior Court refused to credit this all-but-certain disenfranchisement and misapplied the imminent irreparable harm inquiry.

Absent relief from this Court, a significant number of Alaska voters will be avoidably disenfranchised in the 2020 General Election due to predicable and correctable omissions on their ballot envelope certificate. The clear weight of this Court's precedent supports protecting the right to have these votes counted by requiring a notice and cure

opportunity. The Superior Court's ruling should be set aside, and the requested injunctive relief should be granted.

STATEMENT OF FACTS

None of the following facts are in dispute. Over 112,000 absentee ballots have been mailed to Alaska voters for the 2020 General Election, and over 30,000 absentee mail ballots have already been returned.[1] Each mailed absentee ballot includes a return envelope with a "certificate" printed on the back, which has a blank line for a voter signature affirming that they are "a citizen of the United states," [sic] "have been a resident of Alaska for at least 30 days," "have not requested a ballot from any other state," and are not "voting in any other manner in this election." *See* Appendix B. It also contains four blank spaces for voters to list one identifier: driver's license number, date of birth, last four digits of social security number, or voter number. *Id.* Finally, the certificate contains a space for a witness signature.[2] *Id.* Each of these three items is required for an absentee ballot to count. *See* AS 15.20.203(b)(1)-(2); 6 AAC 25.570; 6 AAC 25.580(7)-(9).

A. Logging of and notice to voters of ballot certificate errors.

When a voter submits an absentee ballot certificate that does not contain a voter

[1] *See* State of Alaska - Division of Election, Combined Ballot Count Report at https://www.elections.alaska.gov/results/20GENR/data/sovc/CombinedBallotCountReport_Server.pdf (last revised October 19, 2020).

[2] On October 12, 2020, this Court affirmed a Superior Court order enjoining the witness requirement for mail-in ballots during the 2020 general election due to COVID-19. *See Arctic Vill. Council, et al. v. Meyer et al.*, Case No. 3AN-20-07858CI (Sup. Ct. Oct. 5, 2020), *aff'd* S-17902 (Alaska Oct. 12, 2020). Although Petitioners' underlying Complaint challenges Respondents' failure to provide notice and an opportunity cure a missing witness attestation before election results are finalized, Petitioners no longer seek preliminary injunctive relief regarding the witness requirement.

signature or identifier and the ballot *is* rejected as a result, the Director of the Division must "prepare and mail to each absentee voter whose absentee ballot *was rejected* under [AS 15.20.203] a summary of the reason that the challenge to the absentee ballot was upheld and the absentee ballot was rejected." AS 15.20.203(h) (emphasis added).[3] This notice must be mailed "to the voter *not later than* (1) 10 days after completion of the review of ballots by the state review board for a primary election," and "(2) 60 days after certification of the results of a general election." AS 15.20.203(i) (emphasis added). Nothing in the law prevents the Division from providing that notice much sooner.

The Division of Elections Manual on "Reviewing and Data Entry of Absentee Ballots" details how the Division's Voter Registration Election Management System ("VREMS") works.[4] Appendix C ("Manual"). VREMS has a coding field that must be completed if a ballot is slated for rejection, and if so, the reason why. Ballot reviewers log code "G" if there is "[n]o identifier on by mail ballot envelope" or log code "Z" if the "voter failed to sign the ballot envelope." *Id.* at 47, 49. The Manual requires that unopened ballot envelopes slated for rejection be set aside "in their own bundle in sequence order by

[3] While AS 15.20.203(h) requires the Director to prepare and send a notice to voters *after* disenfranchisement, the relief Petitioners seek is a pre-deprivation notice and an opportunity to cure, which would necessarily need to be provided sooner in order for such notice to be meaningful. The fact that the Director already prepares post-disenfranchisement notices shows that she has the capability to provide pre-deprivation notice based on the software coding for initial ballot logging described in this section and in Petitioners' briefing before the Superior Court, which Respondents did not refute.

[4] Petitioners submitted the 2016 version of this Manual as an exhibit to their Reply in Support of Expedited Consideration on October 12. On October 14, Respondents' Opposition to the Motion for a Preliminary Injunction did not assert that any provisions of this Manual as cited by Petitioners two days prior are no longer in affect.

district." *See id.* at 12. Finally, the Manual requires each election supervisor to "provide an accountability report to track *daily* the number of ballots reviewed in each district and the number counted." *Id.* at 10 (emphasis added). Despite this evidence, the Superior Court made no findings of fact regarding what would be required for the Division to implement the requested notice and opportunity to cure.

B. The potential cure timeframe in the Alaska election calendar.

Alaska's existing, statutorily-defined election calendar provides ample time in which voters could be provided with notice and an opportunity to cure missing voter signatures or identifiers before election results must be certified. When voters return their mail-in ballots—which can be and often is done well before election day—"[t]he Division preliminarily reviews and logs all absentee ballots on arrival." Appendix D ¶ 4. As of October 17, this review and logging process has already identified 116 ballots slated for rejection in the 2020 General Election, unbeknownst to the affected voters. *See supra* n.1.

In addition to this preliminary review, State law provides that formal review of absentee ballot certificates *must* begin no later than seven days *before* the general election. AS 15.20.201(a). Nothing prevents this formal review process from beginning as soon as ballots are received. The review process continues until "the 15th day following the day of the election"—this year, Nov. 18—at which time the district absentee ballot counting board must certify the review and finalize the absentee ballot totals. AS 15.20.201(c).

Thus, Alaska's election calendar provides, at a minimum, for a 22-day window during which Respondents can provide voters who would otherwise be disenfranchised for not including a voter signature or identifier on their ballot certificate with notice and an

opportunity to cure the inadvertent mistake. Even for voters whose absentee mail-in ballots do not arrive to the Division until the last permissible day for them to do so and still be counted (if postmarked by Election Day)—which is 10 days after a general election, *see* AS 15.20.081(e)—there still would be a five-day window in which Respondents could effectuate notice and an opportunity to cure before absentee vote counts must be finalized. This five-day window is longer than the notice and cure period mandated by statute and/or caselaw in many other states. *See* Complaint n.4.

C. Past and forthcoming disenfranchisement due to the voter signature and identifier requirements as mail voting drastically increases.

In the 2016 Presidential General Election, only 31,817 Alaskans requested to vote absentee, and only 27,262 returned their absentee ballots.[5] In contrast, over 112,000 mail-in absentee ballots have already been sent to voters in the 2020 General Election, and over 30,000 have already been received.[6] Thus, the number of absentee ballots *already* returned for the 2020 General Election—nearly a month before the November 13 ballot receipt deadline—has already surpassed the total number of domestic absentee ballots cast in the *entire* 2016 General Election.

Since at least 2012, Alaska election officials have rejected over 586 absentee ballots in general elections based on a missing signature alone, according to data submitted by the

[5] Statistics for absentee ballots in every primary and general election since 2004 are publicly available on the Division's website. https://www.elections.alaska.gov/doc/info/statstable.php (last visited Oct. 19, 2020).

[6] *See supra* n. 1. Absentee ballots will continue to be sent for at least another week since the deadline to request one for the 2020 General Election is not until October 24.

Division to the federal Election Administration and Voting Survey ("EAVS").[7] There can be no credible dispute that this consistent pattern of disenfranchisement will increase in the 2020 General Election, absent relief, because far more Alaska voters will cast their ballots by mail than ever before.[8]

STATEMENT OF QUESTION

The Alaska Statutes do not prohibit Respondents from providing voters with notice of and an opportunity to cure inadvertent voter signature or identifier omissions on a ballot certificate before election results are certified. Does Respondents' failure to provide voters

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[7] The data submitted to the U.S. Election Assistance Commission by Respondents and all other states is publicly available at U.S. Elections Assistance Commission, *Surveys and Data*, https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys (last visited Oct. 19, 2020). It is unclear based on Respondents' EAVS submissions how many ballots have been rejected based on a missing voter identifier.

Although this Court has repeatedly expressed its confidence in Alaska voters to understand the material presented to it by the Division and to comply with the Division's instructions, *see State v. Alaska Democratic Party*, 426 P.3d 901, 913 (Alaska 2018), respectfully, Respondents' data shows that some voters are indeed disenfranchised every election cycle due to inadvertent mistake, as was Petitioner Floyd Tomkins in the 2020 Primary Election. *See* Appendix E.

Conversely, many Alaska voters are likely to be familiar with and understand a notice and cure process since Anchorage and Juneau both provide it through one-page cure affidavits. *See* CBJ 29.07.370(e)(3); AMC 28.70.030(D). That both Anchorage and Juneau engage in signature matching (and thus reject ballots with certificate signatures that do not match other signatures the city has on file for the voter) is not relevant here. Only the fact that those cities provide a straightforward cure affidavit that allows votes to be counted that would otherwise be rejected is. Notably, the State has not challenged these local provisions, even though municipal elections must comply with the Alaska Statutes.

[8] The increase in scale will likely be exacerbated by the fact that most of those voters will be inexperienced at voting by mail, and therefore more likely to make an honest mistake in completing their absentee ballot certificate. *See* Appendix F at 24 ("A surge of inexperienced [vote-by-mail] voters, particularly in what is expected to be a high-turnout election, may lead to an increase in the number of signature-related errors in November 2020."); Appendix G at 7 ("All states require a signature, and it's not uncommon for people who have never voted absentee before to forget to sign."); *see also* Cottrell et al., Vote-by-mail ballot rejection and experience with mail-in voting (Oct. 8, 2020), http://www.dartmouth.edu/~herron/VBM_experience.pdf.

with notice of and an opportunity to cure mail-in ballot certifications that are missing voter signatures or identifiers before election results are certified violate the Alaska Constitution's guarantees of the fundamental right to vote and due process of law?

DISCRETIONARY REVIEW IS WARRANTED

This Court's discretionary review is warranted under at least two sections of Appellate Rule 402(b). First, under 402(b)(1), if this Court postpones review injustice will result since the 2020 General Election will have come and gone and affected voters will have been irreparably and unconstitutionally disenfranchised. Second, under 402(b)(2), the Superior Court's decision involves important questions of law on which there is substantial ground for difference of opinion, and which are belied by binding precedents from this Court. Immediate review will therefore advance important public interests.

STANDARD OF REVIEW

Although, as a general matter, this Court reviews lower court decisions on motions for preliminary injunctions for abuse of discretion, it "review[s] *de novo* the superior court's legal determinations" and applies its "independent judgment to constitutional law issues." *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014). In conducting *de novo* review, this Court must adopt the rule of law that is "most persuasive in light of precedent, policy, and reason." *Whittenton v. Peter Pan Seafoods, Inc.*, 421 P.3d 1133, 1135 (Alaska 2017).

ARGUMENT

This Court should reverse the Superior Court's Order because it misapplied the law and runs counter to this Court's binding precedent.

I. Relief is warranted because this Court has made clear that voters may not be disenfranchised based on a "mere mistake" where their intent is clear.

The Superior Court's Order—which concluded that Petitioners' claims were not redressable because any disenfranchisement would be the voter's own fault, Appendix A at 73:15-17—directly contravenes binding precedent from this Court holding that voter error alone cannot be a basis for disenfranchisement.

This Court has addressed the impact of honest and incidental voter mistakes more than once. In *Miller v. Treadwell*, this Court considered whether write-in votes clearly intended for Senator Lisa Murkowski should be counted if the voter misspelled Senator Murkowski's name. 245 P.3d 867 (Alaska 2010). In deciding whether to count those votes, this Court began its analysis by noting that its "prior decisions clearly hold that a voter's intention is paramount." *Id.* at 869 (citing *Edgmon v. State, Off. of the Lieutenant Governor, Div. of Elections*, 152 P.3d 1154, 1157 (Alaska 2007)). It then reiterated its prior precedent holding that "the voter shall not be disenfranchised because of mere mistake, but [the voter's] intention shall prevail." *Id.* (alteration in original) (quoting *Edgmon*, 152 P.3d at 1157). This Court also respectfully recognized that "Alaskan voters arrive at their polling places with a vast array of backgrounds and capabilities":

> Some Alaskans were not raised with English as their first language. Some Alaskans who speak English do not write it as well. Some Alaskans have physical or learning disabilities that hinder their ability to write clearly or spell correctly. Yet none of these issues should take away a voter's right to decide which candidate to elect to govern.

Id. at 870. Ultimately, this Court held that misspellings would be "disregarded in determining the validity of the ballot, so long as the intention of the voter can be ascertained." *Id.*

Here, too, Alaskan voters complete and return their mail-in ballots with a vast array of backgrounds and capabilities—not to mention the current economic, personal and social stresses of the COVID-19 pandemic. Many are also first-time absentee voters. *See supra* n.8. *Miller* clearly counsels against disenfranchising voters whose intent to vote is otherwise clear but who might forget to or not readily understand that they need to provide a voter signature or identifier on a voter certificate to have their vote count.

Miller is not the only binding precedent that demands this result. In *Edgmon v. State, Off. of the Lieutenant Governor, Div. of Elections*, the Court decided whether voters should be disenfranchised based on the voter error of "overvoting."[9] The Court concluded that alleged overvotes could only be rejected in the absence of clear voter intent to vote for one candidate over another. *Id.* at 1156-58. While marking more than one candidate's name on the ballot is a voter's mistake, the Court nevertheless held that, where voter intent is clear, a voter should not be disenfranchised.

Together, *Miller* and *Edgmon* support only one result: because Alaska voters may not be unnecessarily disenfranchised on the basis of a mere mistake, Respondents must be required to provide notice of and an opportunity to cure voter certificates that inadvertently

[9] "An 'overvoted' ballot is when a voter 'marks more names than there are persons to be elected to the office,' in which case 'the votes for candidates for that office may not be counted.'" *Id.* at 1155 (citation omitted).

omit a voter's signature or an identifier. Like the voters facing disenfranchisement in *Miller* and *Edgmon*, voters who take the time to register to vote, request a mail-in ballot, fill it out, procure and put a stamp on it, and send it to the Division most assuredly have expressed an intent to cast a valid ballot and have their vote counted. Thus, rejecting ballots due to an honest and easily-corrected mistake runs directly counter to the principles and holdings of both *Miller* and *Edgmon*.[10]

The Superior Court did not so much as reference those binding precedents, let alone distinguish them. Instead, the Order directly contravened the above precedents when it concluded that voters could not be wrongly disenfranchised as a result of their own mistakes. *See* Appendix A at 73:14-17. *Miller* and *Edgmon* foreclose that harsh approach.[11]

II. Relief is warranted based on this Court's requirement that statutes be construed to avoid disenfranchisement, which is possible here.

[10] While the Court may wish to clarify the relationship between its holdings in *Miller* and *Edgmon* and other black letter law setting forth the appropriate tests for constitutional claims alleging an undue burden on the fundamental right to vote and a violation of procedural due process based on a deprivation of that fundamental right, *see infra* Section V, if nothing else, the Superior Court's failure to mention (let alone distinguish) *Miller* and *Edgmon* presents an independent and reversible error of law.

[11] Respondents likewise failed to address *Miller* and *Edgmon* in their briefing, and instead compared this case to the very different situation in *Willis v. Thomas*, 600 P.2d 1079 (Alaska 1979). In *Willis*, this Court held that the Division was correct not to count the ballot of a voter who did not provide her complete address on her voter registration form and attempted to fix the error on election day, long after the registration deadline had passed. The Court noted "there are limits to the extent to which defects in [voter] registration can be ignored or 'cured' after the fact." *Id.* at 1086 (emphasis added). But an error in registration which impacts voter eligibility to vote—when sought to be remedied after the registration deadline has come and gone—is not analogous to an honest mistake on a voter certificate submitted by an eligible voter long before election results are finalized. *See id.* at 1086 (noting that the issue was whether the voter was a "qualified voter"). Thus, *Willis* is inapposite here and does not undermine *Miller* and *Edgmon*.

This Court has also long held that, "where any reasonable construction of [a] statute can be found which will avoid [disenfranchisement], the courts should and will favor it." *Miller*, 245 P.3d at 870 (quoting *Carr v. Thomas*, 586 P.2d 622, 626 (Alaska 1978) (holding that a punch card ballot is a form of paper ballot under AS 15.15.215 because "[n]owhere in Title 15 is the specific distinction made between a "paper ballot" and a "punch card ballot")); *see also Edgmon*, 152 P.3d 1158-58 (holding that, where a statute was silent as to whether a representative must list their mailing and physical addresses separately, it could not be read to require disenfranchisement where the representative listed only one).

In *Miller*, the plaintiff sought to interpret AS 15.15.360(a)(11)—which provides that "[a] vote for a write-in candidate . . . shall be counted if . . . the name, as it appears on the write-in declaration of candidacy, of the candidate or the last name of the candidate is written in the space provided"—to disqualify any write-in votes who misspelled a candidate's name. 245 P.3d at 869. Like Respondents, Miller urged that only his interpretation of the governing statute—which he said required precise spelling—would preserve the integrity of the electoral process. *Id.* at 870. But this Court recognized that the exact opposite was true: Miller's interpretation "would erode the integrity of the election system, because it would result in disenfranchisement of some voters and ultimately rejection of election results that constitute the will of the people." *Id.*

To avoid that result—and in light of its "strong and consistently applied policy of construing statutes in order to effectuate voter intent"—the Court held that ballots with misspelled write-ins should be counted because the plain text of AS 15.15.360(a)(11) did not prohibit that. 245 P.3d at 869. This Court has "consistently construed election statutes

in favor of voter enfranchisement," and recognized that "inclusiveness is consistent with the overarching purpose of an election: 'to ascertain the public will.'" *Id.* (quoting *Boucher v. Bomhoff*, 495 P.2d 77, 79 (Alaska 1972)).

Here, because the Alaska Statutes do not prohibit Respondents from providing affected voters with notice and an opportunity to cure, the statutes should be construed in favor of voter enfranchisement. There is nothing about providing such notice and an opportunity to cure that would impact the legitimacy of Alaska elections or run afoul of any other relevant statutory provision.

AS 15.20.081(d) and (f) require a voter signature and identifier on a certificate, respectively, and AS 15.20.203(b)(1) provides that an absentee ballot may not be counted if a voter certificate is not properly executed. But nowhere does AS 15.20.203 say that the certificate must be on a mail-in ballot envelope only—rather than on a separate certification document or cure affidavit—nor does any other provision suggest that voters must be disenfranchised rather than provided with an opportunity to complete a supplemental certificate if their initial certificate contains inadvertent omissions.

Contrary to Respondents' argument before the Superior Court, AS 15.20.030 does not suggest that the *only* place the certificate can be present is on a ballot envelope.[12] Rather, AS 15.20.030 imbues the Director with discretion as to the form the certificate takes by providing that the "director shall prescribe the form of and prepare the voter's

[12] AS 15.20.030 states that "[t]he director shall provide a secrecy sleeve in which the voter shall initially place the marked ballot, and shall provide an envelope with the prescribed voter's certificate on it, in which the secrecy sleeve with ballot enclosed shall be placed."

certificate, envelopes, and other material used in absentee voting." That 'certificate' and 'envelopes' appear as separate items in the list in AS 15.20.030 strongly suggests that they need not be one in the same, and supports an interpretation allowing a voter to complete a supplemental certificate to cure an initially missing voter signature or identifier.

Notably, the Division already uses separate certificate pages that are not part of the mail-in ballot envelope for voters who receive their ballots electronically via email. Those voters are asked to print and return a separate certificate page as part of their absentee voting process. *See* Appendix H. As a result, it is clear that AS 15.20.030 *cannot* be read to require that voter certificates *must* be placed on the ballot envelope or foreclose the potential for certificates to be completed separately, as requested here. Finally, although 6 AAC 25.550 states that "[a]n absentee voter voting by mail must execute the certificate on the oath and affidavit envelope," it also does not per se require that the certificate necessarily be on the envelope.

The governing statutes can therefore be construed to allow voters to provide their signature and identifier on a supplemental certificate (such as a cure affidavit) without declaring any existing statute facially unconstitutional. There is likewise no statutory prohibition on counting a ballot if the "certificate" is not complete by Election Day, the statutes can also be applied to count the ballot of a voter who provides a valid certificate at any time before election results must be certified.

Because the relevant statutory framework is silent on the issue of whether the Division *may* provide notice and an opportunity to cure before results are finalized, this

Court's binding precedent demands that it *must* be construed to do so to avoid unnecessary disenfranchisement on the basis of "mere mistake."[13]

III. The Superior Court improperly analyzed the constitutional claims before it as questions of "statutory interpretation."

In issuing its Order, the Superior Court did not engage with the required constitutional analysis, and instead purported to interpret the Alaska Statutes. Thus, the Superior Court incorrectly analyzed the constitutional claims before it, which clearly assert that notice and an opportunity to cure is constitutionally required under Alaska Const. Art. I, § 7 (due process) and Art. V, § 1 (right to vote). *See* Complaint ¶¶ 38-43 (undue burden on right to vote); ¶¶ 44-52 (deprivation of procedural due process). Instead of employing this Court's binding precedents in *Miller* and *Edgmon* and the black letter law of *Anderson-Burdick* and *Mathews v. Eldridge* (detailed below), the Superior Court conceived of the claims before it as requiring "statutory interpretation." It explained:

> We really are dealing with a[t] bottom [a] question of statutory interpretation, only we're interpreting something that's not—we're interpreting a statute and dealing with language that's not present. We are—at bottom I think the argument of the plaintiffs is that the statute should have been ·written differently, that things were left out that a wise Legislature should have put in, or that now—I'll put quotes around it—a wise judge should put in.

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[13] The Superior Court was wrong to assert that Petitioners were asking it to legislate or write new law from the bench. Just the opposite is true. Consistent with well-established law, Petitioners are requesting that the Court bring the Divisions' current application of the law into constitutional compliance by requiring that it be applied without placing an undue burden on the right to vote, violating due process, and needlessly disenfranchising voters. This Court is empowered to—and indeed has previously instructed—that courts should interpret Alaska's existing laws in such a way as to comply with constitutional strictures and promote eligible voters' enfranchisement wherever possible. This is exactly the remedy being requested here—nothing more.

Appendix A at 69:7-16. In so doing, the Superior Court mischaracterized Petitioners' claims, relying on principles of statutory interpretation that would only be relevant had Petitioners sought *enforcement* of the relevant statutes. They do not.

To be sure, the Superior Court's entire Order was infused with improper analysis. For example, elsewhere the Superior Court framed Petitioners' claims as follows: "They maintain that the manner in which [the statute is] applied is unconstitutional, yet they don't argue and they're unable to point that it is being applied in a way *inconsistent with the statute*." Appendix A at 68:18-22 (emphasis added). But asking whether a statute's application is *inconsistent with the statute* is not the test for a constitutional claim, which are the only kinds of claims at issue here. The Superior Court further said that Petitioners were "attempt[ing] to read into the statute a requirement that is not there." *Id.* at 71:17-19. While true that the *Alaska Statues* do not require notice and an opportunity, the Superior Court's framing failed to consider whether the *Alaska Constitution* does. Ultimately, the Superior Court concluded that providing notice and an opportunity to cure is a "policy decision," *id.* at 71:20-72:7, rather than addressing Petitioners' argument that it is a constitutional requirement.

These analytical errors resulted in the Superior Court's failure to address the central thrust of Petitioners' claims—that the relevant statutes are unconstitutional as applied. The distinction and overlap between "facial" and "as applied" constitutional challenges is important. "A holding of facial unconstitutionality generally means that there is no set of circumstances under which the statute can be applied consistent with the requirements of the constitution." *State v. Am. Civil Liberties Union of Alaska*, 204 P.3d 364, 372 (Alaska

2009). In contrast, "[a] holding that a statute is unconstitutional as applied simply means that under the facts of the case application of the statute is unconstitutional. Under other facts, however, the same statute may be applied without violating the constitution." *Id.* Given that framing, Petitioners' claims are decidedly as applied challenges. To wit: Petitioners assert that, under the facts of the case—in which Respondents currently apply the Alaska Statutes by not providing notice or an opportunity to cure—Respondents' application of the Alaska Statutes is unconstitutional. But "[u]nder other facts"—namely, if Respondents were to provide notice and an opportunity to cure—the same statutes could be applied without violating the Alaska Constitution.

Considering Petitioners' claims to be as-applied challenges makes sense given the Alaska Statutes' silence on notice and the opportunity to cure, as well as the doctrine of constitutional avoidance. *See State v. Planned Parenthood of the Great Nw.*, 436 P.3d 984, 992 (Alaska 2019). But even if the statutes did preclude notice and an opportunity to cure (they do not), Petitioners would still prevail on the merits of their claims under a facial challenge for the reasons detailed below.

IV. The Superior Court erred as a matter of law and abused its discretion in refusing to contend with record evidence of irreparable harm.

The Superior Court's conclusion that Petitioners were not entitled to relief under the balance of the hardships was based on an erroneous analysis of irreparable harm. The Superior Court said that reliance on past harm to show that irreparable harm was imminent in the 2020 General Election was "possibly true [but] possibly hysterical," and that the "[p]ublic record on past years is still speculation as to what's going to happen on November

3rd." Appendix A at 61:21-62:4. This is contrary to established law, and any fact finding that flowed from this error of law amounts to an abuse of discretion.

The Superior Court erred as a matter of law in disregarding proof of prior disenfranchisement due to the challenged practices—*as reported by Respondents*, *see supra* n.7 & accompanying text—which is legally sufficient to establish that Petitioners are likely to suffer irreparable harm absent relief. If the standard for preliminary injunctive relief to prevent *future* harm were that a plaintiff must prove with absolute certainty not only that irreparable harm definitively will occur, but also—as the Superior Court suggested, the precise scope and magnitude of the future harm—a preliminary injunction would never issue. That is, the burden to show future harm is not and cannot be one of absolute divination. Instead, courts have made clear that the standard for establishing irreparable harm is merely that plaintiffs show that it is "*likely* in the absence of an injunction." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (emphasis in original); *see also* 11A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2948.1, p. 139 (3d ed. 2012) (applicant must demonstrate that in the absence of a preliminary injunction, it "is likely to suffer irreparable harm before a decision on the merits can be rendered").

Accordingly, courts have consistently held that evidence of prior irreparable harm is convincing evidence that future irreparable harm is likely. *See e.g.*, *Houston v. Marod Supermarkets, Inc.*, 733 F.3d 1323, 1336 (11th Cir. 2013); *Daubenmire v. City of Columbus*, 507 F.3d 383, 389 (6th Cir. 2007). This Court has indeed applied that same commonsense logic in other contexts. *See e.g.*, *Jon S. v. State, Dep't of Health & Soc.*

Servs., Office of Children's Servs., 212 P.3d 756, 767 (Alaska 2009) (holding, in the family law context, that "[a]lthough the court must focus on risk of future harm rather than past injury, past failures may predict future conduct"). Because Petitioners' put forward evidence of past disenfranchisement due to the challenged practices, the Superior Court's refusal to consider that evidence was both an error of law and an abuse of discretion.

Because there can be no credible dispute that Petitioners face irreparable harm absent relief, and because their briefing below demonstrates why Respondents would be adequately protected if an injunction issues,[14] the Order was an abuse of discretion.

V. Petitioners are likely to succeed on the merits and thus are entitled to preliminary injunctive relief.

The cleanest route to relief would be for this Court to order the injunctive relief requested based on Petitioners' probable success on the merits. The Superior Court plainly misconstrued Petitioners' claims, as discussed *supra* Section III, and its Order improperly turned on questions of statutory interpretation, rather than the black letter law that guides courts' analysis of those constitutional claims.

While the Superior Court did—in the context of weighing what it characterized as a "policy decision" with regard to providing notice and the opportunity to cure—make reference to burdens on voters and the interests of the State, there is no question that the Superior Court decided Petitioners' motion based on an inappropriate statutory interpretation framework, rather than a sound application of the applicable *Anderson-*

[14] The Superior Court's Order did not speak to the adequate protection prong of the balance of the hardships analysis.

Burden and *Mathews v. Eldridge* tests. *Compare* Appendix A at 72:22-73:22 (noting respective burdens and interests in the "policy decision" context) *with id.* at 73:23-74:3 (reiterating the misapprehension that "[t]he basic thrust of the plaintiffs' case in this—the argument in this case is that the Court should take over the policymaking function of the Legislature. I don't believe the Court has any more wisdom and, you know, probably less than the elected representatives of the citizens of the state."). Petitioners were not asking the Court to read words into the law, or to interpret the Alaska Statutes to provide a "do-over" for certain voters. Such characterizations fundamentally overlook the constitutional challenges raised and sidestep the prior decisions of this Court.

Had the Superior Court properly analyzed Petitioners' claims, it would have necessarily found that Petitioners met their burden in establishing a likelihood of success on the merits with regard to the undue burden on the right to vote and improper disenfranchisement without due process of law. Because this Court "review[s] de novo the superior court's legal determinations in issuing the preliminary injunction" and applies its "independent judgment to constitutional law issues," it need not accord any weight to the Superior Court's approach. *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014).

A. Relief on Petitioners' right to vote claim is warranted under *Anderson-Burdick* and Alaska law.

This Court has adopted the federal framework referred to as the *Anderson-Burdick* balancing test in evaluating claims alleging an undue burden on the fundamental right to vote. *See O'Callaghan v. State*, 914 P.2d 1250, 1253 (Alaska 1996) (quoting *Burdick v. Takushi*, 504 U.S. 428 (1992)). Under this standard, Alaska courts "assess the character

and magnitude of the asserted injury to the right[]" and weigh that against "the precise interests put forward by the State as justifications for the burden imposed by its rule." *State, Div. of Elections v. Green Pty. of Alaska*, 118 P.3d 1054, 1061 (Alaska 2005) (quotation marks and citations omitted). Alaska courts then "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." *Id.* (quotation marks and citations omitted). "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 state's interest must be closer." *Id.*

Miller and *Edgmon* necessarily inform the "character and magnitude of the asserted injury" and the "fit between the challenged legislation and the state's interests" by confirming that, in Alaska, disenfranchisement due to voter mistake is a grave injury that cannot fit a state interest when there is, as here, a reasonable construction of the statutes at issue that can avoid disenfranchisement.

1. The voter signature and identifier requirements, absent notice and an opportunity to cure, impose a severe burden on the right to vote.

Caselaw overwhelmingly confirms that the voter signature and identifier requirements, absent an opportunity to cure, impose an impermissible and unconstitutional burden on the fundamental right to vote.

Despite referencing the parties' respective burdens and interests when it suggested that the deadlines being applied under the law were "policy decision[s]," Appendix A at 72:22-73:22, the Superior Court did not apply the *Anderson-Burdick* balancing test. Had it

done so, the Superior Court would have concluded that the character and magnitude of Petitioners' asserted injury is severe—that is, unnecessary disenfranchisement—and that Respondents have no compelling interest in failing to provide notice and a cure opportunity, and thus strict scrutiny should apply. *See Jordan v. Reed*, 544 P.2d 75, 81 (Alaska 1975) ("[T]he right to vote is a fundamental right and its denial ought to be strictly scrutinized by the courts.").

Even if the Superior Court applied this framework in concluding that the burden imposed was less than severe (it is not), Petitioners would still prevail even under a lesser level of scrutiny, because Respondents have no sufficiently weighty interest in disenfranchising voters based on a simple mistake, instead of providing a reasonable opportunity to correct their omission, verify their identity, and have their voices heard before absentee results are certified. "However slight" the burden on a voter may appear, "it must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation." *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 191 (2008) (quotation marks and citation omitted).

The Superior Court gave short shrift to the idea that the only burden or imposition on Alaska voters was signing the ballot (and presumably including identifying information on the ballot, though this was not mentioned). And it said that disenfranchisement could not be the burden, because any disenfranchisement would be the voter's fault. Appendix A at 73:16-17. But that is squarely at odds with *Miller* and *Edgmon*, which sanction the notion that, in Alaska, disenfranchisement due to voter mistake is a severe injury.

The Superior Court's Order also conflicts with precedent from across the country

holding that the burden imposed by a state's failure to provide notice and an opportunity to cure missing or incorrect information—disenfranchisement—is severe. *See, e.g.*, *Fla. Democratic Pty. v. Detzner*, No. 4:16cv607-MW/CAS, 2016 WL 6090943, at *6, 9 (N.D. Fla. Oct. 16, 2016) (reasoning that "[i]f disenfranchising thousands of eligible voters does not amount to a severe burden . . ., then this Court is at a loss as to what does," and holding that lack of an opportunity to cure imposed "an unconstitutional obstacle to the right to vote"); *Democratic Exec. Comm. of Fla. v. Detzner*, 347 F. Supp. 3d 1017, 1030 (N.D. Fla. 2018) (holding that the injury imposed absent an opportunity to cure is disenfranchisement, and that the state had no legitimate interest that might justify that burden); *League of Women Voters of N.J., et al. v. Tahesha Way*, No. 20-cv-05990, ECF No. 34 (E.D.N.J. June 17, 2020) (requiring election officials to allow voters to cure absentee ballots with missing or mismatched signatures for sixteen days after Election Day) (attached as Ex. 10); *Frederick v. Lawson*, No. 1:19-cv-01959-SEB-MJD, 2020 WL 4882696, at *17 (S.D. Ind. Aug. 20, 2020) (permanently enjoining election officials from rejecting any absentee ballot absent adequate notice and an opportunity to cure); *League of Women Voters of the U.S. v. Kosinski, et al.*, No. 1:20-cv-05238, 2020 WL 5608635 (S.D.N.Y. Sept. 17, 2020) (consent decree requiring election officials to provide five days for voters to cure absentee ballot).

In light of the significant weight of caselaw explaining that a state's failure to provide voters with notice and an opportunity to cure imposes an undue burden on the right to vote, the Superior Court erred as a matter of law in failing to consider that burden, and in concluding that Petitioners failed to establish a severe burden on the right to vote.

2. The State has no compelling interest that justifies the burden on the fundamental right to vote.

In deciding this case based on statutory interpretation that turned on legislative "policy decisions," the Superior Court observed that Respondents have "interests in avoiding voter fraud, which is why they have those requirements in the first place," and an "interest in timely reporting and analysis and collating of the election data, and producing election results." Appendix A at 72:2-6. Even if the Superior Court had evaluated these "interests" in the context of the *Anderson-Burdick* framework, such interests are inapposite because neither would be disturbed by Petitioners' requested relief or justify the burdens imposed on the right to vote.[15]

Petitioners' proposed notice and cure period does nothing to undermine the existence of the voter signature or identifier requirements, and thus any fraud-prevention interest related to those requirements would remain intact. To wit, any fraud prevention accomplished by requiring a voter to provide an identifier would be accomplished in exactly the same way if provided on a cure affidavit. The voter's signature affirms that they are "a citizen of the United states," [sic] "have been a resident of Alaska for at least 30 days," "have not requested a ballot from any other state," and are not "voting in any other manner in this election"—which is all that the voter certificate requires, *see* Appendix B—

[15] Of note, Respondents put forward no evidence to show how or why the orderly administration of elections would be disturbed in any way by Petitioners' requested relief. To the extent that Respondents might suggest that any administrative burden in effectuating the requested relief is relevant, that is not the appropriate inquiry under *Anderson-Burdick*. The state interest does not concern whether it might be difficult to implement the remedy; rather, the state interest must *justify* the burden its application of the law imposes on voters.

which is just as valid if provided on a cure affidavit signed under penalty of perjury. Petitioners have not suggested that this information should be omitted, but rather that voters should be able to supply it at any time before election results are certified. As a result, the proposed notice and opportunity to cure—which is a "less restrictive alternative" than Respondents' current practice—would "adequately protected the asserted governmental interests." *State, Divisions of Elections v. Metcalfe*, 110 P.3d 976, 979 (Alaska 2005).

Similar notice and cure opportunities already exist in many other states. *See* Preliminary Injunction Motion at n.4. Comparing Alaska's election laws "with the requirements of other states" is "one reasonable way to determine whether less restrictive alternatives exist." *Metcalfe*, 110 P.3d at 980. Here, that comparison confirms that less restrictive alternatives are widely implemented elsewhere.

Likewise, contrary to the Superior Court's conclusions, Petitioner's requested relief would do nothing to disturb Respondents' interest in the "timely reporting and analysis and collating of the election data, and producing election results," Appendix A at 72:4-6, because the cure deadline Petitioners propose is contemporaneous with the existing deadline for certifying election results. Beyond making conclusory assertions that providing relief within the 22-day window already provided for in Alaska's election calendar would be "unfeasible," Respondents failed to introduce *any* evidence that tangibly showed they could not effectuate Petitioners' requested relief.

Indeed, many states already do this, some within even far shorter periods of time—and some as required by court order. *See* Preliminary Injunction Motion n.4; *Democratic Exec. Comm. of Fla.*, 347 F. Supp. 3d at 1032–33 (N.D. Fla. 2018) (in response to a

complaint and motion filed *after* election day, ordering local election officials to promptly notify and permit voters "to cure their ballots" in the upcoming 48 hours); *id.* at 1032 (holding that "any potential hardship imposed by providing an actual opportunity to challenge the determination that a signature does not match, and thus, a vote does not count, is out-weighed by the risk of unconstitutionally depriving eligible voters of their right to vote and have that vote counted.").

Because there is no close "fit" between the challenged practice and Respondents' interests which makes it necessary to burden Petitioners' rights, the challenged lack of notice and opportunity to cure places an undue burden on the right to vote. *Green Pty. of Alaska*, 118 P.3d at 1061.

B. Relief on Petitioners' procedural due process claim is warranted under *Mathews v. Eldridge*.

The Superior Court did not address Petitioners' procedural due process claim, which also merits the relief requested. Alaska Const. Art. § 7 provides that "[n]o person shall be deprived of life, liberty, or property without due process of law." This Court has repeatedly held that the right to vote is fundamental. *See, e.g.*, *Vogler v. Miller*, 651 P.2d 1, 3 (Alaska 1982). Because Alaska law allows fundamental voting rights to be exercised by mail, there is a constitutionally-protected liberty interest in mail voting that Respondents may not deprive without adequate procedures. Federal courts—in looking to the federal due process clause that mirrors the Alaska version—have consistently held that "[w]hile it is true that [mail ballot] voting is a privilege and a convenience to voters," a state does not have "the latitude to deprive citizens of due process with respect to the exercise of this privilege"

once it is extended. *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1338 (N.D. Ga. 2018); *see also Saucedo v. Gardner*, 335 F. Supp. 3d 202, 217 (D.N.H. 2018).

This Court has held that "the Alaska Constitution's due process clause must be flexibly applied by balancing three factors: [1] the private interest affected by the official action; [2] the risk of an erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards; and finally, [3] the government's interest, including the fiscal and administrative burdens that additional or substitute procedural requirements would entail." *Midgett v. Cook Inlet Pre–Trial Facility*, 53 P.3d 1105, 1111 (Alaska 2002) (adopting test articulated in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

This Court's clear holdings in *Miller* and *Edgmon*—that voters should not be disenfranchised due to mistakes when a voter's intent is clear—strongly suggest that Alaska's due process clause protects against voter error, not just state error (for example, in signature matching), contrary to Respondents' argument otherwise in briefing below.[16] That is, *Miller* and *Edgmon* confirm that voter mistake should not be a valid basis for a deprivation of due process. They also indicate that the *Anderson-Burdick* test does not subsume procedural due process in Alaska election cases (despite Respondents' prior contention that it does) since they clearly envision some process being available that will allow a voter's intent to prevail, even in the face of a voter mistake. Examples from other

[16] In support of this, Respondents cited *Silides v. Thomas*, 559 P.2d 80, 89 (Alaska 1977). But that case is readily distinguishable because it concerned whether a candidate's name could be excluded from a ballot, rather than the fundamental right to vote.

jurisdictions that might not apply *Mathews* in similar instances are thus irrelevant, given this Court's binding precedent in *Miller* and *Edgmon*.

In applying *Mathews* to claims like those raised by Petitioners, courts have consistently held that a state's failure to provide voters with notice and an opportunity to cure for absentee or provisional ballot defects violates their rights to procedural due process. *See, e.g.*, *Self Advoc. Sols. N.D. v. Jaeger*, No. 3:20-cv-00071, 2020 WL 3068160, at *1 (D.N.D. June 5, 2020) (concluding that cure procedures violated due process and ordering election officials to allow voters six days after Election Day to cure their absentee ballot); *Saucedo* 335 F. Supp. 3d at 214 (holding signature law "violates the requirements of procedural due process because it lacks any pre-deprivation process: voters receive neither prior notice of, nor an opportunity to cure, a rejection"); *Martin*, 341 F. Supp. 3d at 1339-40 (holding law that afforded only an illusory cure process violated the Due Process Clause). The Alaska Constitution demands the same result here.

1. Petitioners' private interest is of paramount importance.

The nature of the private interest at stake in this case—the right to vote and to have that vote count—is the most critical liberty interest of all because it is preservative of all other basic civil and political rights. *Vogler*, 651 P.2d at 3. When Respondents reject absentee mail-in ballots based on a mistaken omission of a voter signature or identifier without first providing notice and an opportunity to cure, the Alaska voter is deprived of that most "precious" of all rights. *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). For this reason, the private interest affected is of paramount importance. *See, e.g.*, *Martin*, 341 F. Supp. 3d at 1338 ("the private interest at issue," in mail ballot case, "implicates the

individual's fundamental right to vote and is therefore entitled to significant weight"); *Raetzel v. Parks/Bellemont Absentee Election Bd.*, 762 F. Supp. 1354, 1358 (D. Ariz. 1990) (adequate process required before mail ballot voters are "denied so fundamental a right"). Accordingly, the first *Mathews* factor therefore weighs strongly in Petitioners' favor.

2. The risk of erroneous deprivation of Petitioners' rights is high, and a cure process would significantly lessen that risk.

It is a statistical certainty that some eligible voters who timely submit their mail ballots will inadvertently fail to sign or provide an identifier on the ballot envelope in the 2020 General Election. Indeed, at least 116 voters for the 2020 General Election have already had their ballots slated for rejection. *See supra* at n.1. Absent relief, voters who could easily cure their certificates before absentee ballot totals must be finalized will be deprived of a meaningful opportunity to fix their mistake and have their vote counted. Accordingly, there is a substantial risk of erroneous deprivation of Petitioners' rights.

Conversely, affording voters notice and an opportunity to cure these defects before results must be certified would significantly lessen the risk that Petitioners' rights will be erroneously deprived. Indeed, absentee ballot counting boards begin reviewing absentee ballot certificates at the latest seven days *before* election day, AS 15.20.201(a), and the Division has acknowledged it has already begun "preliminarily review[ing] and log[ging] all absentee ballots on arrival." Appendix D ¶ 4. Accordingly, there is no justifiable reason Respondents could not provide notice of certificate defects and an opportunity to cure them starting now. The second *Mathews* factor thus weighs in favor of Petitioners.

3. Additional procedures would further Respondents' interests and involve minimal administrative burdens.

The Superior Court did not make findings regarding administrative burdens, but that does not preclude relief because the first and second *Mathews* factors tip the scale in favor of providing notice and a cure opportunity. Whatever findings the Superior Court might have made regarding administrative burdens under the third factor would not outweigh the first two factors since *Miller* and *Edgmon* confirm that voter mistake cannot not be a valid basis for a deprivation of due process where, as here, the voter's intent is clear.

To the extent that this Court considers the third *Mathews* factor, the record reflects numerous undisputed ways in which the additional procedures would align with Respondents' interests. *First*, Respondents' interest in verifying that the voter is "a citizen of the United states," [sic] has "been a resident of Alaska for at least 30 days," has "not requested a ballot from any other state," and has not "vot[ed] in any other manner in this election," and that the voter is who they say they are as indicated by an identifying number, Appendix B, will still be met if the injunction issues, since voters would have to put this information on a cure certificate affidavit. *Second*, Respondents' interest in certifying election results by the 15th day after the election will be maintained because the proposed cure period would mirror that deadline. *Third*, effectuating notice and cure would align with Respondents' existing ballot coding and set aside procedures, as detailed above. *See* Appendix C at 11, 47, 49. And *fourth*, Respondents' interest in ensuring an orderly and uniform election would not be impacted, since notice and cure provides narrow relief applied only after ballots are returned, and only for affected voters. Thus, it would not affect voters' completion and mailing of ballots as is already underway. Moreover, Respondents' interest in a notice and cure system that operates fairly and consistently in

both urban and rural areas is aligned with its already-existing fair and consistent ballot by mail system, since both written notice and a cure affidavit could be issued by mail. In any event, this Court has rejected the idea that administrative burden alone can justify a significant burden on protected first amendment rights in the voting context. *See State, Div. of Elections v. Green Party of Alaska*, 118 P.3d 1054, 1069 (Alaska 2005); *see also Taylor v. Louisiana*, 419 U.S. 522, 535 (1975) ("administrative convenience" cannot justify practices that impinge upon fundamental rights); *Johnson v. Halifax Cnty.*, 594 F. Supp. 161, 171 (E.D.N.C. 1984) ("[A]dministrative and financial burdens on the defendant . . . are not . . . undue in view of the otherwise irreparable harm to be incurred by plaintiffs."); *Democratic Exec. Comm. of Fla.*, 347 F. Supp. 3d at 1032 ("[A]ny potential hardship imposed . . . is out-weighed by the risk of unconstitutionally depriving eligible voters of their right to vote and have that vote counted."). Ultimately, Petitioners' requested relief would further Respondents' interest in ensuring that no mail ballot is needlessly rejected. *See, e.g.*, *Saucedo*, 335 F. Supp. 3d at 220 ("[A]dditional procedures further the State's interest in preventing voter fraud while ensuring that qualified voters are not wrongly disenfranchised . . . [and] only serve to enhance voter confidence in elections."); *Zessar v. Helander*, No. 05 C 1917, 2006 WL 642646, at *9 (N.D. Ill. Mar. 13, 2006) (where 1,100 mail ballots were rejected for signature mismatches, "the risk of erroneous deprivation" is "not enormous, but the probable value of an additional procedure is likewise great in that it serves to protect the fundamental right to vote").

Thus, under the *Mathews* balancing test, Petitioners are likely to show that Respondents' failure to provide notice and an opportunity to cure initial voter signature or

identifier defects on a ballot certificate denies the right to vote without due process.

VI. The timing of Petitioners' requested relief is not a bar to granting it.

The Superior Court did not make any findings or conclusions regarding either the Respondents' burden to prove undue delay or prejudice elements of the laches defense. In any event, laches does not apply to suits seeking prospective relief, particularly in the voting rights context, as Petitioners seek here. Where a party seeks prospective relief to address "ongoing" injury, rather than to undo or overturn a prior election's result, laches is inappropriate. *See, e.g.*, *Schaub v. Schaub*, 305 P.3d 337, 345 (Alaska 2013) (holding that laches did not apply to prospective relief); *Garza v. Cty. of L.A.*, 918 F.2d 763, 772 (9th Cir. 1990) (voting rights action not barred by laches "[b]ecause of the ongoing nature of the violation"); *Smith v. Clinton*, 687 F. Supp. 1310, 1312-13 (E.D. Ark. 1988) (voting rights action not barred because "the injury alleged by the plaintiffs is continuing, suffered anew each time a[n] . . . election is held").

CONCLUSION

Absent an immediate remedy, the November general election will come and go, and hundreds of voters will be unnecessarily and avoidably disenfranchised. The Superior Court ignored precedent, misconstrued Petitioners' claims, and misapplied the law. Respondents' failure to provide notice and an opportunity to cure applies Alaska law in a manner that unduly burdens the fundamental right to vote and takes away that voting right without sufficient due process. Petitioners respectfully request that the Court overrule the Superior Court's Order and grant the preliminary injunction.

DATED: October 19, 2020.

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In the Matter Of:

THE AK EDUCATION FUND vs FENUMIAI

ORAL ARGUMENT

October 15, 2020

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1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE
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THE ALASKA CENTER EDUCATION FUND, et al.,
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Plaintiffs,
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vs.
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GAIL FENUMIAI, et al.,
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Defendants.
8 _____/
Case No. 3AN-20-08354 CI
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ORAL ARGUMENT
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14 Thursday, October 15, 2020
9:05 a.m.
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16 BEFORE THE HONORABLE ANDREW GUIDI
Superior Court Judge
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CERTIFIED TRANSCRIPT

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A-P-P-E-A-R-A-N-C-E-S

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9:05 a.m.

THE COURT: This is Judge Guidi. We're on record in Case No. 3AN-20-08354 Civil. The case has a long caption, but the essence of it is the Alaska Center Education Fund, et al. versus Gail Fenumiai, et al., and the State of Alaska, Division of Elections on the defense side.

We're here now for oral argument on a pending motion for a preliminary injunction filed by the plaintiff in the case. And we have both sides; let me go through a roster of folks that I understand are on the line. Everyone is participating by telephone. We also have a lot of folks who are listening in, a media representative, and that's totally fine.

The roster that I'm covering, though, is just for those who are parties or their counsel. So let's begin on the plaintiffs' side. I understand that we have Alexi Velez, attorney for Alaska Public Interest Research Group.

Are you there, sir?

MS. VELEZ: Yes, I'm here. Ms. Velez on behalf of all plaintiffs.

THE COURT: I'm sorry, yes, it's Alexi. I misread your name. Sorry, Counsel.

MS. VELEZ: No problem, Your Honor. Thank

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you.

THE COURT: And also I think we have Kevin Feldis, attorney for Alaska Public Interest Research Group.

MR. FELDIS: Yes, Your Honor. Good morning.

THE COURT: Good morning. And I think Mr. Feldis is also -- are you attorney for Floyd Tompkins as well?

MR. FELDIS: Yes, Your Honor. We're appearing on behalf of the Alaska Center Education Fund, the Alaska Public Interest Research Group, and Mr. Floyd Tompkins.

THE COURT: All right. Thank you.

And on the defense side, I think we have Gail Fenumiai.

MS. FENUMIAI: Yes, Your Honor. Gail Fenumiai is here.

THE COURT: Fenumiai, thank you. Thank you for helping me with the pronunciation.

MS. FENUMIAI: Certainly.

THE COURT: And I encourage everyone who, if I've mispronounced your name, please don't be shy about correcting it. With my last name, I've had to go through life doing that. So I certainly understand the right to have your name pronounced as

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accurately as possible.

I also think we have Lael Harrison, an attorney from the Attorney General's office, representing the Division of Elections.

Are you there, Ms. Harrison?

MS. HARRISON: Yes, I am. Thank you, Your Honor.

THE COURT: All right. So I was planning on one hour of argument, a half-hour to each side. Plaintiff would get to go first and have a rebuttal opportunity.

So, Ms. Velez or Mr. Feldis, which one of you will be arguing, or will you both be dividing the argument today?

MR. FELDIS: Thank you, Your Honor. This is Mr. Feldis. I'll be handling the argument today. And if I understood you correctly, did you say each side will have 30 minutes and, if so, could we reserve some of that time for our rebuttal?

THE COURT: That's correct. How much time would you like to reserve?

MR. FELDIS: Could I please reserve ten minutes for rebuttal, Your Honor?

THE COURT: Not a problem. All right. We'll track your time. All right.

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And so, Ms. Harrison, you have the full 30 minutes all in one block, okay?

MS. HARRISON: Yes, thank you, Your Honor. And also before we begin, I have a procedural matter to bring up. So if we could make a little time for that.

THE COURT: All right. Let's take care of any preliminary matters before we start the argument. Ms. Harrison, you can go first.

MS. HARRISON: Yes, Your Honor. I'd like to make a motion to strike the filing of the plaintiff this morning. Maybe half-an-hour or 45 minutes ago the plaintiff filed an additional 116 pages of exhibits with a cover pleading and quite a lot of highlighting in the exhibits that appears argumentative.

Your Honor, this is the oral argument. We're at the final step in the process of deciding the plaintiffs' motion. The plaintiffs had their opportunity to present evidence. They had their opportunity to request some kind of an evidentiary hearing. And, Your Honor, I don't see anything about these exhibits that couldn't have been presented earlier. I haven't had much time to go through them, with them being filed so late, but one is dated

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April 2020. Another is dated October 8, which is the date that they filed. There's a manual here from the Division of Elections that the plaintiffs say on their cover sheet correctly they didn't get until yesterday, but that's because they did not request it until yesterday. Obviously, the defendants would have provided it any time it was requested, and when they did request it, we provided it.

So, Your Honor, this is sort of another inappropriate effort, I believe, on the part of the plaintiffs to frankly railroad this process and to, you know, present evidence so late that the Division has no time to meaningfully read it or respond to it. One of these articles is sort of in the nature of trying to be expert testimony. It's by outside researchers, and that kind of thing is just really inappropriate at this stage.

So I'd like to move to strike that.

THE COURT: All right. Let me give the other side a chance to respond.

Mr. Feldis or Ms. Velez.

MR. FELDIS: Yes, thank you, Your Honor. Let me address that. I think what we're looking at in the supplemental exhibits are mostly public records, things that are out there in the public realm, but

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that we did want to highlight for the Court and of course give the defendants an opportunity to know we'd be referencing them.

So the first one is this Absentee Review Board Manual and Procedures, which is published by the State of Alaska, Division of Elections. Unfortunately, it is not publicly available that we know about. We submitted that document with our motion, and in speaking to Ms. Harrison last night inquired whether there was an update to that. Again, not publicly available. She very helpfully told me that there was, and that's what we provided to the Court. I think everything is fairly consistent with the older version of that document, but I do think given the importance of the issue here today, that I wanted everybody working off of the most recent version so there's no concern that something material has changed that's not in the record. So that's really the first and most important document here, is this Absentee Review Board Procedures published by the Division that we have put in our supplemental exhibit this morning just so that the Court and everybody knows what we're working off of.

The other documents are similar. We have something from the Municipality, a public record, not

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readily available. Something that we just came upon ourselves. It just shows that when people are given the opportunity to cure, which they are in the municipal elections; when they are given notice of a problem and the ability to cure, they do so in a very high percentage rate. We thought that was relevant for the Court to know.

There was also some very recently published research that we've just come upon. It was just published here in October a few days ago talking about the fact that there's a lot of new absentee voters this year, and statistics show that those folks are more likely to make honest mistakes. So that's in there as well.

And then I think the last thing is just a printout of what's available on the -- from the State data in terms of this very election showing that the State is already calculating votes that are being rejected for various reasons. Again, that's just kind of live realtime data that we pulled off this morning, again, to help the conversation today.

So nothing here is presented in the spirit of ambushing anybody, of course. It's really in the spirit and in the fact of having this before us while we're doing this proceeding, you know, necessarily by

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1 telephone today so we know what we're talking about
2 when we reference things.
3 THE COURT: All right. Thank you,
4 Mr. Feldis. The Court has to grant the motion to
5 strike for the reason that is sort of fundamental to
6 any fair proceeding that -- particularly when one
7 side has ample time to prepare and file a complaint
8 with no imposed time limits. The other side is then
9 hurried by the nature of the process and by a motion
10 for expedited consideration, which was granted to
11 respond in an expedited way to -- it's really
12 important for the decision-making process that we
13 have a level playing field and that both sides are
14 working off the same -- from the same standpoint of
15 the procedural fairness of the hearing.
16 It's fundamental in the Appellate Rules and
17 in the Civil Rules that new materials raised in reply
18 are typically not allowed to be considered. These
19 are materials that should have been raised in the
20 original motion. And were this is a normal
21 proceeding, I wouldn't have any problem with
22 continuing the hearing for a period of time, but then
23 were this a normal proceeding we would probably not
24 be holding the hearing today, and we would
25 probably be -- the parties would probably be going

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1 through a period of a significant amount of discovery
2 and exploration of facts before they come to court
3 and argue the case.
4 All of that has been -- all of that typical
5 process has been truncated for the needs of this
6 case. So to inject a lot of new materials, no matter
7 how innocent they may be portrayed, raises the
8 specter that one side is being sandbagged, that the
9 motion was filed on one basis and on one basis -- one
10 set of facts, but that at the last minute the judge
11 is being asked to consider new evidence and new
12 materials that weren't raised originally.
13 To the extent that materials that may be
14 enclosed were actually included with the original
15 filing, they'll be considered, but it sounds like
16 they're all new materials. There may be updated
17 versions of earlier documents, but they're still new
18 materials; so it will be stricken for the purposes of
19 today's hearing.
20 Are we ready to proceed, or are there more
21 preliminary matters?
22 MR. FELDIS: Yes, Your Honor. This is
23 Mr. Feldis again.
24 We did give notice and, again, it was
25 yesterday, but given the Court's ruling we know

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1 Ms. Fenumiai is on the line today and I think it
2 might be very helpful to have her testify for a few
3 brief issues today. Really what I'm just trying to
4 make sure is that there's no dispute about the State
5 of Alaska, Division of Elections Absentee Review
6 Board Manual that I've been talking about. And
7 perhaps it's something that the State is prepared to,
8 you know, stipulate to. I don't think there's any
9 question that this document the State sent me last
10 night is true and accurate. I received it from the
11 State.
12 But if there's any dispute about that
13 document, then I would ask that Ms. Fenumiai be asked
14 to verify that. It is authentic, and that's the most
15 recent version of the document that governs the
16 Absentee Review Board's work.
17 THE COURT: Well, Mr. Feldis, when the
18 plaintiffs asked for a hearing, they asked for oral
19 argument on the motion. They give no indication that
20 there were any issues of fact that required discovery
21 and/or litigation or deposition for fact-finding by
22 the Court. They asked the Court based on the briefs
23 to make findings as a matter of law as to whether a
24 preliminary injunction should be ordered. Based on
25 those representations, I set aside an hour for oral

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1 argument. There is no -- there was no advance notice
2 that this would be an evidentiary hearing, and I
3 wasn't really prepared for that eventuality.
4 MR. FELDIS: Understood, Your Honor. And
5 maybe it's as simple as the State just stipulating
6 that the document that they sent to us last night is
7 true and correct.
8 THE COURT: I don't know if the State wants
9 to stipulate to anything, Counsel, but you can ask
10 them outside the presence of the Court. It's not
11 something that we need to mediate here on the record.
12 So I'm prepared to entertain the oral argument that I
13 was told was what your side wanted to have, and I'm
14 ready to proceed.
15 MR. FELDIS: Very well. Understood.
16 THE COURT: All right. Go ahead, Counsel.
17 MR. FELDIS: Thank you, Your Honor. Again,
18 this is Kevin Feldis, and I represent the Alaska
19 Center Education Fund, the Alaska Public Interest
20 Research Group, and Mr. Floyd Tompkins. Thank you
21 for taking oral argument today.
22 Democracy is hard and it can't be taken for
23 granted. We all must work hard to protect it. And
24 most fundamental and most relevant here today to our
25 democracy is the right to vote. We're here today

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1 because we are currently in a situation where many
2 hundreds of eligible, and I want to emphasize
3 eligible Alaskan voters, will be disenfranchised if
4 we don't take immediate action to provide notice to
5 those voters and an opportunity to cure missing
6 signatures or missing voter identification
7 information.
8 Fortunately, the facts show that the Division
9 of Elections already identifies these eligible voters
10 who omit signatures or voter identification
11 information. They already enter that information on
12 a daily basis into an electronic database and they
13 already notified those voters, but they notified them
14 too late. They notified them after the election is
15 over, after the votes are certified.
16 I think central to our discussion today is
17 that here in Alaska there's at least 22 days of time
18 in which the State and the Division of Elections has
19 the ability to notify voters, instead of waiting to
20 notify them during this 22-day window and provide
21 them an opportunity to correct those omissions.
22 We're not asking for any of the requirements
23 of the election to be modified. We're just asking
24 for the procedures to be put in place in a way that's
25 meaningful, in a way that protects democracy, and

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1 protects the fundamental right to vote, which the
2 Alaska Supreme Court as well as the U.S. Constitution
3 have emphasized is so very vital.
4 The U.S. Supreme Court has said there's
5 nothing -- there is more -- there is more to the
6 right to vote than the right to mark a piece of paper
7 and drop it in a box or the right to pull a lever in
8 a voting booth. The right to vote includes the right
9 to have the ballot counted, and that's Reynolds v.
10 Sims, the U.S. Supreme Court.
11 The Alaska Supreme Court has said in Miller
12 v. Treadwell: The voter shall not be disenfranchised
13 because of a mere mistake and the voter's intention
14 shall prevail. And that's what we're talking about
15 here, an honest mistake, a predictable mistake, a
16 mistake that we know will happen to eligible voters
17 during this election cycle more than ever. Due to
18 the pandemic we have an unprecedented number of
19 people voting by mail-in ballot.
20 The Division of Elections has invited mail-in
21 ballots, and their website clearly states there's no
22 reason necessary; anyone can apply. But what we now
23 know, and what the plaintiffs now know, is that these
24 votes will be rejected and they will not be counted
25 if an honest mistake is made and a signature is

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1 omitted.
2 Now, there's nothing in the remedy that's
3 being requested today that requires the Court to find
4 any Alaska law unconstitutional or to write any new
5 law contrary to what the State has asserted. In
6 fact, the Alaska Supreme Court has consistently
7 instructed that when reviewing and interpreting
8 election statutes where there's any reasonable
9 construction of a statute that can be found, which
10 will avoid disenfranchisement, the courts should and
11 will favor it.
12 THE COURT: So, Counsel, if I may interject.
13 Are you saying there's nothing unconstitutional about
14 the existing absentee ballot statutes?
15 MR. FELDIS: Only as applied, Your Honor.
16 The way it's currently applied, it is
17 unconstitutional. But when the Court can read that
18 statute and apply it in a constitutional way, as
19 we're requesting, that's what the Alaska Supreme
20 Court indicates should be done and can be done.
21 THE COURT: How long has it been applied in
22 the way it's being applied?
23 MR. FELDIS: Well, the State has put in their
24 briefing that there's been changes made to this
25 particular provision over the years, so that it has

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1 been applied in different ways including with the
2 signature requirement. But what we're talking about
3 now is an ongoing violation, an ongoing burden on
4 voters, an undue burden that's continuing. So we're
5 not looking just retroactively; we're looking
6 prospectively. And there's no question that this
7 election is unlike any other in terms of the vast
8 numbers of mail-in voters. The large majority of
9 them are new and we know that the new voters are much
10 more likely to make mistakes, honest mistakes, than
11 folks who have done this before.
12 I think it's helpful to look at what's not
13 disputed here. The way things currently work, what
14 the facts are, what's undisputed as a way of
15 understanding really the request being made. It's a
16 very, very slight administrative request to the
17 Division of Elections. It's undisputed that the
18 Absentee Review Boards begin work 7 days prior to the
19 election and continue until 15 days after the
20 election. That's the 22-day window that we're
21 talking about.
22 It's undisputed that the Absentee Review
23 Boards currently in their current training and
24 capabilities review the ballot envelopes and make and
25 accept or reject determination based upon whether the

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1 voter has signed the envelope and included voter
2 identification information. We know this year, after
3 the recent Supreme Court decision, that the witness
4 of signatures will not be required for this election
5 only.
6 But we know the Absentee Review Board makes
7 that initial decision and they record that
8 determination using a code. In this case it would be
9 the V code in the Voter Registration and Election
10 Management System known as VREMS that the Division
11 uses. They're already doing that, and they're doing
12 it on a daily basis as the absentee ballots are
13 reviewed starting 7 days before the election.
14 Not only that, but reports are generated on a
15 daily basis, and those reports, as we see from the
16 Absentee Review Board Manual that was submitted and
17 as I said there's an update, but it hasn't changed in
18 any parts that we're talking about today, a detailed
19 report is generated every day that includes the
20 voter's name, the voter's address, and the reason the
21 ballot is rejected. All that information is already
22 being inputted; no new training or procedures are
23 required.
24 The State is already notifying voters if
25 their ballot is rejected as required by statute, but

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1 they're doing it too late. We're asking here today
2 that that process be moved forward, that those
3 notifications be mailed out; the information is
4 there; the envelopes can be printed. We're asking
5 that that be done in a timely manner.
6 THE COURT: Now, is there, if I may ask, a
7 basis in the statute, any express language that
8 requires the notification be at some particular time?
9 MR. FELDIS: Yeah, the statute uses language
10 that says it must be -- depending on whether it's a
11 general or a primary election, between 10 days -- not
12 less than 10 days after the results of the primary
13 and not less than 30 days after certification results
14 of a general or special election.
15 THE COURT: Okay. And is the Division --
16 you're not claiming that that language is
17 unconstitutional?
18 MR. FELDIS: Correct, Your Honor. What's
19 unconstitutional is to apply it in a way that doesn't
20 provide an opportunity, that waits too long to
21 provide that notice.
22 THE COURT: So you're saying the statute
23 deadline should be earlier than what the statute
24 actually provides?
25 MR. FELDIS: Well, the statute deadline

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1 should be earlier. I think what you're getting at
2 is: Is there a need to declare this provision
3 unconstitutional? No. So this is a rolling
4 deadline. If somebody's ballot is obviously late,
5 they're going to be given notice that their vote
6 wasn't counted because it was late. And we're not
7 asking that that vote be counted.
8 If there's -- there's a whole slew of reasons
9 for rejecting ballots. People might not register to
10 vote and they might have, through some mechanism,
11 voted. There's a number of reasons and the ballot
12 manual gives all the codes. We're talking about
13 something very specific here.
14 It's the missing voter signature and the
15 missing voter ID number, whether it's a date of birth
16 or the last four of the Social Security number.
17 We're asking that be done beginning on a rolling
18 basis to give that opportunity for that vote to be
19 counted. So it's really an as-applied concern that
20 we have here.
21 I'm not sure if that answered your question,
22 Your Honor.
23 THE COURT: Thank you. But just to clarify,
24 then, in order to grant the relief you request, I
25 would need to specify a particular date by which the

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1 Division of Elections -- I would need to accelerate
2 the statutory date, let me put it that way, that's
3 currently provided for by which the Division of
4 Elections notifies absentee voters that their ballots
5 have been -- that their votes have been, because of a
6 formality or a defect, have not been counted, right?
7 MR. FELDIS: There would need to be some
8 direction to the Division, correct. So it wouldn't
9 require calling the statute unconstitutional. We're
10 challenging -- we're not challenging that the statute
11 says you must be notified by X date. We're saying
12 that failing to provide notice and cure of a rejected
13 ballot on the basis we're alleging, burdens the right
14 to vote to the extent that it's unconstitutional and
15 doesn't provide procedural due process. So, yes,
16 there would need to be some --
17 THE COURT: I guess I'm not following how it
18 burdens the right to vote. People can vote in
19 person. They can vote by mail. They can vote
20 absentee. And the Department, does it not, have --
21 and the statute lays out formal requirements for each
22 process, but today we're talking about absentee
23 voting. So the voter follows a process. They submit
24 a vote.
25 How exactly are they disenfranchised?

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1 MR. FELDIS: Well, then we're talking about
2 the balancing test, which we can get into. So we
3 have to balance the magnitude of the injury, which
4 means their vote will not be counted. These are
5 estimated 500 Alaskan voters who are eligible to vote
6 whose votes will not be counted in this election.
7 That's the injury here weighed against the interest
8 of the State in taking these extra steps, or putting
9 it another way: What legitimate State interest is
10 there in not putting in a notice-and-cure mechanism
11 to count these votes? That's the balancing test that
12 applies. What I've laid out here and what the --
13 THE COURT: And what about the argument of
14 the State that that is a policy decision for the
15 Legislature?
16 MR. FELDIS: Well, we're not talking about a
17 policy decision. We're talking about protecting and
18 not placing undue burden on the right to vote, the
19 constitutional and protected right to vote, and
20 that's what the Alaska Supreme Court has said. We're
21 not -- we're trying to get every vote the opportunity
22 to be counted. We must construe the statute in a way
23 that preserves that right.
24 We know that Alaska voters, and this is a
25 quote from Miller v. Treadwell: They arrive at the

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1 polling places with a vast array of background and
2 capabilities. And the due process that we're talking
3 about here is not one that places fault on someone
4 for making what is a predictable error, an omission
5 that we know happens, in a way that the State can
6 easily correct. So that is a burden on the right to
7 vote.
8 The goal here, and I think this is universal,
9 but certainly supported very broadly by the Alaska
10 Supreme Court, is to count every vote we can. Not to
11 put in -- not to withhold from taking steps that are
12 going to discard votes, that are going to keep them
13 in the trash bin, and that's what's happening here.
14 We know we can do something about it. The burden is
15 very, very slight. So if we can do anything that
16 avoids even one person's vote from being rejected --
17 THE COURT: Why don't you describe the
18 burden, Mr. Feldis. What do you -- what is your
19 understanding of the burden in this case?
20 MR. FELDIS: Well, the burden on the State is
21 very slight. We're not talking about throwing -- is
22 that what you're talking about, or the burden on the
23 voter, Your Honor?
24 THE COURT: Well, the burden of implementing
25 the curing mechanism that you see.

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1 MR. FELDIS: Yes. The burden is very, very
2 slight. We're not talking about taking away any kind
3 of protections here in terms of making sure that the
4 voter is who he or she says she is. We're not
5 talking about putting in new policies and procedures
6 or hiring new workers.
7 What we're talking about are three things,
8 three options, and each one of these is an option
9 available. No. 1 is simply mailing out that --
10 mailing out the notice immediately. That's as simple
11 as hitting mail merge on a daily basis. And if you
12 take 500 ballots and divide that by the 22 days that
13 are available, these ballots are already coming in,
14 and they're coming in on a rolling basis, that's
15 probably something like 25 ballots a day that are
16 being put into a pile and entered into the VREMS
17 system already with the code not to be counted for
18 missing signature. It's simply --
19 THE COURT: Well, right now you're arguing
20 factual matters. Do we have evidence -- any sworn
21 testimony in the record or admissible evidence to
22 support that?
23 MR. FELDIS: Yes, Your Honor. It's the
24 Absentee Review Board Division of Elections Manual
25 that we did submit as Exhibit No. 1 to our motion.

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1 It spells out those procedures in the manual.
2 And I would also refer to the affidavit of
3 Julie Hussman that is our Exhibit 3, which is --
4 she's the elections supervisor for the Anchorage
5 Office of the Division of Elections for the State of
6 Alaska talking about the process of reviewing
7 ballots. The board checks to see if the ballot was
8 signed by the voter and logs it as missing. So this
9 is the procedure outlined in the evidence before the
10 Court.
11 And as I said, I think these are public
12 records as well. So we're not asking the Court to
13 rely on anything that isn't factual here. So the
14 burden is very minimal, to send these envelopes and
15 notices to voters immediately. The Division already
16 has an affidavit certification prepared that they use
17 for people who receive their ballots electronically
18 and that's also admitted.
19 If you'll remember, there was an affidavit by
20 Ms. Amy Olson, who is a registered Alaska voter
21 currently in the Air Force Reserves. And she
22 received her absentee ballot electronically and she
23 submitted the voter certificate and identification
24 form, which she sends in separately. It's not
25 actually on a ballot envelope.

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So the form is already there. The ability to mail notices is already there. We saw just last week that the Division of Elections has the ability; they mailed out 4,800 new notices when they left the candidates' name off the election pamphlet. We're talking about 500 letters over the course of 22 days as one of the remedies.

Second is if you log on right now to my Alaska Vote dot Com, you will be able to see the status of your vote. That's statutorily required as well. That's something that the Division could simply update. Voters can log on and see whether there was a problem with their ballot, and then they could download the form and submit it. So, again, not overly burdensome.

And the third way is just making it available to public record searches such that any time after election day people can ask the Division for a list of the names and addresses, which is statutorily required under the public access laws, to be provided, and as long as that's provided timely, then there's lots of very helpful groups that will notify the voters if they don't look themselves, that their vote is not being counted because they forgot to sign or include the voter identification information.

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So these are not high burdens on the State. There's at least three options there, all of which would be good and important, but we shouldn't let perfection get in the way of implementing a reasonable solution that will allow votes to be counted, votes that could very well matter in this or any other election.

I think that's a clear message of what the Alaska Supreme Court has said. We shouldn't be valuing one person's vote over another. We shouldn't be construing a statute to disenfranchise voters.

So what's the interest of the State? In doing that, there really isn't one. The administrative burden here is low. There's no new staff that need to be trained, no nuanced policy decisions, no new programs; no laws will be violated by ordering this relief. It's, in our view, a very common-sense process that fits seamlessly into what's already being done.

I'll note in Ms. Fenumiai's affidavit where she indicates, look, you know, they're very busy this time of year. Nothing in there says that this is impossible. Nothing in there says that this can't be done. We're talking about a few extra minutes each day by the Ballot Review Boards. I venture to guess

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that if we ask the members of the Ballot Review Board, the folks who are separating out these ballots and entering in the information right now into the computer system every day that they're working, if we ask them if they were willing to take a few extra minutes every day to make sure that someone that they know could have their ballot counted who forgot, honestly forgot to put a signature, an honest predictable mistake, they would probably say yes. That's my belief.

So when we look at the burdens here and we balance them out, I think clearly it weighs in favor of enfranchising voters and having their votes counted.

I think I've taken my 20 minutes, Your Honor.

THE COURT: All right. Thank you.

MR. FELDIS: And I'd like to reserve the remaining time. Thank you.

THE COURT: Ms. Harrison, will you be arguing for the State?

MS. HARRISON: Yes, I will, Your Honor.

THE COURT: All right. You have the floor.

MS. HARRISON: Thank you, Your Honor. Again, just to introduce myself more formally, I'm Lael Harrison with the Department of Law. I also have my

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co-counsel, Tom Flynn, on the phone and, as you know, Division Director Gail Fenumiai is also present for the Division of Elections.

Your Honor, the plaintiffs are not asking this court to strike down a law as unconstitutional; they're asking this court to write a new one. As Mr. Feldis was just very clear, they're not asking this court to eliminate the requirement that a voter correctly fill out their certificate, sign the oath, provide identifying information. They're not asking for a court order requiring the Division to just count blank ballots.

They understand and they agree that having those procedures, requiring voters to sign ballots and provide identifiers, are important anti-fraud measures that are justified by the State's very legitimate interest in a secure election. And so that's the end of the inquiry, Your Honor. That is the end of the Anderson verdict test. That is the test of whether a statute is unconstitutional.

Is the statute on the books unjustified? And here the statute on the books is plainly justified by State interests and that's all there is for this court to do today. This court does not have the power to decide that a different law might be better

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1 or the power to conduct an inquiry into how to
2 improve the system. Those are questions for the
3 Legislature, and there's a public and politically
4 accountable process that that goes through. But
5 that's what the plaintiffs are asking this court to
6 do.
7 And, Your Honor, I'd also like to point out
8 that motion for a preliminary injunction is also
9 unusual in that it's so very vague. Your Honor, it
10 seems that the plaintiffs are asking the defendants
11 and this court to decide to tell them what it is
12 they're asking for. You know, to go out there and do
13 the research about what it is that all other 50
14 states do and decide whether any of those, you know,
15 might be a good idea to adopt here in Alaska and see
16 if any of those would mesh with the existing system
17 or look into, you know, how can we reprogram or
18 change what we're already doing.
19 Rule 65, which is the Rule of Civil Procedure
20 addressing preliminary injunctions, requires
21 preliminary injunctions to be specific an detailed,
22 but here the plaintiffs are sort of asking the
23 defendants and this court to fill in those specifics
24 and to fill in those details for them.
25 THE COURT: Ms. Harrison.

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1 MS. HARRISON: Yes.
2 THE COURT: I guess I want to just raise a
3 consideration that wasn't touched upon and get your
4 take on it --
5 MS. HARRISON: Okay.
6 THE COURT: -- as an intellectual exercise,
7 if I may. With regard -- I was trying to think of an
8 analogy and it's not a great -- it's not a perfect
9 analogy, but, I mean, to some extent the theme here
10 from the plaintiffs is that voters that fail to
11 follow the rules established by law and the Division
12 are being, quote, disenfranchised, and they should
13 have a chance to cure within a specific time frame.
14 And I'm thinking: What other situation do we
15 have where a person might seek some -- to exercise
16 some civic obligation or request something from the
17 State where you have certain formal requirements.
18 And the most obvious one I can think of is the
19 application for a PFD. In regard to an application
20 for a PFD, which also can be rejected for a lot of
21 different things, substantive and procedural
22 failings, the State -- the plaintiffs might argue
23 that, gee, look at that situation, Your Honor. In
24 that case the State does kind of, quote, work with,
25 you know, with you if your original application is

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1 defective or lacks information. But I don't know.
2 It seems that maybe the obvious distinction,
3 or one of them, is that the State has months to
4 process those. So apart from that comparison, I'm
5 not saying it's a great comparison, but it does evoke
6 interest. Apart from that, what considerations
7 prompt the -- what is the importance to the State, to
8 the electorate, to the Division of time in this case?
9 I mean, it seems that we're all racing
10 against the clock or we have some time limit here.
11 What is the issue with regard to that? What are the
12 stakes with regard to time limits of election results
13 and counting?
14 MS. HARRISON: Sure. Of course I'll answer
15 that question, but first I wanted to just make a
16 point, Your Honor, about this word
17 "disenfranchisement" that the plaintiffs have used
18 and that you just used in a question. I think we
19 have to be very careful about that.
20 Disenfranchisement is not a voter's own
21 error. We know that from the United States Supreme
22 Court, and we know that from the Alaska Supreme
23 Court. I'll point Your Honor to the case of Willis
24 v. Thomas, which is the Alaska Supreme Court's
25 recount case. That very clearly held that a voter

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1 who had made an error in her registration was not
2 entitled to try to cure it after the deadline and
3 that her vote would not be counted. And the court
4 said: There has to be deadlines. There has to be
5 limitations on this process.
6 And the U.S. Supreme Court has said the same
7 thing. You know, I haven't thought of any
8 hypotheticals really outside of the voting context,
9 but certainly we all understand that the polls close
10 at a certain time, and if you lose track of time and
11 you show up at the polls at 8:30 and they've already
12 closed and there's no line, you don't get a do-over.
13 So especially in the elections context, which is
14 everything is happening in a very compressed time
15 period, deadlines matter, and doing something
16 correctly in the time period matters.
17 So let me talk about this 22-day window,
18 which is I think what you're asking about, Your
19 Honor. What is the State's interest in time here?
20 How does this all work? Your Honor, I do want to say
21 that I feel Mr. Feldis just sort of testified a bit
22 and provided a lot of supposed factual information
23 outside of his personal knowledge about how this all
24 works. But of course, Your Honor, you need to look
25 at what's in the statutes and look at what the

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1 information -- the sworn testimony in the record from
2 people who actually have personal knowledge about how
3 it works at this time.
4 So what's happening in this 22-day window?
5 The Division right now is still certifying the
6 results of the REAA elections, so that that process
7 is still under way and not quite yet complete. The
8 deadline to apply for absentee ballots has not yet
9 passed. That's on the 24th. So the Division is
10 still receiving applications and processing those as
11 well as sending out new ballots while at the same
12 time voted ballots are already coming back in. So
13 the volume of voted ballots that's going to be coming
14 in is going to continue to increase over time. Let
15 me just point out that that continues well past
16 election day because there are always people that
17 vote their ballots on, you know, the 1st or the 2nd
18 or the 3rd even though the post office recommends
19 that folks do it earlier. So those end up coming in
20 after election day. So that process is going to be
21 going on for a long time.
22 You know, it is true that as ballots come in,
23 the Division is logging them, but it is very
24 important, Your Honor, for you to be aware of the
25 statutes regarding the Absentee Ballot Review Board

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1 process. The folks logging ballots have absolutely
2 no authority to make final decisions about whether a
3 ballot is counted or not, and they do not make final
4 decisions. The Absentee Review Board is a very
5 structured process. It's bipartisan. I believe it
6 has four people on it. They work with the Division
7 supervisors and they are the only people that have
8 the authority to make a decision about whether or not
9 a ballot is rejected. So we've got these things
10 going on right now.
11 The Division is also getting ready to start
12 with the early voting and absentee in-person voting
13 process. That starts next Monday. I believe there's
14 about 140 locations that are being set up for that
15 right now. Getting materials out to those locations.
16 Making sure that they've got folks to work those
17 locations, and making sure they've got hand sanitizer
18 and masks and all this additional material that's
19 required this year.
20 Also, Your Honor, I hope very much you get a
21 chance in this expedited schedule to read Exhibit
22 E to the affidavit of Gail Fenumiai. It's a letter
23 that she provided, not even in the context of this
24 litigation, wholly unrelated, to a State senator
25 about what's going on at the Division right now with

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1 this process of providing in-person polling. I think
2 it really illustrates the extra challenges that the
3 Division is facing this year setting this up,
4 recruiting poll workers, dealing with last minute,
5 you know, changes and resignations, and pulling in
6 new people and training new people. It's a very
7 demanding job, and it's mostly being done by the
8 high-level supervisors. This isn't work that can be
9 done by the administrative staff. So that's 141 --
10 excuse me -- 441 locations that they're working to
11 get set up and up and running for that. So that's a
12 very time-consuming process.
13 And then of course once -- that kind of gets
14 us out for the next two weeks and we've got the
15 Absentee Ballot Review Boards are going to start
16 meeting the week before the election. That's also a
17 very time-consuming process for Division staff and
18 especially again the managerial-level folks. So once
19 that process starts, they're going to be really
20 engaged with working with those Review Boards on
21 reviewing what ballots should, in fact, be rejected
22 and accepted.
23 Then this kind of gets us up to election day
24 here and what's going on -- you know what's going on
25 on election day, and of course after election day the

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1 counting of the in-person ballots, but you also have
2 to remember, Your Honor, there's the question ballot
3 process. There's a separate Question Ballot Review
4 Board, which is a similar process of the Absentee
5 Ballot Review Board. So the supervisors are also
6 going to be working with the Question Ballot Review
7 Boards on their inquiry about which of the question
8 ballots should be counted. So that's going on.
9 Then after the election, the Division is also
10 going to be going through a process of verifying the
11 absentee ballots that they have determined should be
12 counted to make sure that the voter didn't vote some
13 other way, in person or early. So that will be
14 another process that's going on with these absentee
15 ballots before they're actually counted. Then of
16 course we get to the part where we're counting those
17 ballots, the absentee ballots.
18 So there's a lot happening, a lot of layers,
19 one on top of each other, a lot of extra challenges
20 this year related to the pandemic. This is a very
21 tightly packed season, Your Honor. I think that
22 Director Fenumiai's affidavit is very clear. She
23 says: Look, if I'm going to pick up a new project
24 right now, I'm going to have to put something else
25 down. If I am devoting my --

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1 THE COURT: Can I ask a clarification
2 question, Ms. Harrison?
3 MS. HARRISON: Yes.
4 THE COURT: I could have asked this of
5 Mr. Feldis as well, but just to be clear.
6 Are there -- just so I have the timeline
7 straight, are some absentee ballots -- are the
8 defects in some absentee ballots, let me put it that
9 way, detected prior to the election and, if so, are
10 any of those notices sent out prior to the election?
11 MS. HARRISON: Your Honor, the Absentee
12 Ballot Review Board is the one that makes that
13 decision about whether there are defects in the
14 ballot, and that is not sent out prior to the
15 election.
16 Let me talk about something there. Let's
17 just go through the statutes. Let's just take a
18 moment to work right through the statutes, because I
19 think it's important to understand what these notice
20 processes are and what the statutes really provide
21 for here.
22 THE COURT: Go ahead. I have the statutes in
23 front of me.
24 MS. HARRISON: Okay. So if you wouldn't mind
25 turning to Section 15.20.030.

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1 THE COURT: We're there.
2 MS. HARRISON: Okay. So as you know, we
3 already went through in our briefing Section B(1):
4 The absentee ballot may not be counted if the voter
5 has failed to properly execute the certificate. The
6 certificate is the one described earlier in 030.
7 But let's now go to the notice provisions
8 that are in Section (h) and (i) and (j). So
9 (h) says: The director shall prepare and mail to
10 each absentee voter whose absentee ballot was
11 rejected under this section.
12 So let's look at that. Was rejected, not may
13 be rejected, not is considering rejecting. It says:
14 Was rejected. So this notice provision contemplates
15 that the decision is already made and it does not
16 contemplate a cure period.
17 Now let's look at "under this section". Was
18 rejected under this section. Well, what's "this
19 section"? What's the title of this statute? It is:
20 Procedure for district absentee ballot counting
21 review, and it starts out: The district Absentee
22 Ballot Counting Review Board shall. So this is
23 contemplating that, again, only the board can make
24 that decision.
25 So the plaintiffs' suggestion that somehow

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1 during the ballot-logging process, you know, on a
2 rolling basis before the Absentee Review Board meets,
3 that the statute would allow for, you know, notice to
4 be sent out on that schedule; that's incorrect.
5 Was rejected by the Absentee Ballot Counting
6 Review Board. Of course we wouldn't want to bypass
7 that very important statutory process of having the
8 review board review people's ballots. We don't want
9 the folks -- the administrative folks who are just
10 logging them to be the ones making final decisions.
11 Now let's go down to (i) here. So that was
12 the notice. Have to send notice the absentee ballot
13 was rejected under this section. Then: The director
14 shall mail the materials not later than 10 days after
15 completion of the review of the ballot. So not later
16 than 10 days after. So this does, like you were
17 saying, Your Honor, put an outer limit on when they
18 can be sent.
19 This is interesting. Ten days after for the
20 primary election, but then the next section is 60
21 days after the general election or a special runoff
22 election if there's no further election afterwards.
23 So it's the same thing. If this were a primary and
24 we've got a general coming up soon, or if this is a
25 special election and there's going to be a runoff

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1 coming up soon, you need to provide the notice at
2 least 10 days after so the people have a chance to
3 get it right for the next election.
4 That's what this is saying, but if it's a
5 general election or a special election with no runoff
6 and there's not -- and there's going to be another
7 election coming up soon, then the Division has more
8 time than this 60 days. So this is clearly aimed at
9 making sure that voters are able to get it right for
10 the next election.
11 Now, to look at (j), and this is very -- an
12 interesting piece of drafting; (j) says that the
13 Director has to make available a free access system,
14 and then the final line says: The Director shall
15 make this information available through the free
16 access system not less than 10 days after
17 certification of the primary, 30 days after
18 certification of the general.
19 Not less than, so, in fact, it would be
20 contrary to this law as it is written to have the
21 online system have this information 7 days after
22 certification or any time prior to certification.
23 So, in fact, because of this interesting drafting of
24 not later than in (i) and not less than in (j), it
25 appears that the Legislature intended the online

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1 system to be one for future reference and not one
2 that would be -- you know, happening in that time
3 frame directly after the election.
4 Your Honor, it was a long answer, but I hope
5 that it helped address your question about timing.
6 THE COURT: Thank you. I appreciate it.
7 Thank you, Counsel. I didn't want to sidetrack you.
8 MS. HARRISON: Sure.
9 THE COURT: So in regard to the original
10 question --
11 MS. HARRISON: Yes.
12 THE COURT: -- because the impression -- and
13 maybe I'm getting the wrong impression, but the
14 impression I got, my initial impression from reading
15 the original brief, is that the Division is already
16 notifying some -- and this may be incorrect and it
17 may be just a misimpression -- but that the Division
18 is already notifying some absentee voters that their
19 ballots have been rejected and in time for them to
20 come in and fix it, and that the scope of the relief
21 being sought is to just expand it to all absentee
22 voters.
23 MS. HARRISON: That is not correct, Your
24 Honor.
25 THE COURT: All right.

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1 MS. HARRISON: That is not correct. Perhaps
2 you got that impression because the Division already
3 sent notice to voters whose primary election ballots
4 were rejected. My understanding is that is the
5 situation of Mr. Tompkins, that he did not have his
6 ballot witnessed in the primary election when that
7 requirement was still in force. So the Division on
8 September 9th sent him a notice that his primary
9 ballot had been rejected.
10 Now, so that's the only -- so that is the
11 post-election notice is the only -- so there's no
12 situation here where some voters are getting
13 preelection notice that their ballots are rejected.
14 So I hope that clarifies that, Your Honor.
15 THE COURT: Thank you. Appreciate it.
16 MS. HARRISON: Yes. And Mr. Feldis talked
17 again a lot about something which is not really in
18 the record. I certainly, you know, request that Your
19 Honor not rely on that until you've had the
20 opportunity to have those full evidentiary hearings
21 and have a discovery process about it and get
22 information about it from the folks who really know,
23 which is this ballot logging process.
24 I believe that it is sort of basically in the
25 record just that there is a process of logging

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1 absentee ballots as they come in. To keep on top of
2 that works so that by the time the Absentee Ballot
3 Review Board starts, everything has -- the basic fact
4 that the voter's ballot has been returned is already
5 in the system.
6 Now, Mr. Feldis has said a lot of stuff about
7 what those folks do, what codes they put in. Your
8 Honor, you've got to wait until you've got the
9 evidentiary record, until you've got the testimony of
10 the people who really do that work, and who really
11 oversee that work, and who really work with that
12 system. But I think the important thing that is in
13 the law that you must be aware of is that only the
14 Absentee Ballot Review Board makes any decision about
15 whether a ballot will be rejected. Loggers have no
16 legal authority to make those decisions. It's just
17 an administrative process.
18 This is such a difficult oral argument, Your
19 Honor, because we haven't gone through all those
20 evidentiary processes. I think it just really
21 illustrates why this is not a proper preliminary
22 injunction order to enter and why this, you know,
23 this court is not in a position to really make an
24 informed decision about this case in this incredibly
25 rushed schedule.

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1 You know, there's no evidence in the record
2 and no one has had any opportunity to give evidence
3 or to consider a lot of the things that Mr. Feldis
4 was saying. You only can create a mail merge or
5 there wouldn't be any new need for programming. We
6 don't know that. Part of the reason that we don't
7 know that is because the plaintiff never, until
8 today, never said you wouldn't need to do any new
9 programming or you could just create a mail merge.
10 If their original motion had been specific
11 about exactly what they were asking for, then we
12 could have put specific information in the record
13 about one particular method or another particular
14 method. But the fact that the preliminary injunction
15 motion was so very vague means that the Division
16 couldn't meaningfully respond on a detailed level
17 with facts about any particular process or, you know,
18 request that the plaintiffs might be making.
19 So I think that goes back to the point about
20 Rule 65 that I was making as we started out, that
21 this is a very strangely vague request, and the
22 plaintiffs are asking the defendants to sort of
23 figure it out for them and suggesting it wouldn't be
24 difficult, but without actually saying what "it" is,
25 what it is that they want, you know, how exactly they

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would want it to work.
I think that goes back also, Your Honor, to the fact about the questions that you were asking earlier about the timing of this. There's actually no reason, Your Honor, for this incredibly compressed time frame. This basic requirement that a voter complete the certificate, sign, provide identification information, have a witness in other years, but this one has been on the books, as far as I can tell, since at least 1980, probably earlier.
Mr. Feldis suggested there's been some recent changes. The most recent change to any of these parts that we're talking about, Your Honor, I believe was made in 2003 and that change was to Section 081(f), but in a very minor way. It changed in -- if you go back and look at the statutory history, before 2003 (f) said: The Director may require a voter casting an absentee ballot by mail to provide proof of identification. And it changed to: The Director shall require a voter casting an absentee ballot by mail to provide proof of identification.
But the basic -- so that's the only change that I'm aware of in the last 20 years. Certainly the process for how it's been implemented has not changed at all recently. In fact, the details --

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excuse me -- the details as statistics about what ballots are rejected every year has been made available with the election results on the Division's website, I think, since 2016. So there's nothing here that's been cloak and dagger or mysterious about what's going on.
Absentee voters have been receiving their notices of rejected ballots for years and years. Nothing being done differently this cycle or recently.
THE COURT: Thank you, Ms. Harrison.
MS. HARRISON: Your Honor, I'm about at my half-hour. Unless you have some more questions for me, I'll just conclude briefly.
THE COURT: I don't have any questions at this time. Go ahead.
MS. HARRISON: All right. Then, Your Honor, I just want to recap sort of the legal hurdles here that the Division believes that the plaintiffs have failed to clear and the multiple reasons, Your Honor, for denying their motion for a preliminary injunction.
The first is that it's too late, as we were just discussing. This is a statute and a process that's been around for years and years. There's no

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need for this judicial fire drill of everyone leaping into action during an incredibly packed busy time for the Division of Elections.
Another reason is Rule 65. What they propose is too vague and nonspecific. Your Honor, Rule 65 requires the plaintiffs to post a bond to cover the costs associated with a preliminary injunction, but we can't even figure out what those costs might be because we don't know what it is that they want the Division to try to do in any specific way that would allow us to say, you know, printing a mailer would cost X much, or hiring somebody to reprogram this machine would cost X much. We don't have that kind of detail to work with, and that's part of the way that this has violated Rule 65.
Then to the merits, Your Honor, which we didn't spend a lot of time talking about, but is very well covered in the brief. On the balance of hardship, Your Honor, as you correctly pointed out, having to fill out a very simple form correctly is not an irreparable harm. This is a very plain, very simple requirement, very clearly explained in the instructions and by the Division of Elections. Any voter who is confused about the requirement or uncertain of what to do, there's contact information

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on the instruction sheet. They can call the Division of Elections and get more assistance.
If there are still concerns that they won't be able to get the process of filling out that certificate correctly, there are lots of other ways for them to vote. That person can still vote early, vote absentee in person with the assistance of an absentee voting official, vote at the polls. If a person has a difficulty with it due to a disability, they could get a special needs representative. There's lots of different ways to fulfill that right to vote.
And then finally, Your Honor, on the question of have the plaintiffs established probable success on the merits? As I began this argument, this statute passes the Anderson verdict test requirement for constitutionality. It's a very simple test. It's very simply completed in this case. The requirement that's on the books is justified by the State's needs to prevent fraud and ensure an orderly and efficient election.
Now, the plaintiff may have some good policy arguments for why a different system would be a good idea, but those policy arguments are for the Legislature. They're not for this court. This court

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1 shouldn't be holding committee hearings about, you
2 know, how the system should work and what we might do
3 differently and how it might be improved. There's a
4 process that exists for that in the Legislature.
5 So, Your Honor, the Division respectfully
6 requests you deny this motion for preliminary
7 injunction. Put this matter on for the regular
8 process of discovery and briefing on the regular time
9 frame after the election.
10 Thank you.
11 THE COURT: All right. Thank you,
12 Ms. Harrison.
13 Mr. Feldis, you have your -- I think you
14 reserved 10 minutes. So it's all yours.
15 MR. FELDIS: Thank you, Your Honor.
16 Your Honor, the only thing that's too late
17 here is it's too late to wait. This is
18 unprecedented. We are estimating that there's going
19 to be 500 eligible Alaskan voters whose votes will
20 not be counted. The State has absolutely -- in all
21 of those 30 minutes they have not articulated any
22 legitimate State interest in failing to count those
23 votes.
24 Ms. Harrison just said preventing voter
25 fraud; that's not an issue in this case. Nothing

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1 being suggested impacts voter fraud issues. That's a
2 red herring here.
3 We're not asking that any requirements be
4 removed. We're just asking that an additional due
5 process requirement be allowed.
6 So what has the State said is their interest
7 here? They haven't. What is the legitimate State
8 interest in preventing voters from voting? There is
9 none. The Alaska Supreme Court in Miller
10 v. Treadwell was very clear. No voter shall be
11 disenfranchised because of a mere mistake. That's
12 what the State is doing here. They're blaming the
13 voter for mistakes and saying: Well, you know, you
14 should have known better. That's not how our system
15 of government works, nor how it should work, and
16 that's not how the due process clause works, nor how
17 the courts have ever interpreted the due process
18 clause.
19 Due process protections don't blame the
20 victim, but that's what the State is trying to do
21 here. They're blaming voters who make honest
22 mistakes that are predictable --
23 THE COURT: Excuse me, Mr. Feldis. I'm
24 sorry, I just had to interject. When you say "blame
25 the victim", in what way are they a victim?

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1 MR. FELDIS: Because they're eligible voters.
2 They've taken every possible step to have their vote
3 count, and when they sealed the ballot -- they filled
4 out the ballot. They did it in time. They
5 registered to vote. When they put the cover down and
6 licked the outside, they didn't sign the outside of
7 that envelope.
8 THE COURT: All right. But you're not saying
9 it's because of some mistake the State made?
10 MR. FELDIS: It's because what the State is
11 not willing to do, and it has no legitimate interest.
12 It's putting an undue burden by not giving a cure.
13 THE COURT: Well, I don't want to confuse
14 things. I'm just separating cause and effect here.
15 There's no claim in this case -- I mean, one of the
16 points Ms. Harrison made is that these are voter
17 errors, and there's no claim that these are -- that
18 the initial failure to comply with the requirements
19 are State errors.
20 MR. FELDIS: No, but that -- I think we have
21 a false -- correct, Your Honor. But what I'm trying
22 to point out is that's not the test and that -- while
23 the State is throwing out there that there should be
24 a difference between something that the State did or
25 failed to do and something that the voter did or

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1 didn't do, that's not the test for due process. The
2 test is: What is the burden on the State for -- why
3 would the State burden the voter in this way to
4 exclude those votes? So that's really not the
5 analysis that --
6 THE COURT: Well, what if a voter doesn't
7 register at all? Does the State have an obligation
8 to go knock on their door and register them?
9 MR. FELDIS: But that's not the situation
10 here. These people have already registered.
11 THE COURT: Of course it's not the situation,
12 but you were saying there's an affirmative duty on
13 the State to do something to cure a voter's --
14 something the voter has not done.
15 So how far does this go?
16 MR. FELDIS: Well, in this case I guess I
17 would have to point to what the Alaska Supreme Court
18 said, that we don't want to disenfranchise voters
19 because of mere mistakes. So in that case, of course
20 we all know it was -- you know, did somebody spell a
21 name correctly? Did they give an abbreviation or
22 initials? And the Court was clear. Look, if
23 somebody made a mistake, we're not going to discount
24 their vote. We understand there have to be rules in
25 place, deadlines in place for mailing votes, but here

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1 this is a correctable situation.
2 The line could be eligibility to vote. If
3 you didn't register, you're not eligible. If you're
4 not eligible for some other reasons, there's lines
5 that can be drawn here that don't unduly burden
6 voters. Here, what would be the legitimate State
7 interest in not taking these extra steps?
8 THE COURT: Well, I think that's what the
9 State is arguing. It's not my job to draw the lines
10 and, in fact, it's not just not my job, it would be
11 improper for me to do so. That's the State's
12 argument.
13 MR. FELDIS: Right. And what we're saying is
14 they haven't addressed the clear Alaska precedent
15 here from the Alaska Supreme Court, Parr v. Thomas,
16 Miller v. Treadwell, which says just the opposite.
17 And the State has no argument against those. There
18 are numerous cases around the country that Your Honor
19 can look to to support reading the statute so it
20 doesn't place an undue burden on the right to vote
21 and so that it doesn't deny due process of law.
22 So we're not alone here. We're not on the
23 cutting edge. We're well within what the Alaska
24 Supreme Court said we should be doing. And the fact
25 that this has never been challenged before is really

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1 respectfully neither here nor there. We're in a
2 different situation than we were ever in before. The
3 magnitude is different. It's now front and center.
4 It's an ongoing harm. And that's what the law says,
5 that's how the due process clause is interpreted.
6 The fact that this could have been corrected
7 before or the fact that it was never challenged
8 doesn't change anything. There's lots of
9 constitutional violations that have happened over the
10 years that people have challenged and it's not of any
11 moment to say you could have come forward earlier.
12 There's still time and I wanted to address
13 that, Your Honor. I think the State is arguing that
14 we're asking for something different than we really
15 are. The Absentee Review Boards begin work 7 days
16 prior to the election. That's the time period we're
17 talking about here. Until 15 days after 22 days, the
18 Absentee Review Boards are already doing this work.
19 They're already separating out the ballots. We're
20 not asking for anyone else to get involved. There's
21 no new employees or training.
22 The people already designated with the
23 authority to separate out the ballots and enter the
24 information into the system, if someone forgets their
25 signature, the additional step requires actually just

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1 notifying them and giving somebody an opportunity to
2 submit a new piece of paper. Like the Municipality
3 of Anchorage does, like Juneau does, like many other
4 states do.
5 So the State is making this very expansive,
6 but really the remedy is very concrete and very
7 straightforward and not very burdensome at all. So
8 to say this is vague is not --
9 THE COURT: It sort of depends on what you
10 want to put on the scale. You put virtually no --
11 nothing on the scale for the State and, on the other
12 hand, the State is arguing that the burden for the
13 voter is de minimus, that it's simply got a couple of
14 fairly straightforward requirements by law to
15 complete to have your absentee vote properly counted.
16 That's a pretty low threshold burden and doesn't
17 justify throwing topsy-turvy the whole election
18 process on the eve of the election.
19 MR. FELDIS: But would it really do that,
20 Your Honor? There's no evidence that that would
21 happen. I think we are allowed to rely on common
22 sense and the manual, the publicly available
23 information. Nothing is going to change how the vote
24 counts. We're not asking for the election to be
25 continued or new ballots to be printed or anything.

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1 We're asking for a few extra steps to allow a few
2 more voters to vote. Maybe 500. If they don't get
3 to all 500, that doesn't mean it's fatally flawed.
4 So they haven't pointed to a State interest.
5 That's what they have to do. The only one they've
6 pointed to, avoiding voter fraud, is a red herring.
7 That's not what's happening.
8 THE COURT: Well, they've pointed to the
9 State's interest in the free and fair and orderly
10 administration of elections.
11 MR. FELDIS: Understood.
12 THE COURT: And they have cited voter fraud,
13 not because they're worried so much that this is
14 going to invite voter fraud, but that the voter fraud
15 concern is one of the underlying bases for the policy
16 of requiring these formal requirements before you
17 count S&T votes. So the voter fraud issue goes to
18 the constitutionality of the requirement, but their
19 burden is -- what they're claiming is burdensome for
20 them is the extent to which this last-minute request
21 will interfere with the orderly and efficient
22 administration of the election.
23 MR. FELDIS: And we see no evidence that it
24 will, Your Honor, and I understand that. I think the
25 burden here is low, you know. I think the math tells

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1 us it could be 20 ballots, 25 ballots a day that need
2 to be -- that are already being entered, and I think
3 that the record is clear on that and there's no
4 dispute. This information is already going into the
5 system.
6 So in one way we have to ask: Why is the
7 State opposing this? It shouldn't be just oppose at
8 all costs. It should be: How can we make this
9 happen? If there's no compelling interest that can
10 be evidenced here, other than a generalized concern
11 that we have a lot to do, that's far less than
12 disenfranchising voters because that's the end result
13 here. And that should be the balance.
14 The harm to the voter is votes not counting,
15 and that's a harm to democracy. Here we'd be saying:
16 What's the harm to the Division? And it may require
17 a little bit of extra work, but it's not going to
18 throw the election into chaos, nor have they
19 suggested it has. We're not asking that the votes --
20 you know, things not be certified 15 days. We've got
21 22 days to work with. We're unique in Alaska with
22 these 22 days. Lots of other states have things in
23 place and courts have ordered them, even at the last
24 minute, far less time than we have here. So I do
25 want to suggest that we're not too late at all.

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1 We've actually got plenty of time for this to
2 take place. They just mailed 4800 mailers out last
3 week. We're talking about 500 in the course of 22
4 days. So I do want to just put that on the table,
5 that I haven't seen evidence of a burden that is
6 really overwhelming on this date.
7 THE COURT: Well, remember who has the burden
8 of showing that in this case.
9 MR. FELDIS: Absolutely, and we turned to the
10 State of Alaska, Division of Elections manual on
11 absentee ballots, Exhibit 1, which talks about all of
12 these things going forward. So we put forth evidence
13 that the process is already in place. We've shown
14 that data is already being entered into the system,
15 that it's already being mailed out. We're just
16 asking for it to be done sooner. No one suggested it
17 can't be, other than it will add some amount of
18 process.
19 THE COURT: But you haven't taken any
20 discovery yet or deposed a witness?
21 MR. FELDIS: No, and that's why we're here at
22 this early stage, and we're talking about balancing
23 the known burdens and implementing a remedy that will
24 actually prevent a huge harm; 500 voters who will not
25 have their votes counted. Why would we not try to

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1 make that happen in this election unless there's an
2 absolute compelling State interest, which there isn't
3 here. So I understand this is preliminary, but
4 that's because it's so important. The danger of
5 irreparable harm is so high and the State is
6 adequately protected.
7 THE COURT: Well, the State would say if it's
8 so important, why wasn't this brought up several
9 months ago?
10 MR. FELDIS: But again, respectfully, that is
11 not an issue that the Court should be giving great
12 weight to because the fact is this wasn't done --
13 this is not a sandbagging and no one has suggested
14 that. And that's not the process --
15 THE COURT: Why isn't it -- I'm sorry,
16 Counsel. Why isn't it important for the Court to
17 have an adequate time in a deliberate fashion to
18 consider issues that you're telling me are of
19 principal importance?
20 MR. FELDIS: No, not that the Court --
21 THE COURT: Why should it be done on a rush
22 basis?
23 MR. FELDIS: In order to prevent --
24 THE COURT: If it's that critical and of such
25 a high public interest, why do you wait until several

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1 weeks before the election to file this case?
2 MR. FELDIS: And not at all suggesting, Your
3 Honor, that it's not important for the Court to have
4 that information. What I'm talking about is from a
5 due process perspective, that this is an ongoing harm
6 and so, therefore, the fact that we're here at the
7 last minute is not a basis that we shouldn't be
8 considering the harm that's going to occur.
9 THE COURT: Well, you're asking me to make a
10 very important decision based on an inadequate and
11 incomplete record. In fact, zero factual -- or
12 almost no factual evidence. Nothing that has been,
13 you know -- you can possibly consider on a motion for
14 summary judgment to the extent it's a sworn
15 affidavit, but then the issue is just whether there
16 are any genuine issues of fact, and everybody would
17 have to concede there are lots of genuine issues of
18 fact.
19 So we're really at an early stage where
20 representations like 500 voters will lose their vote
21 are possibly true and possibly hysterical. I don't
22 know.
23 MR. FELDIS: Well, the Division has made
24 publicly available statistics from past years that
25 can be extrapolated out. So we're not talking about

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1 anything that isn't just a public record here.
2 THE COURT: Public record on past years is
3 still speculation as to what's going to happen on
4 November 3rd.
5 MR. FELDIS: Right. Understood. We don't
6 know, but I think that we've certainly got a record
7 to rely upon that can be, you know, rationally and
8 reasonably extrapolated out.
9 We've also got the Division of Elections
10 ballot manuals and their own data about how they do
11 the process. So nothing that we're positing is not
12 factually supported. Voting right cases are often --
13 and I understand the situation we're all in -- that
14 we all find ourselves in, and that's what I'm
15 suggesting. This isn't a situation that plaintiffs
16 had created or necessarily defendants have created
17 other than not being -- having addressed a remedy
18 earlier. We're all here in this situation. Voting
19 rights cases are very often at the last minute
20 because these issues come to the forefront. We only
21 learned the number of ballots going out the door were
22 so exponentially greater very recently. It was the
23 State that --
24 THE COURT: Yeah, but the knowledge of the
25 procedure of the Department and how they handle

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1 absentee ballots has been known, I think Ms. Harrison
2 said, for four years.
3 MR. FELDIS: The way the State handles their
4 absentee ballots?
5 THE COURT: Right.
6 MR. FELDIS: Right. Now we know the
7 magnitude of the injury that's going to occur this
8 election.
9 THE COURT: Well, we don't know the
10 magnitude. I just thought we'd established that.
11 We're speculating based on past statistics. So three
12 years ago you knew the magnitude of what happened in
13 2016, but no suit was brought.
14 MR. FELDIS: And, again, with all respect to
15 wanting to have the right answer here, of course we
16 want the right answer here, but this has come to the
17 forefront because I think we got four times as many
18 absentee ballots this year as in the past. We know
19 that the Division has tweeted, just a week ago,
20 letting people know -- citizens, Alaskan voters who
21 didn't know this before, including the plaintiffs
22 here who didn't know this before, come to the Court
23 seeking to avoid what the Alaska Supreme Court would
24 say is a construction of a statute and implementation
25 of a policy on the part of the Division that will

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1 disenfranchise voters because of mistakes that they
2 made.
3 So I understand the need and the desire. We
4 want to get this right, and we need to get this
5 right. But getting it right here means putting in a
6 process that allows those votes to be counted. I
7 know this is a very hard situation, but it's not
8 unusual, and it's not one that -- again, we would
9 have to look to other court decisions that other
10 courts have grappled with and found necessary
11 remedies even 30 days before elections.
12 There was the Florida case. Democrat
13 Executive Committee of Florida versus
14 (indiscernible), which was done even after the
15 election day came and went, when there was still time
16 to correct remedies before the election was
17 certified.
18 THE COURT: Well, we're 19 days before the
19 election now.
20 MR. FELDIS: Right, and I'm just counting the
21 15 days after until the certification date --
22 THE COURT: Right.
23 MR. FELDIS: -- time period here, which again
24 makes the remedy more feasible in Alaska than in
25 other places that have also implemented similar

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1 remedies.
2 So I guess just to step back and conclude,
3 and I want to address any other questions the Court
4 has --
5 THE COURT: I don't have any other questions.
6 Thank you for asking, though.
7 MR. FELDIS: Then just to conclude, Your
8 Honor, the State hasn't addressed the Alaska Supreme
9 Court precedent of not disenfranchising voters
10 because of mere mistakes. They have not addressed
11 the instruction of the Alaska Supreme Court to
12 interpret statutes in a way that avoids undue burden
13 on the right to vote.
14 That's the situation that we find ourselves
15 in. We have enough evidence here. We have enough in
16 the public record. We have enough presented even in
17 just the Ballot Review Board's Manual to know that
18 all of these processes are in place, other than
19 sending out the notice in time for a voter to become
20 aware that they missed their signature and in time
21 for them to do something about it.
22 This is not a case of creating new laws or
23 creating new policies. It's a case of sending
24 notices earlier than they're currently being sent to
25 avoid a huge impact on the voter, and the State has

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1 not, and really we would suggest cannot in this case,
2 given what we know about what's already being done
3 and how that ballot review boards already work, they
4 cannot present a compelling State interest of why
5 they would want to -- and why the Constitution, State
6 constitution would allow them to impose this burden
7 on voters.
8 I have to think that everyone working
9 together, if asked, would say that this is the right
10 result. This is what should happen. Voters who are
11 eligible and cast their ballot should have their
12 votes counted. This is not a surprise that there are
13 going to be more problems this year than ever before,
14 and I understand the Court's concern that we don't
15 know the exact number; but we know that it will occur
16 and we know that something can be done about it.
17 So we would ask, Your Honor, that you look at
18 the danger of irreparable harm to those voters whose
19 votes will not be counted, and that you find that
20 there are serious and substantial questions as to the
21 merits, and that you enter the injunction requiring
22 the State to give notice and an opportunity to cure
23 in three very concrete ways that we've spelled out:
24 By mail, by the publicly available posting on the My
25 Alaska Vote, and by allowing public requests for this

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1 information and asking that the Division respond
2 timely to those so that folks can be notified in
3 several different ways and have the ability to
4 correct their ballot through a one-page affirmation
5 that's already been created by the State.
6 Thank you for considering all that, Your
7 Honor, and for your attention to this today.
8 THE COURT: Thank you, Mr. Feldis. I had
9 intended that over the past half-hour that I would be
10 in recess to deliberate over the arguments. I have
11 another matter, important matter. Every matter is
12 certainly important to the participants, and this may
13 be -- the matter currently before me may be more
14 important to more folks in the state, but I do need
15 to -- I'm forced by the calendar, the inevitable
16 pressure of the calendar, to accelerate the
17 deliberative process and give you an outcome
18 immediately.
19 I've listened to both sides and read your
20 materials. I guess I would start with certain
21 observations that the -- Mr. Feldis made a point that
22 this is -- at the end in his last remarks, that this
23 would be the right result, the result he seeks would
24 be the right result. As a judge, I do not have the
25 luxury, I have to say, of attempting to reach, quote,

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1 right results or attempting to avoid, quote, wrong
2 results, that is, results that I personally think are
3 right or that I personally think are wrong.
4 The job of a judge is to apply the law
5 dispassionately and as fairly as possible, that it
6 is -- sometimes this may be a prehistoric conception
7 of the job of the judge, but it's the job of the
8 judge to apply the law and the job of the Legislature
9 to -- who are the elected representatives of the
10 people of the State -- it's the job of the
11 Legislature, of course, to enact the law. I really
12 think that fundamental proposition is at play in this
13 case.
14 The plaintiffs do not assert there is
15 anything unconstitutional in the absentee voting --
16 in the statute that pertains to absentee voting, any
17 of the statutes. They do not find or argue that
18 there is defect in them. They maintain that the
19 manner in which it's applied is unconstitutional, yet
20 they don't argue and they're unable to point that it
21 is being applied in a way inconsistent with the
22 statute.
23 So I have a situation before me in which the
24 representative of the administrative executive branch
25 of the State is applying the statute created by the

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1 Legislature, that the plaintiffs acknowledge it is
2 constitutional as written, and the administrative and
3 executive branch is applying the statute as written.
4 And yet I'm being told that it is -- I should find
5 that it is -- nonetheless we are dealing with a
6 constitutional violation in this case.
7 We really are dealing with a bottom question
8 of statutory interpretation, only we're interpreting
9 something that's not -- we're interpreting a statute
10 and dealing with language that's not present. We
11 are -- at bottom I think the argument of the
12 plaintiffs is that the statute should have been
13 written differently, that things were left out that a
14 wise Legislature should have put in, or that now --
15 I'll put quotes around it -- a wise judge should put
16 in.
17 I would cite the parties to one of the canons
18 of statutory interpretation that is found in the --
19 I'm citing from Justice Scalia's work on statutory
20 interpretation, but you could trace it back to Judge
21 Felix Frankfurter. Frankfurter's comment was:
22 Whatever temptations the statesmanship of
23 policy-making might wisely suggest, construction must
24 eschew interpretation and evisceration. The judge
25 must not read in by way of creation.

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1 He's speaking of this situation in which the
2 statute is silent, and the basic canon is that
3 nothing is to be added to what the text states or
4 reasonably implies, that is, a matter not covered is
5 to be treated as not covered.
6 So there is nothing in the statute that
7 requires the Division of Elections to follow the
8 process that the plaintiffs in this case are urging,
9 which is to, on a more rapid time scale, ascertain
10 whether there are defects in absentee ballots and
11 provide notice on a time frame that could allow a
12 voter to revote or somehow correct the situation.
13 I'm not implying the vote would be counted twice, but
14 that the voter would have some opportunity to cure.
15 So they're asking for -- a do-over is the
16 term that Ms. Harrison used, and that somehow the
17 absence of a procedural process installed by the
18 Division of Elections to enable these do-overs
19 amounts to a constitutional violation.
20 I'm -- I think that's -- that's, I think, in
21 essence the nature of the claim. It is characterized
22 in this case as a disenfranchisement of the voter if
23 this do-over process is not read into the law. It's
24 not in the law. We all can see that. There's no
25 attempt to argue that it is, and there's no attempt

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1 to argue that it should be required. There's just
2 this argument that because it's not applied
3 administratively, somehow an unconstitutional action
4 has occurred. That's an interesting argument.
5 Essentially, the plaintiff in this case does
6 not feel that it would assume -- be very persuasive
7 to argue that because the statute says nothing about
8 the do-over, it should be read into the statute
9 expressly. So instead of saying that the statute is
10 unconstitutional because it does not include the
11 provision for correcting and enabling an opportunity
12 to correct an absentee ballot, that because that is
13 not included in the statute, the plaintiffs are
14 arguing that -- are not arguing that that is
15 unconstitutional. They're arguing that the Division
16 should have read it into the statute. Well, that's
17 really two sides of the same coin, and it really is
18 an attempt to read into the statute a requirement
19 that is not there.
20 So I think Ms. Harrison, on behalf of the
21 Division, makes a very valid fundamental point that
22 that's a policy decision. The deadlines that are
23 imposed and that are required by the Legislature for
24 treating absentee ballots are a policy decision made
25 by the elected representatives of the citizens of

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1 Alaska. And there are competing interests in
2 elections. There are interests in avoiding voter
3 fraud, which is why they have those requirements in
4 the first place. There's also interest in timely
5 reporting and analysis and collating of the election
6 data, and producing election results. So that's the
7 basic framework.
8 It was really well described, I think, on the
9 record by Ms. Harrison. In that I'm being asked to
10 find that unless I impose additional requirements not
11 already there, that voters are going to be
12 disenfranchised and that an unconstitutional process
13 will result. I don't find that that is supported
14 legally, not necessarily even factually. The
15 requirements for a preliminary injunction include
16 finding of irreparable harm, and they include a
17 finding of substantial likelihood of success on the
18 merits or probability of success on the merits.
19 Based on what's been argued today, I can't find that
20 the plaintiff has met their burden of showing either
21 one of those.
22 I do not find that if a voter fails to follow
23 rules that everyone acknowledges are fair and have a
24 legitimate basis, that if the voter makes a mistake,
25 even an innocent mistake, that the existing law

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1 requires that the Department not only detect that
2 mistake, but if they do detect it, and it is their
3 obligation to try to detect it, that's what they're
4 trying to do in reviewing and scanning absentee
5 ballots, but then notify the voter in a fashion that
6 enables the voter to come in and vote within a
7 certain time frame.
8 The argument that it is disenfranchisement of
9 the voter if they're not notified in time to come in
10 and correct the error, I think confuses a cause and
11 effect. In these situations the burden on the voter
12 is fairly de minimus. There are ample resources that
13 are made available in call lines and explanations for
14 voters who have confusion about them. Ultimately, if
15 a voter fails to comply with one of those
16 requirements, it's the voter who disenfranchises him
17 or herself, not the State. In a perfect world
18 perhaps everything would be done in a time frame in
19 which all errors could be avoided and all errors
20 could be corrected, and maybe no errors would ever
21 occur in a perfect world. A perfect world does not
22 exist.
23 The basic thrust of the plaintiffs' case in
24 this -- the argument in this case is that the Court
25 should take over the policymaking function of the

Legislature. I don't believe the Court has any more wisdom and, you know, probably less than the elected representatives of the citizens of the state. I like to tell jury panels that the fundamental unit of self-government in the State is a jury, and every jury trial I've ever presided over I've had juries that I think collectively through their collective actions and collective judgment displayed an outcome and reached an outcome that reflected that the whole is greater than the sum of the parts, that acting as a unit they achieved something in the administration of justice that is, I think, infinitely superior to what one solitary individual might or would have come up with in that situation. I think they had an innate sense of fairness and an innate ability to engage in balancing considerations and reaching a just and fair result based on facts and evidence.

I think largely that's true, and it should be true of any democratically elected legislative body. Although we may make fun of and disparage legislatures and politicians, ultimately there is no republic without it.

It's really the role of the Court to respect their realm just as they respect ours. Plaintiffs ask in this case that I sit here and, like Plato,

dream up a new republic. Well, I would say to you that a judge's republic is a contradiction in terms.

The motion for preliminary injunction is denied. We'll set this case on for a status conference in approximately 60 days. Thank you.

We'll go off record.

10:45 a.m.

TRANSCRIBER'S CERTIFICATE

I, Leslie J. Knisley, hereby certify that the foregoing pages numbered 1 through 76 are a true, accurate, and complete transcript of the Oral Argument held on October 15, 2020, in The Alaska Center Education Fund, et al. versus Gail Fenumiai, et al., Case No. 3AN-20-08354 Civil, transcribed by me from a copy of the electronic sound recording to the best of my knowledge and ability.

Dated October 16, 2020.

Leslie J. Knisley, Transcriber

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E36F1 (Rev. 7/1/19)

1. **You MUST Sign AND Provide One Identifier**

Voter Certificate, Signature and Identification

I declare that I am a citizen of the United states and that I have been a resident of Alaska for at least 30 days. I have not requested a ballot from any other state and am not voting in any other manner in this election. If I had this certificate attested by a witness, other than an authorized official, it was because no official empowered to administer an oath was reasonably available. **I certify, under penalty of perjury, that the foregoing is true and accurate.**

Voter Signature: _____

Voter Identifier: _____ Voter No. _____ AK Driver's License No. _____ Date of Birth _____ Last 4 of SSN

2. **Your Signature MUST be Witnessed**

Witness Affidavit

Have your signature witnessed by an authorized official or, if an authorized official is not reasonably available, by someone 18 years of age or older.

Signed in my presence:

This _____ day of _____ 20 _____, at _____ (City & State or Country)

Witness Signature: _____

If authorized official, official title: _____

Warning: False statements made by the voter or by the attesting witness on the certificate are punishable by law.

Review Board Use Only

Count Code: _____ Sequence No.: _____

No Count Code: _____ Initials: _____

E36B (Rev. 7/1/2019)

Exhibit 2, Page 1 of 2

Appendix B
Page 1 of 2

[redacted]

Before Sealing this Envelope

Did you...

- ❑ **Sign the envelope?**
- ❑ **Provide ONE identifier?**
- ❑ **Have your signature witnessed?**
- ❑ **Applied postage to front of this envelope?**

This envelope MUST BE postmarked by Election Day

Reviewing And Data Entry Of Absentee Ballots

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DIVISION OF ELECTIONS

B10 (REV 07/2016)

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SUMMARY OF BALLOT ACCEPT AND REJECT CODES

Accept and Partial Count Codes	P	Hold. Check with director.
	A	Full Count Ballot.
	B	Count Ballot Measure Only.
	F	Count federal races only.
	H	Count President/VP only.
	J	Count statewide and judicial only.
	L	Count statewide and senate only.
	M	Count all but superior and district court.
	N	Count statewide, judicial and senate only.
	S	Count statewide only.
Reject Codes	P	Hold. Check with director.
	D	Duplicate ballot. More than one ballot received.
	E	Ballot envelope empty.
	G	No identifier on by mail ballot envelope.
	I	Voter is in INACTIVE status.
	K	Ballot not applied for as required by law.
	O	Voter did not meet certification requirements.
	T	Voter registered too late.
	U	Ballot not dated or postmarked and received after election day.
	V	Ballot received after deadline.
	W	Postmarked or witnessed after election day.
	X	Voter not registered.
	Y	Improper or insufficient witnessing.
	Z	Voter did not sign.
	1	Voter resides in a different jurisdiction.
	2	Improper notarization by Alaska notary.
	3	Ballot hand delivered after election day.
	4	Ballot voted by somebody other than voter.
	5	Ineligible for primary ballot choice (If ballot measure

		on ballot, use count code B).
	6	Cancelled ballot – voter requested a different ballot type.
	7	No identification at the time of voting.
Ballot Type Codes	A	Automatic by-mail election
	C	Application cancelled
	D	Ballot deleted to correct an error
	E	Ballot sent by electronic transmission (fax)
	F	Federal only ballot sent by mail
	I	In-person voted ballot
	M	By-mail ballot sent
	O	Ballot sent by electronic transmission (online)
	P	Special needs ballot
	R	Replacement by-mail ballot
	S	Advance 45 day by-mail ballot (overseas or remote Alaska)
	U	Ballot returned undeliverable
	W	Federal write-in absentee ballot
	X	By-mail or electronic transmission ballot application incomplete, ballot not sent
Alpha Field By-Mail Absentee Ballot Application Status	A	Application complete
	C	Cancelled ballot
	U	Undeliverable ballot

Numeric Field By-Mail Ballot Registration Status

E1	Electronic – No Alaska residence address
E2	Electronic – No identifier
E3	Electronic – No signature
E4	Electronic – No Primary ballot choice
E5	Electronic – Other/combination of issues
E6	Electronic – No fax number
E7	Electronic – No email address
E9	Electronic – Received after 5pm deadline
M1	Mail – No Alaska residence address
M2	Mail – No identifier
M3	Mail – No signature
M4	Mail – No Primary ballot choice
M5	Mail – Other/combination of issues
M9	Mail – Received after 10 day deadline
U	Undeliverable ballot

ABSENTEE BALLOT REVIEW PROCEDURES

Review Board Responsibilities

Ballot review begins seven days before election day. All ballots received for the Primary election must be reviewed and counted by the 10th day following the election. All ballots received for the General or State Special elections must be reviewed and counted by the 15th day following the election.
The election supervisor will determine the work hours of the review board based upon the number of ballots to be reviewed.

The review board is responsible for the following:

- Verifying ballots are stored in a secure location with limited access.
- Reviewing each voted ballot envelope to determine whether the voter is qualified to vote and if the ballot was properly cast.
- Verifying that the appropriate accept or reject code has been assigned to the ballot and that there is a ballot envelope for each voter appearing on the absentee ballot register.
- Maintaining ballot accountability and verifying that the number of ballots received equals the number of ballots reviewed and counted. Each ballot entered into VREMS must be accounted for.

Handling Ballots

Ballots are to be secured in the locked ballot storage area. **Never leave ballots unattended.** The election supervisor may request the review board to maintain a log of the ballots when taken in and out of the ballot storage area.

Ballots may only be worked one district at a time. It is extremely important that ballots from different districts are not mixed together.

Each ballot received in the regional office will be entered into VREMS and assigned a sequence number. Ballots are to be kept in sequential order for each district.

Review Procedures

The board will work in teams of two when reviewing ballots. Team members must be from different political affiliations. Each team will review ballots one district at a time. Ballots will be reviewed using the absentee ballot register. The register includes the following

information:

- Voter's name and registration status
- Voter's residence and mailing addresses
- District and precinct where the voter is registered
- Registration dates
- Accept or reject code assigned to the ballot
- District ballot issued and the ballot sequence number
- Voter's party affiliation (primary use only)

Review ballots in sequential order by matching the ballot sequence number to the number from the register. Absentee ballots are received daily. Each district may be reviewed several times during the scheduled review period. After the first review, the review board will begin with the next sequence number for each district and will continue in this manner until all ballots have been reviewed.

Ballot review consists of the following:

- Compare the information on the ballot envelope to the information appearing on the absentee ballot register for each voter.

- Determine if the voter is eligible for the ballot cast and what portions of the ballot may be counted based on the ballot eligibility guidelines.

- Verify that there is a ballot envelope for each voter appearing on the register.

- Determine if the proper accept or reject code was used. If there is a disagreement with the accept or reject code given to the ballot, bring the ballot to the election supervisor. **Do not change accept or reject codes without notifying the election supervisor.**

- Verify the accept or reject code appearing on the register matches the code on the ballot envelope.

- Perform a complete name search in VREMS for any voter whose ballot is in an I/AV status with the reject code X or, during a presidential election, any accept code H ballots to ensure that the voter's registration record was not overlooked. This is the review board's last opportunity to find a voter's record that was not initially found when the ballot was entered into VREMS.

- After reviewing each in person ballot envelope, or when directed by the election supervisor, detach the registration portion from the ballot envelope. Keep the registration forms organized by district and give them to the election supervisor.

Observers During Ballot Review

During the review process, observers may be present representing a candidate or a ballot issue. If observers are present verify and announce aloud the following information:

- Voter's name and address.
- If the ballot envelope was signed by the voter and witnessed correctly.
- District where the voter is registered.
- District ballot the voter received and voted.
- Voter's registration status.
- District registration date.
- The accept or reject code determined.
- Ballot sequence number.
- Date the ballot was received for by mail ballots.
- If ballot was received after election day, the date the ballot was postmarked. If there is no postmark, announce the date the ballot was witnessed.
- Affiliation and political party ballot type (primary election only).

Observers are not allowed to handle ballots, election materials or computers in the review board area. Observers must maintain a reasonable distance so not to impede the review board from completing their task.

Challenged Ballots

Alaska law allows observers to challenge the name of an absentee voter if the person has good reason to suspect that the challenged voter is not qualified or has already voted during the same election. The observer must specify the basis of the challenge in writing.

All ballot challenges will be sent to the director of the division for a final count or no count decision. Challenged ballots will be separated from the group of ballots until a decision is made. The director will respond to all challenges prior to the final count.

Ballot Accountability

The election supervisor will provide an accountability report to track daily the number of ballots reviewed in each district and the number counted. Record the total number of ballots reviewed and the total number for each type of count on the accountability report.

The election supervisor and the board must compare the number of ballots received to the number reviewed and counted to verify all ballots are accounted for.

Keep notes of anything unusual. For instance, if a ballot envelope is marked full count, but when the ballot envelope is opened there is no ballot inside. Another example would be, when opening ballots for District 26 and when removing ballots from the secrecy sleeve, it is a District 20 ballot.

Opening Ballot Envelopes

Full count ballots may be removed from the secrecy sleeve and prepared for counting before 8:00pm election day. When opening ballots, work one district and type of count at a time. It is very important that districts or types of count are not mixed up. Partial count ballots are usually held until the last day of counting.

Before opening ballot envelopes, the election supervisor will reconcile the number of ballots recorded on the accountability report as reviewed and ready for counting against the number of ballots received and appearing on the ballot count report in VREMS.

- Remove floppy if not already removed.
- Remove the secrecy sleeve containing the voted ballot from the ballot envelope.
- Place the empty ballot envelopes in sequence order and put away as directed by election supervisor.
- Remove ballots from each secrecy sleeve. Verify that each ballot is for the district that is being opened and that it is not damaged or marked in red or green ink or a highlighter.
- Count the number of ballots to verify that the number is the same number as indicated on the accountability report.
- Prepare a facsimile ballot for any damaged ballots, electronic ballots or ballots marked in red or green ink or highlighter.
- Place the ballots in a voted ballot envelope. For facsimile ballots, place the original and facsimile ballots in separate envelopes before placing in the voted ballot envelope.
- Seal the voted ballot envelope and record on the outside the district, type of count and number of ballots enclosed and ready for counting.

The sealed voted ballot envelope will be stored in the secure ballot storage area until counting begins.

Organize Materials

Organize your materials as follows:

Accepted Ballots:

Keep all opened ballot envelopes from accepted ballots in sequence order by type of count, i.e., full count, statewide count, etc., and by district.

Rejected Ballots:

Keep all unopened rejected ballots in their own bundle in sequence order by district.

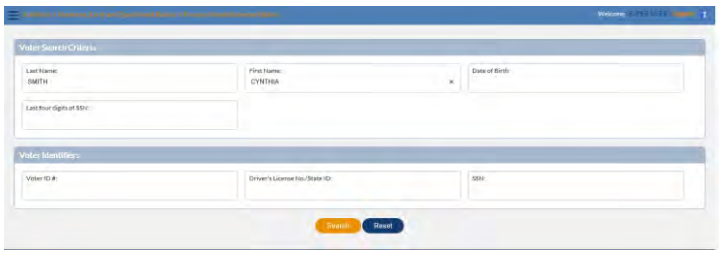
Accessing Voter Search Screen

Absentee ballots will be processed in VREMS from the *Activities>Process Voted Absentee Ballots*. Complete the *"Default Values"* screen as shown below:

Enter the Election ID, Received Date, Region and District for the voted ballots being processed. If appropriate, user can also enter the Site ID where the ballots were voted to auto-populate the Site Id when logging ballots. (Note: REAA District is only required for REAA elections. If processing Federal Only ballots, the region is 00 and District is 99).

Once the values are entered, click **Save**. (Note: The default values entered will remain in memory and be defaulted for all records processed until the user navigates away from the Process Voted Ballot screen).

The voter search screen is displayed. Enter search criteria and click **Search**.



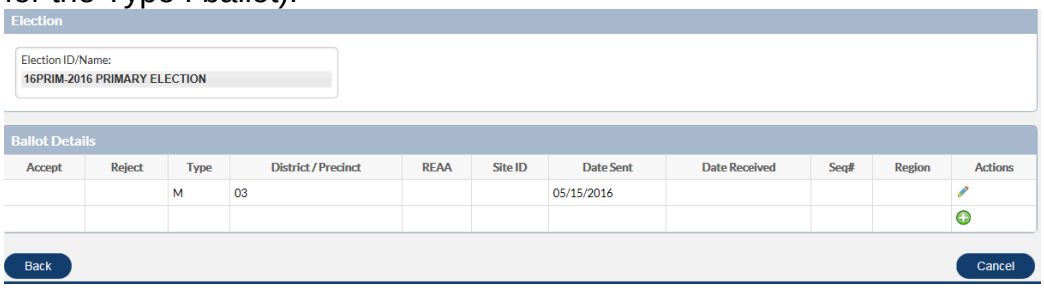
There are several different methods to use to perform a search for a voter record.

- Last Name and First Name with or without wildcard (?) When using a wildcard the user must enter at least 2 characters before (?) in the last name field and can use (?) alone or with characters in the first name field.
- Last Name and First Name, with or without wildcard (?) and in combination with DOB and/or Last 4 digits of the SSN.
- Complete SSN alone
- Voter Registration # alone
- Alaska Driver's License Number/Alaska State ID Number alone
- DOB and Last 4 digits of SSN

System displays Search Voter Results grid, user selects the appropriate voter.

If an identifier is entered and one exact match exists, the system will automatically display the voter record. If there is more than one possible match, or if user searched without using identifiers, the search results grid is displayed. Select the appropriate voter record.

The voter record information will be displayed followed by the Election and Ballot Details grid. If no existing ballot records exist, the system will display a blank grid for the user to insert a new ballot record. If existing ballot records exist for the election ID selected (i.e., ballot was sent to the voter), the system will display them in the grid. The user will either edit the existing record (if the voted ballot matches that record) or use the plus sign to add a new ballot record (i.e., existing record is Type M and the ballot to be logged is a Type I – user would add a new ballot record for the Type I ballot).



System will validate and display messages if the following are true:

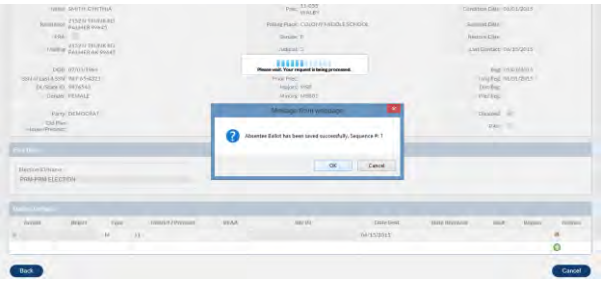
- Voter District is not matching with default district (HD or REAA).

- Voter is Inactive
- Voter Registration Date is greater than the registration deadline.

User enters appropriate accept or reject code (when in the blank field, you can hit the backspace key to get a drop-down list of all codes).

The District/Precinct and Date Received will be auto-populated based on the default values entered at the opening screen, along with the Site ID (if entered on the default values screen). If Site Id was not entered on the default screen, and if the voted ballot is an in-person or special needs, enter the Site ID.

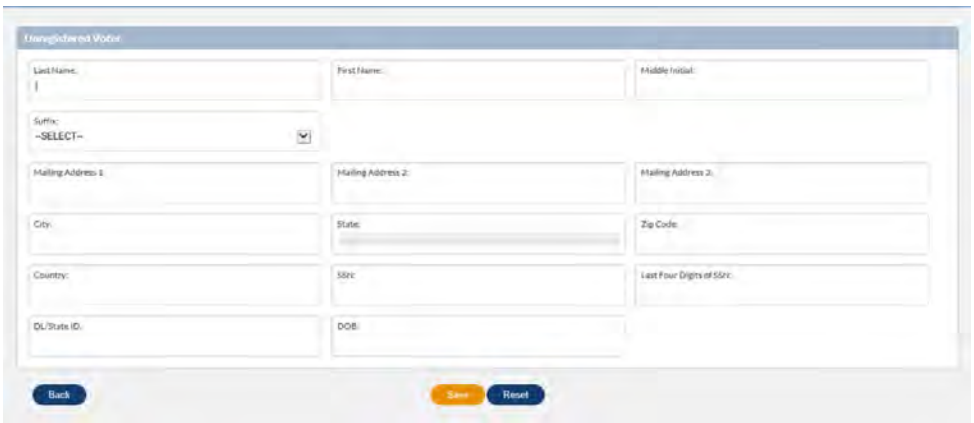
Click **Save**.
User is prompted with the Sequence #.



Click **OK** and the system returns user to the voter search screen to process the next ballot.

Unregistered Absentee Voter

When processing voted ballots, if a voter record is not found after performing a search, click the **Unregistered Voter** button to add an unregistered absentee voter. The Unregistered Voter screen is displayed.

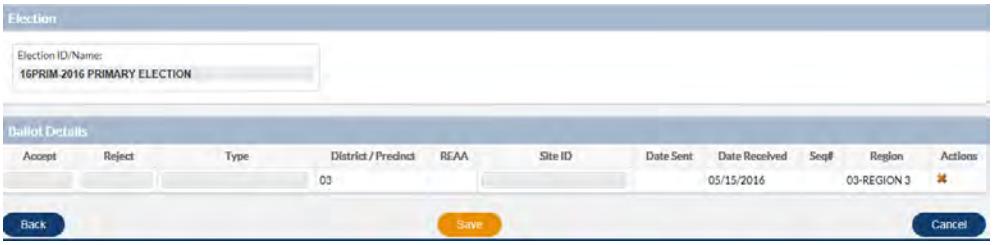


Enter voter's name and mailing address information from the ballot envelope, along with the voter identifier's provided.

Click **Save** to add the unregistered voter. The system will add the

unregistered voter record with Status/Condition I/AV and user will be prompted that the voter record was added and provide the voter ID number. Click **OK**.

The Process Voted Ballots screen will be displayed. Process the ballot with the appropriate accept/reject code, ballot type and site ID.



Click **Save** to add the voted ballot.

DETERMINING VOTER ELIGIBILITY FOR BY-MAIL, IN-PERSON, ELECTRONIC AND SPECIAL NEEDS BALLOTS

General Overview

A voter must be registered 30 days before election day in the district where the voter voted in order for the voter's ballot to be counted in full.

Voters must sign the ballot envelope or certificate, provide an identifier and have their signature witnessed.

Is the Voter Properly Registered?

Look at the voter's STATUS and CONDITION field. "A" is for active and "I" is for inactive.

For the ballot to count in full, the voter's status must be "A" with any condition code except A/ID and I/PU. See below.

A/ID Voters

If the voter's status is A/ID, and the voter is voting by-mail or electronic transmission, the voter **must** provide a copy of his or her identification in order for the ballot to be counted. If the voter is voting in-person or special needs, the voter **must** provide his or her identification at the time of voting.

I/PU Voters

I/PU means the voter's record was purged due to inactivity. Voters with an I/PU condition code are still eligible to vote.

- If the voter is voting in the same district in which the voter was purged, and the residence address provided by the voter is in the same district where purged and voting, the ballot can count in full.
- If the voter was purged from a different district than where the voter is voting, the ballot can be partially counted.

Did the Voter Register in Time?

A voter must be registered 30 days before election day in the same district that the voter votes to have the ballot count in full. Verification of a voter's registration date is determined by the following date fields on the voter record:

- **REGISTRATION DATE:** This date represents the last date a change was made to the voter's record. If this date is before the 30-day registration deadline, the voter is registered in time.

If the registration date is **after** the 30-day deadline, the following dates must be reviewed:

- **ORIGINAL REG DATE:** This date represents the date that the voter initially registered to vote. If this date is after the 30-day registration deadline, the voter's ballot may not be counted, except during a presidential election.

- **DISTRICT REG DATE:** This date represents the date that the voter registered in the district appearing on the voter's record. If the ORIGINAL REG DATE is before the 30-day deadline but the REGISTRATION DATE is **after** the deadline, look at the DISTRICT REG DATE to determine what portions of the ballot may be counted.

  If the voter's DISTRICT REG DATE is before the deadline, the voter's ballot will count in full. If the voter's DISTRICT REG DATE is after the deadline, the HOUSE, SENATE and JUDICIAL DIST fields will need to be compared to determine which portions of the voter's ballot may be counted.

- **PRIOR HD:** This field represents the district the voter was previously registered. The DISTRICT REG DATE field represents the date that the voter moved from the district in the PRIOR DISTRICT field to the new district listed on the voter's record.

- **PRECINCT REG DATE:** This field represents the date that the voter registered in the precinct appearing on the voter's record.

REVIEWING AND DETERMINING BALLOT ELIGIBILITY FOR BY-MAIL BALLOTS

Is the Voter Registered in the Proper District?

Compare where the voter is registered to the district ballot that the voter voted. The ballot may only count in full if the voter registered 30 days before the election in the same district.

Did the Voter Properly Apply for the Ballot?

To vote by-mail a voter must apply for a ballot no later than ten days prior to election day. By-mail ballots are recorded on each voter's record. When retrieving the voter's record, the TYPE, DISTRICT/PRECINCT and SITE ID fields will contain code information for ballot determination. If these fields do not have data entered in them, the voter may not have properly applied for a ballot. In this case, you will need to contact the election supervisor.

Did the Voter Sign the Ballot Envelope?

Verify that the voter who signed the ballot envelope certificate is the same voter who was mailed the ballot. At times, a husband and wife may mix up their ballot envelopes. As long as the person signing the ballot envelope has properly applied, is eligible to receive the ballot, and has properly completed the ballot envelope, the ballot may be counted.

Example	Count	No Count
Voter did not sign.		X
Voter wrote initials.	X	
Voter printed name.	X	
Voter makes mark (X, symbol, etc.)	X	
Voter signed new name which is similar but different than what the voter is registered, but provides an identifier to verify as same person.	X	
Voter signed in wrong place.	X	
Voter signed on Option II witness line and official signed in Option I.	X	
Quadriplegic voter's caretaker signs for voter and writes "signed by aid-quadriplegic."	X	
Voter uses a stamp (facsimile of original signature).	X	
Voter votes and mails his or her absentee by mail ballot. After ballot is mailed voter realizes he or she forgot to sign the ballot envelope.		X

Did the Voter Provide ONE Identifier?

At least one identifier must be provided for the ballot to count. Match the identifier provided by the voter to the voter's record. *(Note: If the identifier provided on the ballot envelope is not in the voter's record, verify in DMV or by signature comparison. If verified, add identifier to voter's record).*

Example	Count	No Count
Voter provides an identifier that is not on the voter's record in VREMS.	X	
The identifier provided belongs to someone else or does not match the voter's VREMS record.		X
Voter provides an identifier and uses white-out to cover the identifier. The witness then provides an identifier in its place. However, the voter's identifier is still legible through the white-out.	X	
Voter does not provide an identifier, but the label on the voter's ballot envelope provided by the division contains the voter's voter number.		X

If the Voter's Status is A/ID, Did the Voter Provide a Copy of Identification?

A/ID voters MUST submit a copy of their identification for their ballot to count.

Example	Count	No Count
Voter has a status and condition code of A/ID, provided an identifier on the ballot envelope but failed to provide a copy of valid identification.		X

Was the Voter Eligible to Receive the Party Ballot Type?

In the primary election, the voter's party affiliation at the 30 day registration deadline will determine the political party ballot type the voter is eligible to vote. Compare the voter's affiliation to the political party ballot type the voter received to determine if the voter was eligible for the ballot.

Example	Count	No Count
Voter's affiliation is the same as the ballot type voted.	X	
Voter's affiliation is different from the ballot type voted.	X Count ballot measure portion when applicable or if voter is eligible for ballot type voted.	X

Was the Voter's Signature Witnessed?

The voter's signature must be witnessed using the requirements in Option I or Option II on the ballot envelope. There MUST be at least ONE witness signature to count the ballot.

Example	Count	No Count
No witnessing signature.		X
Official does not provide date witnessing took place.	X	
Official prints name.	X	
Official signs with mark or symbol.	X	
Official writes initials.	X	
Official does not give title.	X	
Witnessed by a registrar.	X	
Witnessed by an absentee official on or before election day.	X	
Witnessed by an election board worker on or before election day.	X	
Notarized by Alaska notary and does not have seal.	X	
Notary does not give date commission expires.	X	
Notarized outside Alaska with no seal or "stamped notary title" is affixed.	X	
Stamped with official postal stamp but is not signed.	X	
Witness in Option I or II prints name or uses initials or marks.	X	
One witness signature in Option II with another in Option I.	X	
Authorized official signs in Option II and provides information to determine authorized in Option I.	X	
Option II witness signed in wrong place.	X	
Location where witnessing took place is not provided.	X	
Date witnessing took place is not provided.	X	
One witness signature is voter.		X
Voter provides different date than witness.		X
Voter faxes signature sheet and the witnessing signature is cut off.		X
Official gives title different than those identified on list of authorized officials such as utility clerk, spouse, clerk and etc.	X	

Date witnessing took place is not provided.	X	
One witness signature is voter.		X
Voter provides different date than witness.		X
Voter faxes signature sheet and the witnessing signature is cut off.		X
Official gives title different than those identified on list of authorized officials such as utility clerk, spouse, clerk and etc.	X	

Was the Ballot Postmarked and Received in Time?

Ballots must be postmarked on or before election day. During the Primary election, all ballots must be received within 10 days after the election. During the General or Statewide Special election, if ballots are mailed within the United States, the ballots must be received within 10 days after the election and when mailed from overseas, the ballot must be received within 15 days after the election. **After election day, ballots may not be accepted unless received by mail.**

Example	Count	No Count
Postmark is after election day.		X
No postmark but is dated and witnessed prior to election day.	X	
No postmark or witness date but received on or before election day.	X	
No postmark or witness date and received after election day.		X
During the Primary Election ballot received later than 10 days after the election.		X except in recount
During the General Election ballot mailed from APO/FPO address is received later than 10 days but less than 15 days after the election.	X	
During the General Election ballot mailed from overseas is received more than 15 days after the election.		X Except in recount
Voter provides different date than witness.		X
One witness signed Option I and dated and second witness signed Option II and put different date.	X	

REVIEWING AND DETERMINING BALLOT ELIGIBILITY FOR IN PERSON BALLOTS

Is the Voter Registered in the Proper District?

The residence address on the ballot envelope must be compared to the residence address appearing on the voter's record. The residence address provided by the voter on the ballot envelope is used to determine what portions of the ballot may be counted.

- Compare the voter's residence address provided on the ballot envelope with the residence address on the voter's record. If they are the same, and the voter was registered on or before the 30-day deadline, all races on the ballot will count.

If the residence address on the ballot envelope is different than what appears on the voter's record, you will:

- Determine if new residence is enough information to overturn the presumption of the residence address on the voter's record.

- If the new residence overturns the address on the voter's record, determine the district of the new residence. Compare the district of the new residence to the House, Senate, and Judicial district assignment on the voter's record to determine which portions of the ballot can be counted.

To determine if the residence address on the ballot envelope is enough to overturn the presumption of the residence address appearing on the voter record, refer to the following table.

Scenario	Overturn	Count	No Count
Voter leaves residence address blank.	NO	X Count based on district registration and district ballot voted.	
Voter provides a new street address or other physical location which appears nowhere on the voter's registration record.	YES	X Count based on district registration and district ballot voted.	
Voter provides street address or other physical location outside Alaska which appears nowhere on the voter's registration record.	YES		X
Voter states he or she does not have a residence address in Alaska.	YES		X
Voter states he or she is not a resident of Alaska.	YES		X
Voter provides PO Box, PSC Box, Rural Route #, or Mail Stop number for residence address.	NO	X Count based on district registration and district ballot voted.	

Did the Voter Complete the Ballot Envelope?

If the voter is already registered, the required information on the ballot envelope is the voter's name, voter's signature, and the election official's witnessing signature.

Example	Count	No Count
Voter checked NO to US Citizen.		X
Voter checked NO to 18 years old but provided birthdate that confirms 18 or older.	X	
Voter is registered but did not answer certification questions.	X	
Voter did not print name on top line.	X	
Voter voted under new name but did not provide previous name.	X	
Voter is registered but left residence address blank.	X	
Voter is registered but did not provide identifiers or birthdate.	X See ID section below	
Voter did not give gender.	X	
Voter did not give party affiliation.	X	
In a presidential election, voter is not already registered and did not answer YES to US Citizen certification questions, or did not provide requested identifier, or birthdate.		X
In a presidential election, the voter performs same day registration and provides only the city/community name as a residence address.	X The city is within a wholly contained precinct.	X The city contains more than one district.

Did the Voter Present Identification When Voting?

It is assumed that the voter presented ID to the election official or was personally known unless the official clearly indicates on the ballot envelope that identification was not presented. If the voter failed to provide an identifier on the ballot envelope or on the register, check to see if the election official marked "No ID Presented" on the ballot envelope.

Example	Count	No Count
Voter did not provide identifier and official checked the "No ID Presented" box on the ballot envelope.		X
Voter is registered in an A/ID status and provides at least one identifier; however, official checked the "No ID Presented" box on the ballot envelope.		X
Voter did not provide identifier and the official did not indicate type of ID presented and did not clearly indicate that no ID was presented.	X	
Voter provided a credit card as a form of identification.	X Credit card has picture.	X Credit card no picture.

Did the Voter Sign the Ballot Envelope?

Check the ballot envelope to make sure the voter signed. If the voter did not sign the ballot envelope, check to see if the voter signed the register. If the voter failed to sign the ballot envelope, but the voter's signature appears on the register, the ballot may be counted.

Example	Count	No Count
Voter did not sign ballot envelope or register.		X
Voter wrote initials.	X	
Voter printed name.	X	
Voter makes mark (X, symbol, etc.)	X	
Voter printed name at top of ballot envelope but did not sign on signature line.	X Count if signed register. If not, determine if intended as signature. Compare with registration.	X
Voter signed at top of ballot envelope but did not sign on signature line.	X	
Voter signed new name which, is similar but different than what the voter is registered, but provides a social security number or voter number.	X	
Voter signed in wrong place.	X	
Voter modifies the certification portion of the ballot envelope by crossing out US Citizen and writing a different nationality such as "America Freeholder."		X
Voter indicates he or she is a felon on the certificate. Bring to election supervisor if not already researched.	X Dept. of Corrections has no record or voter has completed requirements.	X Dept. of Corrections has felony record of moral turpitude. Voter has not completed requirements.
Quadriplegic voter's caretaker signs for voter and writes "signed by aid-quadriplegic."	X	

Was the Voter's Signature Witnessed?

If the election official failed to sign the ballot envelope or the register, Alaska law allows the ballot to be counted.

Example	Count	No Count
Election official did not sign ballot envelope or register.	X	
Official prints name.	X	
Official signs with mark or symbol.	X	
Official writes name.	X	
Official does not provide date witnessing took place.	X	
Official does not provide site ID or location where ballot was voted.	X	
Official signs in wrong place.	X	

Was the Voter Eligible to Receive the Party Ballot Type?

In the primary election, compare the party affiliation listed on the voter's record with the political party ballot type the voter voted to determine if the voter was eligible for the ballot type.

Example	Count	No Count
Voter's affiliation is the same as the ballot type voted.	X	
Voter's affiliation is different from the ballot type voted.	X Count ballot measure portion when applicable or if voter is eligible for ballot type voted.	X
Voter received more than one ballot type.		X
Voter's affiliation is nonpartisan or undeclared and official does not indicate what ballot type was provided.	X	
Voter's affiliation is with a political party and official does not indicate what ballot type was provided.	X Count ballot measure portion when applicable or determine ballot type and if the voter is eligible for type voted.	X

REVIEWING AND DETERMINING BALLOT ELIGIBILITY FOR BALLOTS SUBMITTED THROUGH ELECTRONIC TRANSMISSION

Is the Voter Registered in the Proper District?

Compare where the voter is registered to the district ballot that the voter voted. The ballot may only count in full if the voter registered 30 days before the election in the same district.

Did the Voter Properly Apply for the Ballot?

To vote absentee by electronic transmission, a voter must apply for a ballot no later than 5:00pm the day before election day. Electronic (online or fax) ballots are recorded on each voter's record. When retrieving the voter's record, the TYPE field will be an "O" for online and "E" for fax, the DISTRICT/PRECINCT field will have the district number of the ballot sent to the voter, and the SITE ID field will contain "DOE". If these fields do not have data entered in them, the voter may not have properly applied for a ballot. In this case, you will need to contact the election supervisor.

Did the Voter Sign the Certificate?

Verify that the voter who signed the ballot certificate is the same voter who the ballot was sent to. At times, a husband and wife may mix up their ballot certificates. As long as the person signing the ballot certificate has properly applied, is eligible to receive the ballot, and has properly completed the ballot certificate, the ballot may be counted.

Example	Count	No Count
Voter did not sign.		X
Voter wrote initials.	X	
Voter printed name.	X	
Voter makes mark (X, symbol, etc)	X	
Voter signed new name which is similar but different than what the voter is registered, but provides identifiers to verify same person.	X	
Voter signed in wrong place.	X	
Voter signed on Option II witness line and official signed in Option I.	X	
Quadriplegic voter's caretaker signs for voter and writes "signed by aid-quadriplegic."	X	
Voter uses a stamp (facsimile of original signature).	X	
Voter votes and mails his or her absentee ballot. After ballot is mailed voter realizes he or she forgot to sign the ballot envelope.		X
Voter submits signature sheet electronically and the signature is cut off.		X

Did the Voter Provide ONE Identifier?

At least one identifier must be provided for the ballot to count. Match the identifier provided by the voter to the voter's record. *(Note: If the identifier provided on the ballot envelope is not in the voter's record, verify in DMV or by signature comparison. If verified, add identifier to voter's record.)*

Example	Count	No Count
Voter provides an identifier that is not on the voter's record in VREMS.	X	
The identifier provided belongs to someone else or does not match the voter's VREMS record.		X
Voter provides an identifier and uses white-out to cover the identifier. The witness then provides an identifier in its place. However, the voter's identifier is still legible through the white-out.	X	
Voter does not provide an identifier, but the label on the voter's ballot envelope provided by the division contains the voter's voter number.		X

If the Voter's Status is A/ID, Did the Voter Provide a Copy of Identification?

A/ID voters MUST submit a copy of their identification for their ballot to count.

Example	Count	No Count
Voter has a status and condition code of A/ID, provided an identifier on the ballot envelope but failed to provide a copy of valid identification.		X

Was the Voter Eligible to Receive the Party Ballot Type?

In the primary election, compare the voter's affiliation listed on the registration record in VREMS to the political party ballot type the voter received to determine if the voter was eligible for the ballot.

Example	Count	No Count
Voter's affiliation is the same as the ballot type voted.	X	
Voter's affiliation is different from the ballot type voted.	X Count ballot measure portion when applicable or if voter is eligible for ballot type voted.	X

Was the Voter's Signature Witnessed?

The voter's signature must be witnessed using the requirements in Option I or Option II on the ballot envelope. There MUST be at least ONE witness to count the ballot,

Example	Count	No Count
No witnessing signature.		X
Official does not provide date witnessing took place.	X	
Official prints name.	X	
Official signs with mark or symbol.	X	
Official writes initials.	X	
Official does not give title.	X	
Witnessed by a registrar.	X	
Witnessed by an absentee official on or before election day.	X	
Witnessed by an election board worker on or before election day.	X	
Notarized by Alaska notary and does not have seal.	X	
Notary does not give date commission expires.	X	
Notarized outside Alaska with no seal or "stamped notary title" is affixed.	X	
Stamped with official postal stamp but is not signed.	X	
Witness in Option I or II prints name or uses initials or marks.	X	
One witness signature in Option II with another in Option I.	X	
Authorized official signs in Option II and provides information to determine authorized in Option I.	X	
Option II witness signed in wrong place.	X	
Location where witnessing took place is not provided.	X	
Date witnessing took place is not provided.	X	
One witness signature is voter.		X
Voter provides different date than witness.		X
Voter faxes signature sheet and the witnessing signature is cut off.		X
Official gives title different than those identified on list of authorized officials such as utility clerk, spouse, clerk and etc.	X	

Was the Ballot Received in Time?

Voters may return ballots either electronically or by-mail. Ballots that are returned through electronic transmission must be received by 8:00pm election day. When the ballot is received, staff will date stamp and indicate if the ballot was received on time. Ballots that are mailed must be postmarked on or before election day. During the Primary election, all ballots must be received within 10 days after the election. During the General or Special election, if ballots are mailed within the United States, the ballots must be received within 10 days after the election. When mailed from overseas, the ballot must be received within 15 days after the election.

After election day, ballots may not be accepted unless received by mail.

Example	Count	No Count
Ballot received after 8:00pm election day.		X
Postmark is after election day.		X
No postmark but is dated and witnessed prior to election day.	X	
No postmark or witness date but received on or before election day.	X	
No postmark or witness date and received after election day.		X
During the Primary Election ballot received later than 10 days after the election.		X except in recount
No witnessing date but is received before 8:00pm election day.	X	
During the General Election ballot mailed from APO/FPO address is received later than 10 days but less than 15 days after the election.	X	
During the General Election ballot mailed from overseas is received more than 15 days after the election.		X except in recount
Voter provides different date than witness.		X
One witness signed Option I and dated and second witness signed Option II and put different date.	X	
By fax ballot received on Election Day before the 8:00pm deadline, however date and time stamp from users fax machine indicates a date after the deadline.	X	

REVIEWING AND DETERMINING BALLOT ELIGIBILITY FOR SPECIAL NEEDS BALLOTS

Is the Voter Registered in the Proper District?

The residence address on the ballot envelope must be compared to the residence address appearing on the voter's record. The residence address provided by the voter on the ballot envelope is used to determine what portions of the ballot may be counted.

- Compare the voter's residence address provided on the ballot envelope with the residence address on the voter's record. If they are the same, and the voter was registered on or before the 30-day deadline, all races on the ballot will count.

If the residence address on the ballot envelope is different than what appears on the voter's record, you will:

- Determine if new residence is enough information to overturn the presumption of the residence address on the voter's record.
- If the new residence overturns the address on the voter's record, determine the district of the new residence. Compare the district of the new residence to the House, Senate, and Judicial district assignment on the voter's record to determine which portions of the ballot can be counted.

To determine if the residence address on the ballot envelope is enough to overturn the presumption of the residence address appearing on the voter record, refer to the following table.

Scenario	Overturn	Count	No Count
Voter leaves residence address blank.	NO	X Count based on district registration and district ballot voted.	
Voter provides a new street address or other physical location which appears nowhere on the voter's registration record.	YES	X Count based on district registration and district ballot voted.	
Voter provides street address or other physical location <u>outside</u> Alaska which appears nowhere on the voter's registration record.	YES		X
Voter states he or she does not have a residence address in Alaska.	YES		X
Voter states he or she is not a resident of Alaska.	YES		X
Voter provides PO Box, PSC Box, Rural Route #, or Mail Stop number for residence address.	NO	X Count based on district registration and district ballot voted.	

Is the Representative's Information in Step 1 of the Ballot Envelope Properly Completed?

Step 1 and Step 2 of the ballot envelope must be properly completed for the ballot to count.

The personal representative must complete each line.

Example	Count	No Count
Personal representative did not provide an identifier.		X
Personal representative did not provide name.		X
Personal representative did not provide their residence address.		X
Personal representative did not provide a mailing address.	X If representative provided a physical residence address	X If physical residence address provided could not be a mailing address such as a park bench
Personal representative did not provide the name of the voter.		X
Personal representative did not sign certification.		X
Personal representative's information is listed in Step 2 and voter's information is in Step 1.	X	

Is the Voter's Information in Step 2 of the Ballot Envelope Properly Completed?

The required voter's information on the ballot envelope is the voter's name, one identifier, voter's signature, and the representative's witnessing signature. The other information in Step 2 is used to register or update the voter's registration record.

Example	Count	No Count
Voter checked NO to US Citizen.		X
Voter checked NO to 18 years old, but provided birthdate that confirms 18 or older.	X	
Voter is registered, but did not answer certification questions.	X	
Voter did not print name on top line.	X	
Voter voted under new name but did not provide previous name.	X	
Voter is registered and voter left residence and mailing address blank.	X	
Voter is registered but did not provide identifiers or birthdate.		X
Voter did not give gender.	X	
Voter did not give party affiliation.	X	
In a presidential election, voter is not already registered and did not answer YES to US Citizen certification questions, or did not provide requested identifier, or birthdate.		X
In a presidential election, the voter performs same day registration and provides only the city/community name as a residence address.	X The city is within a wholly contained precinct.	X The city contains more than one district.
Representative's information is in Step 2 and voter's information is in Step 1.	X	

In Step 2, Did the Voter Sign the Ballot Envelope?

Check the ballot envelope to make sure the voter signed.

Example	Count	No Count
Voter did not sign ballot envelope.		X
Voter wrote initials.	X	
Voter printed name.	X	
Voter makes mark (X, symbol, etc.)	X	
Voter printed name at top of ballot envelope but did not sign on signature line.	X Determine if intended as signature. Compare with registration	X
Voter signed at top of ballot envelope but did not sign on signature line.	X	
Voter signed new name which is similar but different than what the voter is registered, but provides a social security number or voter number.	X	
Voter signed in wrong place.	X	
Voter modifies the certificate portion of the ballot envelope by crossing out US Citizen and writing a different nationality such as "America Freeholder."		X
Voter indicates he or she is a felon on the certificate. Bring to the election supervisor if not already researched.	X Dept. of Corrections has no record or voter completed requirements.	X Dept. of Corrections has felony record of moral turpitude. Voter has not completed requirements.
Quadriplegic voter's caretaker signs for the voter and writes "signed by aid-quadriplegic."	X	

In Step 2, Did the Representative Sign as Witness?

Check the ballot envelope to make sure the representative witnessed the voter's signature.

Example	Count	No Count
Representative did not sign as witness in Step 2.		X
Representative completing Step 1 is not the same representative who signed in Step 2.		X
Representative prints name in Step 2.	X	
Representative signs with mark or symbol.	X	
Representative does not provide date witnessing took place.	X	

Was the Voter Eligible to Receive the Party Ballot Type?

In the primary election, compare the voter's affiliation listed on the voter's record to the political party ballot type the voter received to determine that the voter was eligible for the ballot.

Example	Count	No Count
Voter's affiliation is the same as the ballot type voted.	X	
Voter's affiliation is different from the ballot type voted.	X Count ballot measure portion when applicable or if voter is eligible for ballot type voted.	X
Voter received more than one ballot type.		X
Voter's affiliation is nonpartisan or undeclared and official does not indicate what ballot type was provided.	X	
Voter's affiliation is with a political party and official does not indicate what ballot type was provided.	X Count ballot measure portion when applicable or determine ballot type and if the voter is eligible for type voted.	X

DETERMINING BALLOT ELIGIBILITY
FEDERAL ABSENTEE WRITE-IN BALLOT (FWAB)

General Overview

The FWAB is available under the Uniformed and Overseas Citizens Absentee Voting Act to all active military members, spouses, and dependents and U.S. Citizens residing overseas, referred to as UCOAVA voters. The FWAB is intended to serve as a back-up ballot if the voter does not receive or have time to receive a state ballot.

A voter must be registered 30 days before election day in the district where the voter voted in order for the voter's ballot to count in full.

When returning a FWAB, voters must sign the Voter's Declaration/Affirmation, provide an identifier and have their signature witnessed by either an authorized official or by someone 18 years of age or older.

FWABs will be received by the regional offices at two different times as follows:

- Voters who submit a FWAB simultaneously as an absentee ballot application and voted ballot, will be forwarded to the regional offices during the voting period of 45 days prior to election day through the applicable 10 or 15 day after election day deadline to receive a voted ballot. Voters may submit their FWAB by-mail or by-fax.

- If a FWAB is submitted by a voter who has already applied for a ballot and the ballot was sent, the FWAB will be held until the applicable 10 or 15 day after election day deadline to receive a ballot. If the state ballot is returned and processed, the FWAB will not be processed. If the state ballot is not returned in time, the FWAB will be processed. Voters may submit their FWAB by-mail or, if they requested a by-fax ballot, they may submit the FWAB by-fax.

Did the Voter Properly Apply for the Ballot?

<u>Voter is not already registered to vote in Alaska</u>

To simultaneously register to vote for the first time, apply for a ballot and vote using a FWAB, the voter's FWAB must be received no later than 30-days prior to Election Day except during a Presidential election. During Presidential elections, a person may register, apply, vote and submit the FWAB on or before the by-mail or by-fax deadline. When initially registering to vote and voting a FWAB, the voter MUST provide the following information on the Voter's Declaration/ Affirmation. If any of the below information is missing, the voter's ballot cannot be counted.

- Voter Name

- Date of Birth
- At least ONE of the following: State Driver's License, State ID Number, Social Security Number or last four of Social Security Number
- Residence Address in Alaska
- Signature

Voter is registered in Alaska

When a person is already registered, the voter can simultaneously apply and vote using a FWAB as long as the FWAB is received no later than 10 days prior to Election Day. If the voter had already applied for a ballot and then submits a FWAB, the voter's application must have been submitted no later than ten days prior to Election Day.

If the voter is submitting a FWAB to simultaneously apply and vote a fax ballot, the voter's ballot must be received no later than 5:00 p.m. Alaska Standard Time (AST) the day prior to Election Day. If the voter already applied for a fax ballot and then submits a FWAB, the voter's application must have been submitted no later than 5:00 p.m. AST the day prior to Election Day.

A label will be placed on the Voter's Declaration/Affirmation sheet by the Absentee Office that will show if the ballot is by- mail or by-fax. If the voter did not properly apply for a ballot, the Absentee Office will write reject code K on the label.

Did the Voter Sign the Voter Declaration/ Affirmation?

Verify that the voter who signed the Voter's Declaration/Affirmation is the same voter. At times, a husband and wife may mix up their information. As long as the person signing has properly applied, is eligible to receive the ballot, and has properly completed the Voter Declaration/Affirmation, the ballot may be counted.

Example	Count	No
Voter did not sign.		X
Voter wrote initials.	X	
Voter printed name.	X	
Voter makes mark (X, symbol, etc.).	X	
Voter signed with new name which is similar but different than what the voter is registered, but provides identifiers to verify as	X	
Voter signed in wrong place.	X	
Voter signed in the witness area.	X	
Quadriplegic voter's caretaker signs for voter and writes "signed by aid – quadriplegic."	X	
Voter votes and mails his or her FWAB. After ballot is mailed voter realizes he or she forgot to sign the Voter's		X

Did the Voter Provide ONE Identifier?

At least one identifier must be provided for the ballot to count. Match the identifier provided by the voter to the voter's record. (Note: If the identifier provided on Voter Declaration/Affirmation is not on the voter's record, verify in DMV or by signature comparison. If verified, add identifier to voter's record).

Example	Count	No Count
Voter provides an identifier that is not on the voter's record in VREMS.	X	
The identifier provided belongs to someone else or does not match the voter's VREMS record.		X
Voter provides an identifier and uses white-out to cover the identifier. The witness then provides an identifier in its place. However, the voter's identifier is still legible through the white-out.	X	
Voter does not provide an identifier, but the label on the voter's ballot envelope provided by the division contains the voter's voter number.		X

Was the Voter Eligible to Receive the Party Ballot Type?

In the primary election, the voter's party affiliation at the 30-day registration deadline will determine the political party ballot type the voter is eligible to vote. Compare the voter's affiliation to the ballot type written on the label on the Voter's Declaration/Affirmation by the Absentee Office. If the Absentee Office cannot determine the voter's ballot type (voter has sent the ballot in a sealed envelope) this area will be blank on the label. See your election supervisor for further instructions.

Example	Count	No Count
Voter's affiliation is the same as the ballot type voted.	X	
Voter's affiliation is different from the ballot type voted.	X Count ballot measure portion when applicable or if voter is eligible for ballot type voted.	X

Was the Voter's Signature Witnessed?

The voter's signature must be witnessed by either an authorized official or by someone 18 years of age or older in the witness box at the bottom of the Voter's Declaration/Affirmation.

Example	Count	No Count
No witnessing signature.		X
Official does not provide date witnessing took place.	X	
Official prints name.	X	
Official signs with mark or symbol.	X	
Official writes initials.	X	
Official does not give title.	X	
Witnessed by a registrar.	X	
Witnessed by an absentee official on or before election day.	X	
Witnessed by an election board worker on or before election day.	X	
Notarized by Alaska notary and does not have seal.	X	
Notary does not give date commission expires.	X	
Notarized outside Alaska with no seal or "stamped notary title" is affixed.	X	
Stamped with official postal stamp but is not signed.	X	
Witness in Option I or II prints name or uses initials or marks.	X	
One witness signature in Option II with another in Option I.	X	
Authorized official signs in Option II and provides information to determine authorized in Option I.	X	
Option II witness signed in wrong place.	X	
Location where witnessing took place is not provided.	X	
Date witnessing took place is not provided.	X	
One witness signature is voter.		X
Voter provides different date than witness.		X
Voter faxes signature sheet and the witnessing signature is cut off.		X
Official gives title different than those identified on list of authorized officials such as utility clerk, spouse, clerk and etc.	X	

Was the By-Mail FWAB Postmarked and Received in Time?

By-mail FWABs must be postmarked on or before election day. When mailed within the United States, the ballot must be received within 10 days after the election. When mailed from overseas, the ballot must be received within 10 days after the election for primary elections and within 15 days after general or statewide elections. **After election day, ballots may not be accepted unless received by mail.**

Example	Count	No Count
Postmark is after election day.		X
No postmark but is dated and witnessed prior to election day.	X	
Voter simultaneously applied and voted and the ballot return envelope does not have a postmark or witness date but was received on or before the 10 day absentee ballot application deadline.	X	
Voter applied prior to the 10 day application deadline and the ballot return envelope does not have a postmark or witness date but was received on or before election day.	X	
Ballot mailed from within the United States is received later than 10 days after the election.		X Except in a recount.
Ballot mailed from APO/FPO or overseas address and is received more than 10 days after the primary election.		X Except in a recount.
Ballot mailed from APO/FPO or overseas address and is received more than 15 days after a general or statewide special election.		X Except in a recount.
Ballot mailed from APO/FPO or overseas address and is received later than 10 days but less than 15 days after the election for a general or statewide special election.	X	
Voter provides a different date than witness.		X
One witness signed and dated and a second witness signed and dated a different date.	X	

Was the By-Fax FWAB Received in Time?

By-fax FWABs must be received by 8:00 p.m. AST on election day. When the ballots are received, staff will date stamp the ballot. For ballots received after 8:00 p.m. AST on election day, staff must indicate both date and time the ballot was received.

Example	Count	No
Ballot was received after 8:00 p.m. AST on election day.		X
No witnessing date but is received before 8:00 p.m. AST election day.	X	
No signature date but is received before 8:00 p.m. AST election day.	X	
Voter provides a different date than witness.		X
One witnessed signed and dated and a second witnessed signed and put a different date.	X	
Ballot received on election day before the 8:00 p.m. AST deadline at a divisional office, however date and time stamp from the users fax machine indicates a date and time after the deadline.	X	

DETERMINING BALLOT ELIGIBILITY – FEDERAL VOTER (I/OS)

General Overview

Under Alaska law, voters who were last domiciled in Alaska prior to leaving the United States or whose parent(s)/guardian(s) were last domiciled in Alaska prior to leaving the United States, who do not have intention to return to Alaska, may register and participate in federal elections. Voters under this status DO NOT have to provide a residence address in Alaska and may not appear in VREMS with a residence address.

Voters must be registered 30 days before election day in order for the voter's ballot to be counted for federal races, except for the presidential race during presidential elections.

A ballot with just federal races appearing on the ballot will be sent to voters in this status. One regional office will be responsible to handle all federal ballots. For logging and processing purposes all federal voters are assigned to district "99" that is agreed upon by the regional supervisor.

When reviewing ballots for I/OS voters, the same rules apply as any other type of ballot. The only difference is that the voter's status/condition code will be I/OS and the voter is eligible to vote only the federal races on the ballot.

Is the Voter Properly Registered?

Look at the voter's STATUS and CONDITION field. A federal voter will appear as STATUS "I" for inactive and CONDITION "OS" for overseas.

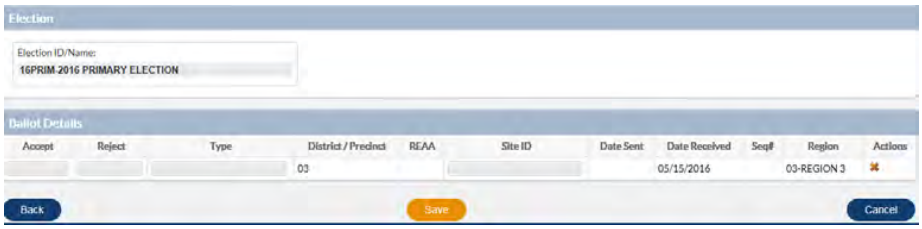
NOTE: Since I/OS voters are not eligible to participate in state and local elections, they are maintained in an inactive status to prevent them from appearing on the state/local precinct registers and voter lists.

DATA ENTRY OF ABSENTEE BALLOTS

Ballot Input Screen

Each ballot received must be entered in VREMS for tracking purposes. Ballots are to be entered one district at a time in date order. Once a ballot is recorded, VREMS will assign a sequence number for the ballot. While entering ballots for a district, keep the ballots in sequence order.

In the lower portion of the Received Absentee Ballot screen specific information about the ballot will be entered. This information will be whether or not the ballot may be counted in full, in part or if the ballot must be rejected.



Election ID/Name field: This is the election ID. The ID will automatically appear from the Default Values that were entered on the process screen before searching for the voter.

Accept field: This is the location to record how the ballot is to be counted, full or partial count. To view a list of the codes, press the Backspace key. It is very important that the correct code is entered.

Reject field: This is the location to record the code of why a ballot was rejected. If a voter's record is inactive with a VR, RE or XX condition code, before rejecting the ballot, verify that the correct condition code was used to inactivate the record and that a data entry error was not made.

Type field: This is the type of absentee ballot the voter voted.

Type **A, E, F, M, O, S** or **W** are for by-mail, faxed or online ballots. These codes will already appear on the voter's record.

Note: Refer to the list of Accept, Reject and Type codes at the beginning of this manual.

When entering an in person ballot or a voter and the voter's record shows that either a by-mail ballot or a by-fax ballot has been sent, you must edit the ballot type by selecting the plus sign and adding the in person ballot.

District/Precinct field: This represents the district ballot issued to the voter. For by-mail and electronic ballots, the district number will automatically appear on the screen. Each region will enter only the ballots for their jurisdiction. An error message will appear if a ballot is

entered for a district that does not correspond to the region. If a different district is entered than the district where the voter is registered, a warning message will appear. If the message appears, verify the information has been entered correctly.

Site ID field: This represents the site ID where the ballot was issued. For by-mail, electronic ballots, special needs ballots the Site ID will be the regional office processing the ballots. The Site ID will change if voted by an Absentee Voting Official or Voting Station.

Date Sent field: This is the date the absentee ballot was sent to the voter by the Absentee Office.

Date Received field: This represents the date the ballot was received by the division. The date will carry forward from the previous screen. The date may be changed if the date that carried forward is incorrect. ***It is very important that ballots are entered using the correct date.***

If a ballot is entered using the wrong date, notify the election supervisor to correct the date.

Voters with More Than One Ballot Appearing on Record

Some voters may have more than one ballot recorded on their record. There are different reasons why more than one ballot may appear on a voter's record.

If a voter casts a second ballot, when logging the ballot to the voter's record you will receive a warning message that this voter has already voted or has a ballot logged to his record.

If it appears that a second ballot has been received for a voter, additional research will need to be conducted and approved by the election supervisor.

- Determine the other source in which the voter may have voted by reviewing the voter's voter history record in VREMS.
- Upon determination of the source, locate the voter's materials used to vote to determine if the information provided on both sources match or if voter history was entered incorrectly.
- If it is determined that the voter has voted more than once, verify if the first ballot has been counted. If the first ballot is an absentee or questioned ballot that has been accepted but not counted, change the accept code on the first ballot to reject and also reject the second ballot. A voter can only vote once in an election. If more than one ballot is voted, none of the ballots may be counted. If the absentee ballot that has been counted, reject the second ballot.
- If it is determined that the first voter history was entered incorrectly in VREMS, bring the materials to the election supervisor for correction.

Completing the Ballot Envelope and Saving the Data

After entering the ballot information, press **SAVE**. VREMS will scan the data entered and check for all technical errors. If no errors are found, a message will appear “Absentee ballot has been saved successfully – Sequence # “

- Write the voter’s number on the VN line of the registration portion of the ballot envelope. When entering an unregistered voter, a voter number will appear with the sequence #.
- If the voter is purged, write the date when purged in the line provided.
- Write the appropriate accept code for how the ballot will be counted on the count code line. If the ballot is rejected, write the appropriate reject code on the reject code line.
- If applicable, write the district number where the voter is registered.
- Write the sequence number on the ballot envelope.

PRESUMPTIVE RESIDENCE SCENARIOS

Presumptive Evidence of Residence Address Scenarios

1. John Smith votes a questioned ballot in district 30, precinct 363. John's voter registration record indicates he is registered to vote in district 30, precinct 305. In the act of voting, John provides a new residence address of PO Box 30, Tuluksak, AK on the questioned ballot envelope.

   Response: AS 15.05.020(10) states: The *address of a voter as it appears on an official voter registration card is presumptive evidence of the person's voting residence*. Therefore, by providing a mailing address in Tuluksak, John does not overturn the presumptive evidence of his voting residence. **This would be a full count ballot**.

2. Tim Fisher votes a questioned ballot in district 30, precinct 470. Tim's voter registration record indicates he is registered to vote in district 30, precinct 310. In the act of voting, Tim provides a new residence address of Tuluksak, AK on the questioned ballot envelope.

   Response: This scenario is different from number one. Tim has provided a new residence address, therefore overturning the presumptive evidence of his voting residence. **This would be a partial count ballot.**

3. Betty Brown, a registered voter in district 29, precinct 480 votes a district 29 questioned ballot. In the act of voting, Betty provides a new residence address of PO Box 1, Anchorage, AK on the questioned ballot envelope.

   Response: Betty does not overturn the presumptive evidence of her voting residence by providing a mailing address in Anchorage. **This would be a full count ballot.**

4. Tom Tucker is a registered voter in district 30, precinct 370. He votes a questioned ballot in district 30 and provides a residence address of Badger Road, North Pole, AK on the questioned ballot envelope

   Response: Badger Road is not a mailing address, but more importantly, it is not in district 30. Since the information Tom now has provided is not a mailing address, it clearly places him outside of district 30. **This would be a partial count ballot.**

5. Mary Martin is a registered voter in district 35, precinct 10. She votes a district 35 questioned ballot and provides a new residence address of Anchorage, AK on the questioned ballot envelope.

   Response: While this is not a mailing address, it is not a complete residence address either. Therefore it does not overturn the presumptive evidence of Mary's voting residence. **This would be a full count ballot.**

6. John Johnson is a registered voter in district 30, precinct310. He votes a questioned ballot in district 30 and provides a new residence address of College Road, Fairbanks, AK on the questioned ballot envelope.

   Response: College Road is split between districts 30 and 31. Since district 30 contains College Road and John didn't provide an exact address, the information provided does not overturn the presumptive residence address.
   This would be a full count ballot.

7. Mark Malone is a registered voter in district 21, precinct 399 and votes a questioned ballot in district 21, precinct 407. He provides a new residence address of PO Box 1234 Fort Richardson on the questioned ballot envelope.

   Response: This would be a full count ballot. However, if Mark had written only Fort Richardson as the residence address, it would be a partial count ballot.

8. Sally Smith enters one of the regional election offices to vote an absentee ballot. She is registered to vote in district 29 and votes a district 29 ballot. She also completes a new voter registration form and provides Charlie's Bar and Grill, Chicken, AK as a residence address.

   Response: Sally has provided a new residence address outside of district 29, therefore overturning the presumptive evidence of her voting residence. **This would be a partial count ballot.**

BALLOT ACCEPT CODE DESCRIPTIONS

A **Accept Whole Ballot**

Use this code when the entire ballot may be counted. If you are using this code, you determined that the voter was eligible to vote on all issues and for each race appearing on the ballot.

B **Accept Ballot Measure Only**

Use this Code during the primary election only when the voter is not eligible for the candidate races due to affiliation and political party ballot received, but eligible for the ballot measure.

F **Accept Federal Only**

Use this code when only the federal races (President, Vice President, U.S. Senate, and U.S. Representative) may be counted. There are two sets of circumstances in which this code will apply.

1. Former residents of Alaska who reside overseas may register and vote in federal elections even if they no longer have a residence address in Alaska. These voters are registered with a status and condition code of I/OS and with an **F** in the **app type** field.
2. In general elections, the federal government provides a special write-in ballot which may be used by overseas voters who have also applied for a state ballot. The State Review Board handles this type of voter following the special advance overseas ballot process.

H **Accept Presidential Only**

Use this code when only the presidential race may be counted. When using this code, it has been determined that the voter either registered after the 30-day deadline or supplied sufficient information on the ballot envelope to register to vote.

J **Accept Statewide and Judicial Only - General Election Only**

Use this code when only the statewide races, judicial races, and ballot measures may be counted. When using this code, it has been determined that the voter has moved from one senate district to another within the same judicial district. Using this code, the senate and house races on the ballot will not be counted.

L **Accept Statewide and Senate Only**

Use this code when only the statewide and senate portions of the ballot may be counted. When using this code, it has been determined that the voter has moved between house districts that share the same senate district, but that have crossed judicial districts.

M **Accept All But Superior and District Court - General Election Only**

Use this code when the entire ballot, except the Superior and District Court judges may be counted. When using this code, it has been determined that the voter has moved within a house district that is split by two or more judicial districts.
Using this code, all issues and races, except Superior and District Court judges, will be counted.

N **Accept Statewide, Judicial, and Senate - General Election Only**

Use this code when only the statewide, judicial, and senate races can be counted. When using this code, it has been determined that the voter has moved between house districts that share the same senate and judicial districts.

P **Hold – Check with Director**

Use this code when there is an issue with the ballot that needs determination from the director before accepting the ballot. All ‘P’ codes need to be changed to either accept or reject before review is complete.

S **Accept Statewide Only**

Use this code when only the statewide issues and races may be counted. When using this code, it has been determined that the voter is not eligible to vote for the house race, senate race, or the Superior Court or District Court judges.

BALLOT REJECT CODE DESCRIPTIONS

Remember that if you determine a portion of the voter's ballot MAY be counted, you will not enter anything under the reject code. **If a portion of the ballot may be counted, enter the appropriate Accept Code**.

D **Duplicate Ballot Voted**

When entering a second ballot from an individual who has cast more than one ballot. VREMS will displace a duplicate ballot voted warning message. Always research voting materials to make sure that a data entry error was not made. Voters who vote twice are subject to criminal charges.

E **Ballot Envelope Empty**

Use this code if the voter's ballot envelope does not contain a voted ballot.

G **Voter Failed to Provide Required Identifiers**

Use this code if the voter failed to provide an identifier such as voter number, social security number, or date of birth when voting by-mail or by-fax.

I **Voter is Inactive**

Use this code if the voter's record is inactive with a status and condition code of I/RE, I/VR, I/FC, I/FD, or I/XX. VREMS will display a reject prompt code of "I".

K **Ballot Not Properly Applied For**

Use this code if a ballot was received from a person who has not applied for the ballot. For example, a wife applied for a ballot, the husband did not, and the husband fills out the ballot envelope and votes the ballot. This code is also used for special needs ballots when the personal representative did not properly complete Step 1 on the ballot envelope.

O **Voter Does Not Meet Certification Requirements**

Use this code if the voter marked through any of the certification requirements on the voter oath or checked "No" on the citizenship, birth date, or residency box.

P **Hold – Check with Director**

Use this code when there is an issue with the ballot that needs determination from the director before rejecting the ballot. All 'P' codes need to be changed to accept or reject before review is complete.

T **Voter Registered Too Late**

To be qualified to vote, voter must be registered or make registration changes at least 30 days prior to the election. Use this code if no part of the voter's ballot may be counted because the voter registered after the 30-day deadline. This code will appear as a prompt at the top of the Add Absentee Ballot screen if the voter registered or made a registration change after the 30-day deadline.

U **Ballot Not Dated or Postmarked and Received After Election Day**

Use this code when there is no postmark or witnessing date on the ballot envelope and the division received the ballot after election day.

V **Ballot Received Too Late**

Use this code if a ballot is mailed from within the US and not received by the 10th day following the election. If a ballot was mailed from overseas, it must be received within 10 days following the primary election and 15 days following the general election. Ballots must be postmarked on or before election day and received within the legal time frame to be counted.

W **Ballot Postmarked/Voted After Election Day**

Use this code if a ballot is postmarked or witnessed after election day.

X **Voter is Not Registered**

Use this code if the voter is not registered and does not appear in VREMS or if the voter appears as an I/AV or I/QU voter. Check VREMS thoroughly before using this code.

Y **Inadequate Witnessing**

Use this code if a ballot envelope was not witnessed properly. For by-mail, online and fax ballots an authorized official or one person over the age of 18 must witness the voter's signature. (This code does not refer to ballots not witnessed properly by notaries).

Z **Voter Failed to Sign**

Use this code if the voter failed to sign the ballot envelope.

1 **Voter Resides in Different Jurisdiction**

Use this code during an REAA election if the voter does not reside or is not registered in the REAA and does not provide enough information on the ballot envelope to register. If the voter is registered in another jurisdiction, but on the ballot envelope provides registration information that would place the voter in the REAA, use the reject B code.

2 **Incomplete Notary**

Use this code when the notary public witnessing the ballot envelope failed to execute the notarization properly.

3 **Ballot Hand Delivered After Election Day**

Use this code if a by-mail ballot was hand delivered after election day.

4 **Ballot Voted By Somebody Other Than Voter**

Use this code if it is clear on the ballot envelope that somebody other than the voter voted the ballot.

5 **Voter Requested a Primary Election Ballot In Which They Are Not Eligible**

Use this code in the primary election if the voter requested a political ballot type in which the voter was not eligible to vote. For example, the voter is registered as a democrat and requests the republican ballot and no ballot measure appears on the ballot.

6 **Cancelled Ballot Received**

This code is used during a primary election. When a voter requests a different party ballot than the one initially mailed, the first ballot is canceled and a second ballot is sent. If the first ballot is voted and returned, it will not be counted because the voter requested it to be canceled.

7 **No Identification Provided at Time of Voting**

Use this code if, on the ballot envelope, the election official marked “No ID Presented” and the voter has a status and condition code of A/ID. This code is also used if an A/ID voter is voting a by mail or fax ballot and does not submit the required identification with the ballot. A/ID means the voter initially registered to vote by mail and the voter’s identity could not be verified. These voters must show ID at the time of voting for their ballot to count.

jnu.law.ecf@alaska.gov

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

THE ALASKA CENTER EDUCATION FUND, ALASKA PUBLIC INTEREST RESEARCH GROUP, and FLOYD TOMKINS,	)	
Plaintiffs,	)	Case No. 3AN-20-08354CI
v.	)	
GAIL FENUMIAI, in her official capacity as the Director of the Alaska Division of Elections, KEVIN MEYER, in his official capacity as the Lieutenant Governor of Alaska; and THE STATE OF ALASKA, DIVISION OF ELECTIONS,	)	
Defendants.	)	

AFFIDAVIT OF GAIL FENUMIAI

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

I, Gail Fenumiai, declare under penalty of perjury that the following is true and correct:

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. Alaska voters who choose to vote either absentee by-mail or absentee by

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electronic delivery must complete the voter certificate. An image of the voter certificate for by-mail ballots is attached as Exhibit A and an image of the voter certificate for electronic delivery ballots is attached as Exhibit B. Exhibit A also includes an image of the reminder on the closing flap of the by-mail envelope. The instruction sheets that have been sent with by-mail ballots are attached as Exhibit C and the instruction sheets that have been sent with electronic delivery ballots is attached as Exhibit D. The sheets stating that a witness is required were sent before the court's order eliminating that requirement for the 2020 general election.

3. Voters may vote and return their absentee ballots as soon as received. Voters may return their absentee ballots by mail or by any reasonable method on or before election day, including by hand delivery or placement in a secure ballot drop-box designated by the Division. However, ballots will only be accepted after election day if received by mail and postmarked on or before election day.

4. The Division preliminarily reviews and logs all absentee ballots on arrival. No ballots are rejected or opened at this time. The Absentee Ballot Review Board makes the final determination of whether a ballot should be rejected or accepted.

5. On September 9, the Division notified absentee voters whose 2020 primary election ballots were rejected of the rejection and the reason for it along with an explanation, if applicable, of how to prevent it from happening in the future.

6. The COVID-19 pandemic has created many new challenges for the Division. The Division must arrange for social distancing, masks, gloves, and sanitizing in 441 polling places and over 140 absentee-in-person voting locations around the state

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for the general election; recruit election workers to staff those polling places and absentee-in-person voting locations in a year when far fewer people are willing to serve in this role; create new distanced training to avoid unnecessary exposure for smaller communities and Division employees; and process an unprecedented number of absentee ballot applications and ballots. This is all while adjusting our own internal workplace protocols to protect the safety of Division employees and poll workers.

7. I recently sent a letter to Senator Donald Olson describing some of the unusual challenges we have faced in recruiting poll workers and making voting available in rural communities this year. A copy of that letter is attached as Exhibit E. This has been a great source of additional stress and effort for us this election cycle. It also describes some of the additional administrative burdens associated with accommodating increased absentee voting this year.

8. The Division has already hired temporary employees to review and log absentee ballots for the general election in addition to its own staff. They already received their training in advance of the primary. The Division only has 28 full time staff and relies heavily on temporary employees to be able to conduct elections. Elections is not the type of work environment where a new employee can just be placed at a computer terminal and left to figure things out. They have access to confidential information in the Division's voter database and must learn to use the Divisions systems. When hiring, the Division reaches out to former temporary workers to gauge their interest in working for an election cycle. Recruitment is also done utilizing Workplace Alaska, Job Center and word of mouth. Training temporary election officials

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takes time. For example, it takes 2-3 weeks to train workers to perform data entry for voter registrations before they are released from audit by a fulltime senior level staff. While auditing is a critical component of the division's data entry processes, it takes valuable time away from a fulltime employee's other election related duties. Senior staff play a key role in hiring and establishing a training plan for temporary workers. Training new employees for ballot logging takes about 1.5 weeks before they understand the process and are not constantly seeking out assistance from senior staff. Adding new employees all adds to the workload of division staff until they are ready to work independently.

9. Our existing administrative staff, including temporary employees already hired, are already completely maxed out with their duties between now and certification of the general election. I do not have any available staff to assign to whom to assign new duties.

10. I understand the plaintiffs have suggested that the Division use CARES Act funds to offset the cost of implementing some sort of cure process if the court orders us to do so, but I am uncertain whether that would meet the criteria for a COVID-19-related expenditure. I would have to reach out to the federal Election Administration Commission to determine whether such expenditures would qualify.

11. The Regional Supervisors are working diligently to ensure voting equipment and supplies are ready to be dispersed to 441 precincts. Early voting and absentee in person voting starts on October 19 and they are conducting follow up with these voting officials and will be busy fielding questions throughout the early voting

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period. Follow up training is being conducted by Regional Supervisors. Three of the four regional offices are still conducting work associated with the October 6 REAA election – ballot logging and review and absentee and questioned review board work. Thousands of absentee by mail ballots for the general election are being received daily and all available staff are tasked with logging ballots in order to stay on top of this to the best of our ability. Absentee ballot review boards start meeting on October 27 and regional supervisors will be spending many hours a day organizing ballots for daily review, running daily reports and responding to Board questions. They are busy every day problem-solving election worker recruitment issues and this will continue through election day. The division does not have the senior level staff available to design a new cure system at this late stage in the election process. I am not currently familiar with what cure processes exist in other states, and what the advantages and disadvantages are of various models or how well they might work in our unique state. I myself am very occupied with the duties I already have and I do not anticipate having time available to devote to a project of this magnitude between now and certification of the general election nor is any other senior level staff person in my office available to take on this project.

Gail Fenumiai

Gail Fenumiai

SUBSCRIBED AND SWORN to before me this 14 day of October, 2020.

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

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

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1. **You MUST Sign AND Provide One Identifier**

Voter Certificate, Signature and Identification

I declare that I am a citizen of the United states and that I have been a resident of Alaska for at least 30 days. I have not requested a ballot from any other state and am not voting in any other manner in this election. If I had this certificate attested by a witness, other than an authorized official, it was because no official empowered to administer an oath was reasonably available. **I certify, under penalty of perjury, that the foregoing is true and accurate.**

Voter Signature: _____

Voter Identifier: _____ _____ _____ _____

Voter No. | AK Driver's License No. | Date of Birth | Last 4 of SSN

2. **Your Signature MUST be Witnessed**

Witness Affidavit

Have your signature witnessed by an authorized official or, if an authorized official is not reasonably available, by someone 18 years of age or older.

Signed in my presence:

This _____ day of _____ 20 _____, at _____.
(City & State or Country)

Witness Signature: _____

If authorized official, official title: _____

Warning: False statements made by the voter or by the attesting witness on the certificate are punishable by law.

Review Board Use Only	
Count Code:_____	Sequence No.:_____
No Count Code:_____	Initials:_____

E36B (Rev. 7/1/2019)

Before Sealing this Envelope

Did you…

- ❑ **Sign the envelope?**
- ❑ **Provide ONE identifier?**
- ❑ **Have your signature witnessed?**
- ❑ **Applied postage to front of this envelope?**

This envelope MUST BE postmarked by Election Day

Voter Certificate and Identification

By law your ballot cannot be counted unless you sign, provide an identifier and have your signature witnessed.

I understand that by using electronic transmission to return my marked ballot, I am voluntarily waiving a portion of my right to a secret ballot to the extent necessary to process my ballot but expect that my vote will be held as confidential as possible. I declare that I am a citizen of the United States and that I have been a resident of Alaska for at least 30 days. I have not requested a ballot from any other state and am not voting in any other manner in this election. If I had this certification attested to by a witness other than an authorized official, it was because no official empowered to administer an oath was reasonably available.

I certify, under penalty of perjury, that the foregoing is true and accurate.

1. **You MUST Sign AND Provide One Identifier**

Voter Signature and Identification

Voter Signature: _____

Voter Identifier: _____ _____ _____ _____

Voter No. | AK Driver's License No. | Date of Birth | Last 4 of SSN

2. **Your Signature MUST be Witnessed**

Witness Affidavit

Have your signature witnessed by an authorized official or, if an authorized official is not reasonably available, by someone 18 years of age or older.

Signed in my presence:

This: _____ day of _____ 20 ____, at _____

(City & State or Country)

Witness Signature: _____

If authorized official, official title: _____

Warning: False statements made by the voter or by the attesting witness on the certificate are punishable by law.

OBSCURED # O 20GENR

BALLOT_DIST_NU PRC PARTY JUDICIAL_DISTRICT Region_#
NAME_FIRST NAME_MID NAME_LAST NAME_SUFFIX
MAIL_ADDR_1 MAIL_ADDR_2
MAIL_ADDR_3
MAIL_CITY MAIL_STATE MAIL_ZIP
MAIL_COUNTRY

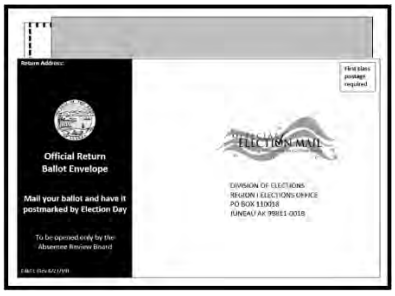
Review Board Use Only	
Count Code: _____	Sequence No.: _____
No Count Code: _____	Initials: _____

November 3, 2020 By-Mail Voting Instructions

1. Vote Ballot

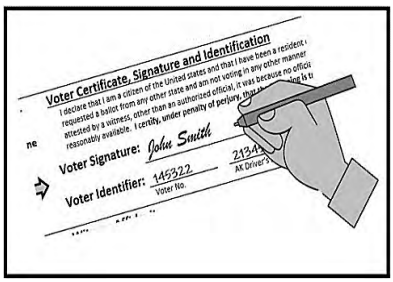
- Fill in the oval next to your choices using blue or black pen.
- For write-in candidates, print the person's name on the blank line and fill in the oval next to the name you have written.
- Follow the instructions on the ballot for voting your ballot.
- If you make a mistake voting, call the elections office below to request a replacement ballot or draw a line through the oval and candidate or issue you voted, write "no" next to it and then continue voting by filling in the oval next to your choice.

  Example: ~~Candidate Name~~ *NO*



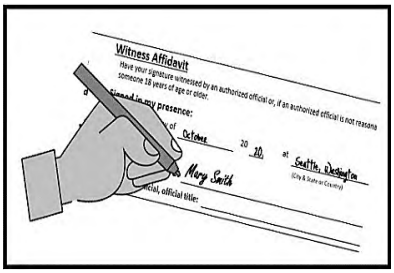
2. Place Ballot Inside the Return Ballot Envelope

- Fold your ballot and place it inside the gray secrecy sleeve.
- Place gray sleeve with your ballot inside the return ballot envelope.



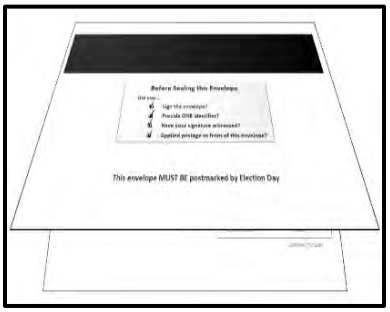
3. Sign the Return Envelope and Provide ONE Identifier

- Sign your Return Ballot Envelope where your witness can view it within a safe social distance.
- Write ONE of your identifiers on the back of the envelope:
  - Voter number, Alaska driver's or state ID number, date of birth or last four of SSN.



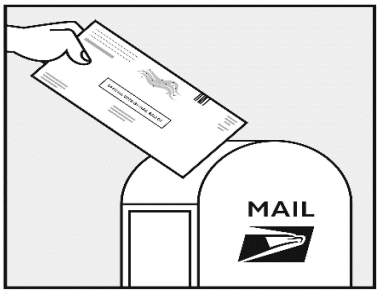
4. Have Your Signature Witnessed

- **Have your signature witnessed by anyone 18 years of age or older**.
- Or, you may choose to have your signature witnessed by an official if reasonably accessible. (Notary public, commissioned officer of the armed forces, district judge or magistrate, registration official or other person qualified to administer oaths.)



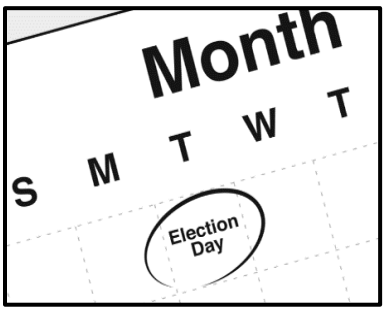
5. Secure your ballot

- Fold over the flap of the return envelope to cover up your signature, identifier and witness information.
- Secure your envelope by moistening the glue at the top and bottom of the flap and sealing it to the envelope.



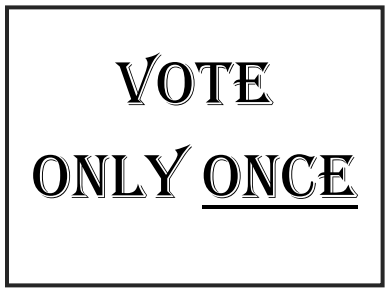
6. You May Return Your Voted Ballot By-Mail

- Apply 55 cents postage to the front of the envelope when returning your voted ballot by-mail (one Forever stamp).
- When mailing your ballot from outside the U.S., apply the correct amount of postage required for the area where you are located.
- Your ballot MUST be **POSTMARKED** or **RECEIVED** on or before Election Day, Tuesday, November 3, 2020.



7. You May Drop-Off Your Voted Ballot

- You may drop-off your ballot at any voting location in Alaska. This includes absentee voting, early voting and polling place locations. To find a drop-off location, visit our website at www.elections.alaska.gov.
- If you drop off your ballot, it MUST be **RECEIVED** by 8:00 p.m. on Election Day, Tuesday, November 3, 2020.



8. Vote ONLY ONE Time

- Once you vote and return your by-mail ballot either by-mail or if you drop it off, **you cannot vote again in any other manner in this election**.
- If you intentionally vote again in this election, you will be committing a crime of voter misconduct in the first degree, which is a class C felony offense. (AS 15.56.040)

9. Questions?

- Call: (907) 270-2700 or (877) 375-6508 (toll free in U.S.)
- Language assistance call: 1-866-954-8683
- Visit: www.elections.alaska.gov for additional information including the Official Election Pamphlet.

November 3, 2020 By-Mail Voting Instructions

Attention Voters:

Due to a recent court decision, a witness signature is not required for the November 3, 2020 general election by mail ballots. Although the envelopes still show a place for a witness signature, your ballot will not be rejected due to lack of a witness signature.

You must still sign the envelope and provide an identifier of your own. It is also recommended, but not required, that you date your signature.

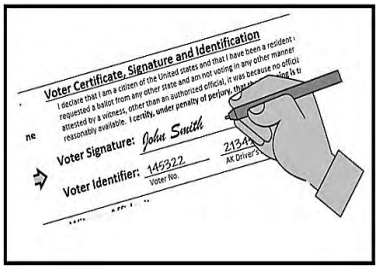
1. Vote Ballot

- Fill in the oval next to your choices using blue or black pen.
- For write-in candidates, print the person's name on the blank line and fill in the oval next to the name you have written.
- Follow the instructions on the ballot for voting your ballot.
- If you make a mistake voting, call the elections office below to request a replacement ballot or draw a line through the oval and candidate or issue you voted, write "no" next to it and then continue voting by filling in the oval next to your choice.

  Example: ~~Candidate Name~~ *NO*

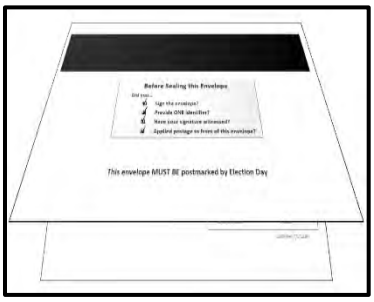
2. Place Ballot Inside the Return Ballot Envelope

- Fold your ballot and place it inside the gray secrecy sleeve.
- Place gray sleeve with your ballot inside the return ballot envelope.



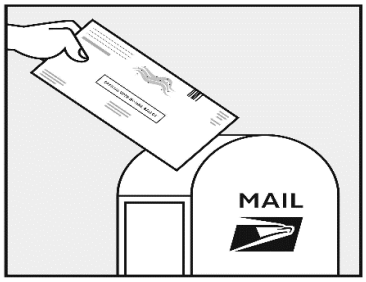
3. Sign the Return Envelope and Provide ONE Identifier

- Sign your Return Ballot Envelope.
- Write ONE of your identifiers on the back of the envelope:
  - Voter number, Alaska driver's or state ID number, date of birth or last four of SSN.



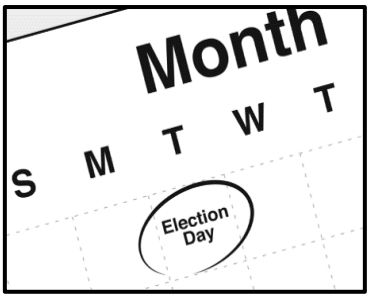
4. Secure your ballot

- Fold over the flap of the return envelope to cover up your signature and identifier.
- Secure your envelope by moistening the glue at the top and bottom of the flap and sealing it to the envelope.



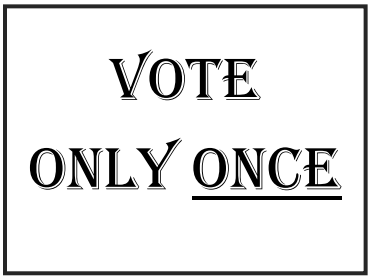
5. You May Return Your Voted Ballot By Mail

- Apply 55 cents postage to the front of the envelope when returning your voted ballot by-mail (one Forever stamp).
- When mailing your ballot from outside the U.S., apply the correct amount of postage required for the area where you are located.
- Your ballot MUST be **POSTMARKED** or **RECEIVED** on or before Election Day, Tuesday, November 3, 2020.



6. You May Drop-Off Your Voted Ballot

- You may drop-off your ballot at any voting location in Alaska. This includes absentee voting, early voting and polling place locations. To find a drop-off location, visit our website at www.elections.alaska.gov.
- If you drop off your ballot, it MUST be **RECEIVED** by 8:00 p.m. on Election Day, Tuesday, November 3, 2020.



7. Vote ONLY ONE Time

- Once you vote and return your by-mail ballot either by-mail or if you drop it off, **you cannot vote again in any other manner in this election**.
- If you intentionally vote again in this election, you will be committing a crime of voter misconduct in the first degree, which is a class C felony offense. (AS 15.56.040)

8. Questions?

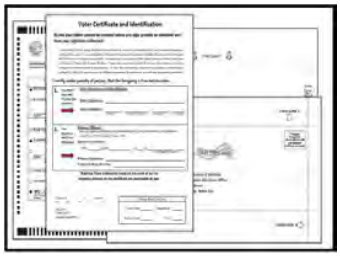
- Call: (907) 270-2700 or (877) 375-6508 (toll free in U.S.)
- Language assistance call: 1-866-954-8683
- Visit: www.elections.alaska.gov for additional information including the Official Election Pamphlet.

Online Voting Instructions

Attention Voters:

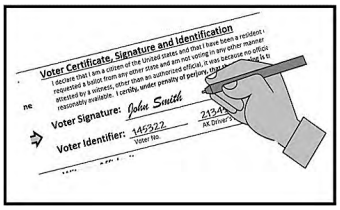
Due to a recent court decision, a witness signature is not required for the November 3, 2020 general election by mail ballots. Although the certificate still shows a place for a witness signature, your ballot will not be rejected due to lack of a witness signature.

You must still sign the certificate and provide an identifier of your own. It is also recommended, but not required, that you date your signature.



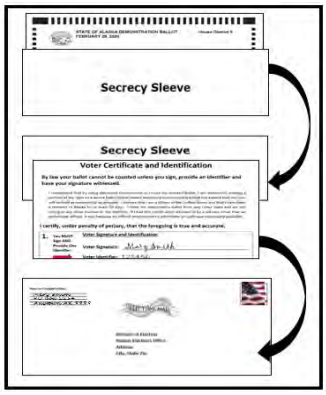
1. Print Downloaded Ballot Package Documents

- Print your Voter Certificate and Identification form.
- Print your voted ballot.
- Print your origami secrecy sleeve and return envelope.



2. Sign and Provide ONE Identifier on the Voter Certificate Form

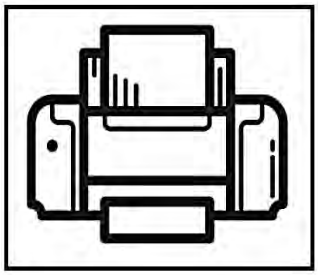
- Sign the Voter Certificate and Identification form.
- Provide ONE of your identifiers:
  - Voter number, Alaska driver's license or state ID number, date of birth or last four of SSN.



3A. Return Your Ballot By-Mail (do NOT mail if you return ballot by-fax)

<u>Returning your ballot by-mail maintains the secrecy of your ballot.</u>

1) Fold your ballot. Then, fold the secrecy sleeve around your ballot.
2) Wrap your completed voter certificate around the secrecy sleeve with your ballot inside.
3) Fold the return addressed envelope around the outside of your voting packet and seal it with scotch tape. Write your return address in the upper left-hand corner.
4) Your ballot must be **POSTMARKED** on or before Election Day, Tuesday, November 3, 2020.



3B. OR, Return Your Ballot By-Fax (do NOT fax if you return ballot by-mail)

- When returning your ballot by-fax, you voluntarily waive your right to a secret ballot, and you are assuming the risk that a faulty transmission may occur.
- Fax your voted ballot and completed voter certificate to the Regional Elections Office at:

  Toll Free (within U.S.): FAX_1
  Fax Number: FAX_2

- Your ballot must be RECEIVED on or before 8:00 p.m. Alaska Standard Time on Election Day, Tuesday, November 3, 2020.
- The first complete voting packet (ballot and voter certificate), as determined by date and time received by the division, will be accepted. All others will be rejected.

Director's Office
240 Main Street Suite 400
P.O. Box 110017
Juneau, Alaska 99811-0017
☎ 907-465-4611 🖷 907-465-3203
elections@alaska.gov

Elections Offices ☎
Absentee-Petition 907-270-2700
Anchorage 907-522-8683
Fairbanks 907-451-2835
Juneau 907-465-3021
Nome 907-443-5285
Mat-Su 907-373-8952

STATE OF ALASKA
Division of Elections
Office of the Lieutenant Governor

October 12, 2020

The Honorable Donald C. Olson, Senator
Alaska State Legislature
Alaska State Capitol, Suite 514
Juneau, AK 99801-1182

Dear Senator Olson:

First, I want to be clear that the division takes the conduct of all elections very seriously. The division values the voice of all Alaskans. To suggest anything less is demeaning and demoralizing to the 28 full time employees of the division. In spite of the COVID pandemic, the division offices have remained staffed. In-person services continued to ensure that all voters could receive assistance. Division staff have taken their responsibility to serve the voters of the state seriously while trying to remain personally safe during this pandemic.

The division of elections has been recruiting election officials for the 2020 election cycle since mid-March. It is not a flawless process. The division receives commitments from officials and letters of agreement, but as the election nears, sometimes they decide not to work or do not respond to calls. The division works with local governments, tribes, native associations, legislative offices to help get the word out that workers are needed. For the primary election, social media was heavily utilized, state workers were encouraged to serve as election workers—sending boosts and targeting messaging in areas of the state where workers were needed.

Newtok-Mertarvik was not the only community where the division struggled to find election officials. Between the dates of July 24 and August 7, the division sent letters to all registered voters in 20 communities, including Newtok-Mertarvik, informing them no workers had been secured for the primary election, asking them for assistance in finding workers and advising them of what their voting options were for the primary. All voters in these communities were also either sent an absentee by-mail ballot application and/or provided with information about utilizing the division's online system and voting by electronic transmission. They had information about the upcoming election and what the status of voting was in their community at that time. Despite these efforts, no one in Newtok-Mertarvik contacted the division stating they would assist the division and the voters in their community by working at the polling places.

Voting did take place in all 441 precincts across the state for the 2020 primary election. Although some locations did not have in-person voting on election day, they were provided the opportunity to vote through the absentee in-person voting process (in addition to the communities mentioned above that received absentee by-mail ballot applications). These precincts were: (1) Cold Bay because the

voting official had to leave town due to medical and no one else would work. She offered absentee voting to all voters in the community prior to her departure and in the end 37 people voted in the primary versus just 8 voters in 2018. Her efforts are to be commended. (2) Kake because this community locked down due to COVID. The precinct chair who was also the absentee voting official continued to provide voting through election day absentee in-person. This resulted in 81 people voting in the 2020 primary versus 68 in 2018. (3) Takotna because no one in the community would agree to work at the precinct. The absentee voting official offered voting through election day, resulting in 25 people voting in the primary in 2020 versus 7 in 2018. (4) Nunam Iqua because of a COVID lockdown. An absentee voting official provided voting for 4 days, resulting in 18 people voting in the 2020 primary versus 11 in 2018. (5) Arctic Village because the division was notified the day before the election that community was in lock down. The second chief and another person were patrolling the community to ensure people were staying at home, so they conducted the election via absentee voting. This resulted in 18 people voting in the 2020 primary versus 26 in 2018. (6) Grayling because of a failure by USPS to get the red bag containing the election supplies to the location. USPS tracking indicated the red bag was in Grayling but then August 25 tracking showed the red bag in Seattle. All the equipment except the red bag was picked up by the chairperson, but without the bag, voting could not take place. In the end, 19 people voted absentee-in-person, 1 voted by mail and 1 voted by online delivery for a total of 21 versus 41 in 2018.

The situation in Newtok-Mertarvik evolved as outlined below:

- The division had no previous knowledge about the transition of Newtok to Mertarvik. Even during multiple calls with various individuals during the recruitment process, this was not mentioned by anyone in Newtok.
- The division struggled to find election workers in Newtok. Recruitment efforts began in mid-March. In early April, the co-chair agreed to work. In late May, the previous chair decided she might work and called the Region IV office in mid-June stating she would chair. The Region IV office made numerous attempts to reach her without success and finally with the assistance of the tribal clerk calling her on the VHF, she called the Region IV office on August 5 stating she wouldn't work. The tribal clerk assisted the division by hanging recruitment posters and spreading the word. The division did not feel it was secure to send voting equipment and ballots to a community without confirmed election officials.
- On August 4, 2020, the division emailed and faxed a letter to the village council advising them there were no workers to provide in person voting on election day; requesting assistance in helping find workers; explaining the pay and providing contact information for the Region IV elections supervisor; informing voters the only available option for voting as of that time was to vote online delivery ; information was provided about the online absentee ballot application system; information about applying for a ballot by electronic transmission and enclosed a paper application. On August 7, 2020 a letter was mailed to all registered voters in Newtok.
- It wasn't until August 11 that the division became aware of the transition of Newtok to Mertarvik.
- On August 11, two voters verbally agreed to work. Later, one returned from travel and wasn't sure if she would be able to work now because she didn't know if she had to quarantine. The co-chair agreed to find help and take care of the election. At that point,

voting materials and equipment were shipped via air cargo. The materials were to be transported from Anchorage to Nome to Bethel to Newtok. The materials were shipped via priority shipping. There were delays in shipping that were not brought to the division's attention until the day before election day, requiring the division to scramble to locate where the materials were and make arrangements to get them flown into Newtok.

- On election day, workers were finally secured. Sample ballots and a precinct register were faxed to Newtok. A Newtok resident told the Lt. Governor he was willing to assist voters in getting from Mertarvik to Newtok for voting but it appears that did not happen.
- 17 people ultimately voted in the 2020 primary versus 36 in 2018.
- For the general election, the division is planning to have in-person voting in Newtok on election day and absentee in-person voting in Mertarvik. We currently have 2 verbal commitments for workers in Newtok and an absentee voting official in Mertarvik. We are working with the school principal to secure space. Absentee voting materials have been sent to the official in Mertarvik. As soon as space is secured, the information will be added to the division's web site.

Every election year, recruiting and retaining workers is the most difficult task for the division. With 441 precincts, the division has to recruit over 2,000 workers to assist in running the election. Confirmation of workers for a precinct can change multiple times in a day, and the regional election supervisors spend the majority of their time from March through November recruiting (and replacing), training, and communicating with workers. This is not meant to be a complaint--we know how important it is that every voter have an opportunity to vote, and the division puts many, many long hours into trying to locate individuals in the communities that are willing to do the job. This is a crucial part of our duties, but also the hardest because we are dealing with people (who can change their minds) and hundreds of different communities. This is not just an issue this year but a perennial issue with elections. For example, in the 2018 primary election, the division was not able to find workers for Stevens Village and there was going to be no voting on election day. In spite of multiple attempts to find workers, none were secured. It wasn't until a voter contacted the division to inquire about voting, resulting in that voter stepping up to be the election official to open polls. Supplies were flown out to him from Fairbanks on the day of the election.

This is one of the reasons the division strives to have multiple available methods for voting available. The division has over 140 absentee voting locations across the state. For the November general election, this information can be found at https://www.elections.alaska.gov/Core/avolocationsg.php. As of today, the division has not secured workers in the following precincts: Cold Bay, Takotna, Elim, Point Lay and Nunam Iqua. Recruitment efforts continue daily. The division would appreciate any assistance the legislators from these areas can provide in helping to secure an election board for election day.

To give you a snapshot of what we expect in the general election and how it will be conducted, as of today's date there have been over 113,476 absentee applications processed for absentee voting for the general election and 111,049 absentee ballots sent. The division has worked hard to get the ballots out

to voters as soon as possible to ensure sufficient time to vote and return ballots. We began mailing ballots two days earlier in the primary election and four days earlier in the general than normal. For the primary election, every voter that applied timely for a ballot was sent a ballot. All ballots received were reviewed and counted within the statutory allowed timeframes. The division conducted one senate district and one house district recount and the results matched vote for vote to the results certified by the state review board. A hand count was conducted for absentee ballots in one house district and it also matched vote for vote to the results certified by the state review board.

Also for the primary, the division did not count absentee ballots until after voter history was completed for those voters who voted at the polling place on election day. This prevented 84 duplicate votes from being cast. This was a process that was implemented with the 2008 general election through the 2014 general election and started again with the 2020 primary election. We will use the same process for the 2020 general election. I think everyone would agree that ensuring the sanctity of one person one vote takes precedent over trying to rush the process.

I know this may be more information than you had originally asked about in your letter. I think it is important to see the entire picture and understand how all the pieces fit together. I am hopeful that every precinct will have a fully-staffed polling place available on election day—we will do everything we can to try and make that happen. But I am also realistic, especially in light of the pandemic, that we will encounter difficulties up to and including election day. As we did in the primary, we will work to remedy issues as quickly as possible and continue our efforts to locate workers. Any assistance you can provide would be much appreciated, or if you have other contacts that we should speak with that may be able to get the word out, that would be great.

Sincerely,

Gail Fenumiai
Director

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT Anchorage
(City or town where the court is located)

The Alaska Center Education Fund, et al.	)	
Plaintiff/Petitioner,	)	
v.	)	
	)	Case No. 3AN-20-8354 CI
Gail Fenumiai, et al.	)	
Defendant/Respondent.	)	**SELF-CERTIFICATION (NO NOTARY AVAILABLE)**

[If a notary public or other person with the power to take oaths is not available to notarize a document that you are filing with the court, you may fill out this form and attach it to your document.]

As allowed by AS 09.63.020, I, *(Name)* Floyd Tomkins, certify under penalty of perjury that the following is true:

1. I am attaching this *Self-Certification* to the following attached document:
   Affidavit of Floyd Tomkins
   If the attached document is required to be served on another party, I have attached a copy of this *Self-Certification* to the document when I served it.

2. No notary public or other person with the power to take oaths is available to watch me sign because:
   - ☐ I live somewhere with no available notary public or other person who can take oaths.
   - ☐ I cannot access the courthouse or private notary for medical reasons including quarantine.
   - ☒ I cannot access a notary as a result of COVID-19.

3. I told the truth to the best of my knowledge and belief in the attached document.

Signature: Floyd Tomkins
Signed on: *(date)* 10/07/2020 at: *(city)* Sitka, *(state)* Alaska
Mailing Address: 313 Islander Dr Sitka AK 99835
Cell Phone: _____ Work Phone: _____
Home Phone: 907-747-5387 Email*: tomkinsfw@gmail.com
*☒ I authorize the court to email me court documents in this case to the email address above.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

THE ALASKA CENTER EDUCATION FUND, ALASKA PUBLIC INTEREST RESEARCH GROUP, and FLOYD TOMKINS, Plaintiffs, v. GAIL FENUMIAI, in her official capacity as the Director of the Alaska Division of Elections, KEVIN MEYER, in his official capacity as the Lieutenant Governor of Alaska; and THE STATE OF ALASKA, DIVISION OF ELECTIONS, Defendants.	Case No. 3AN-20-08354CI

AFFIDAVIT OF FLOYD TOMKINS

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Floyd Tomkins, declare under penalty of perjury as follows:

1. My name is Floyd Tomkins. I am 69 years old, a U.S. citizen, and a registered Alaska voter. I live in Sitka.

2. I moved to Alaska in 1987 and have endeavored to vote in every Alaska election since then, including primary elections.

PERKINS COIE LLP
1029 West Third Avenue, Suite 300
Anchorage, AK 99501-1981
907.279.8561 / Facsimile 907.276.3108
Kevin R. Feldis | KFeldis@perkinscoie.com

3. In the August 2020 primary election, my wife Connie Kreiss and I applied to vote absentee by mail due to the COVID-19 pandemic. We both received mail ballots, filled out our choices, and signed our ballots in the presence of one another, so that we could each serve as each other's witness. We then submitted our ballots through the U.S. Postal Service.

4. However, I later received a letter in the mail, dated September 9, from the Alaska Division of Elections, Office of the Lieutenant Governor, informing me that "the review board was unable to count your ballot because your ballot voter certificate was not properly witnessed." That letter is attached as Exhibit 1 to this affidavit.

5. If I had been informed about the alleged missing witness signature on my ballot before the election was finalized, I would have attempted to correct the omission if a process had been available to me, to ensure that my vote would count. My intent in requesting an absentee mail-in ballot, filling it out, signing it, and sending it back to the Division of Elections was most assuredly to have my vote count.

PERKINS COIE LLP
1029 West Third Avenue, Suite 300
Anchorage, AK 99501-1981
907.279.8561 / Facsimile 907.276.3108
Kevin R. Feldis | KFeldis@perkinscoie.com

Date: October 7, 2020

Floyd Tomkins

SUBSCRIBED, SWORN TO OR AFFIRMED before me this 7th day of October 2020.

Notary Public in and for Alaska
My commission expires:_____

CERTIFICATE OF SERVICE
I hereby certify that on October 8, 2020, a true and correct copy of the foregoing document was served via U.S. mail on the following:

Kevin Meyer
Lieutenant Governor
Office of the Governor
PO Box 110015
Juneau, AK 99811-0015

Courtesy Copy:
Joann Grace
Alaska Department of Law
Civil Division
1031 W. 4th Ave., Ste. 200
Anchorage, AK 99501

Division of Elections PO
Box 110017
Juneau, AK 99811-0017

Gail Fenumiai
Division Director
Office of the Governor
Election Office Juneau
PO Box 110017
Juneau, AK 99811-0017

Courtesy Copy:
Clyde "Ed" Sniffen
Deputy Attorney General
Alaska Department of Law
Civil Division
PO Box 110300
Juneau, AK 99811-0300

Samantha Reardon
Legal Practice Assistant

PERKINS COIE LLP
1029 West Third Avenue, Suite 300
Anchorage, AK 99501-1981
907.279.8561 / Facsimile 907.276.3108
Kevin R. Feldis | KFeldis@perkinscoie.com

bacy side Y
→ did not have witness sign on outside of envr

STATE OF ALASKA
Division of Elections
Office of the Lieutenant Governor

September 9, 2020

4*2*1043*********ALL FOR AADC 995
FLOYD WILLIAMS TOMKINS
313 ISLANDER DR
SITKA AK 99835-9730

35-765 4535905

Dear Voter:

Thank you for voting an absentee ballot during the August 18, 2020 Primary Election. We appreciate your participation in the electoral process.

As required by Alaska law, each absentee ballot envelope must be reviewed by the Absentee Ballot Review Board to determine the voter's eligibility to vote and to determine if the voter properly completed the ballot envelope.

Unfortunately, the review board was unable to count your ballot because your ballot voter certificate was not properly witnessed. For future elections, when voting by-mail, by-fax or by online delivery, be sure to have your signature witnessed by anyone 18 years of age or, you may choose to have your signature witnessed by an official who is reasonably accessible.

Please be assured that your voting record reflects your participation in this election. We look forward to your continued involvement in future elections.

The Absentee Ballot Review Board in the Region I Office reviewed your ballot envelope.
If you have any questions, please contact that office at the address and telephone number listed below.

Sincerely,

Division of Elections

Region I Elections Office
PO Box 110018
Juneau, AK 99811-0018
(907) 465-3021
Toll-free 1-866-948-8683

Region II Elections Office
Anchorage Office
2525 Gambell Street, Suite 100
Anchorage, AK 99503
(907) 522-8683
Toll-free 1-866-958-8683

Mat-Su Elections Office
North Fork Professional Bldg
1700 E. Bogard Road, Suite B102
Wasilla, Alaska 99654
(907) 373-8952

Region III Elections Office
675 7th Avenue Suite H3
Fairbanks, AK 99701-4594
(907) 451-2835
Toll-free 1-866-959-8683

Region IV Elections Office
PO Box 577
Nome, AK 99762-0577
(907) 443-5285
Toll-free 1-866-953-8683

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Voting by Mail and Ballot Rejection: Lessons from Florida for Elections in the Age of the Coronavirus

Anna Baringer, Michael C. Herron, and Daniel A. Smith

ABSTRACT

The COVID-19 pandemic and its concomitant need for social distancing have increased the attractiveness of voting by mail. This form of voting is nonetheless not a panacea for election administration in the time of a public health crisis, as a widespread move to ballots cast by voting by mail risks exacerbating existing inequities in mail-in ballot rejection rates across voters and jurisdictions. This motivates our examination of the roughly 9.6 million and 8.2 million ballots cast in the 2016 and 2018 general elections in Florida, respectively, including over 2.6 million vote-by-mail (VBM) ballots cast in each. Using a selection model that analyzes all ballots cast and those VBM ballots not counted in Florida in these two elections, we find that younger voters, voters not registered with a major political party, and voters in need of assistance when voting are disproportionately likely to have their VBM ballots not count. We also find disproportionately high rejection rates of mail ballots cast by Hispanic voters, out-of-state voters, and military dependents in the 2018 general election. Lastly, we find significant variation in the rejection rates of VBM ballots cast across Florida's 67 counties in the 2018 election, suggesting a non-uniformity in the way local election officials verify these ballots. As interest in expanding mail voting swells as a consequence of the novel coronavirus, protecting the rights of all voters to participate in electoral politics requires a characterization of the correlates of VBM ballot rejection with an eye toward considering how disparities in ballot rejection rates might be rectified.

Keywords: vote-by-mail, rejected ballots, Florida, COVID-19, election administration

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INTRODUCTION

In Spring 2020, the onset of the COVID-19 pandemic disrupted presidential primaries across the United States. By early April 2020, the die was cast: over a dozen states had rescheduled their primaries, and other states, like Ohio, New Jersey, and Wisconsin, moved hastily, if unevenly and clumsily, to push voters to request and cast mail-in ballots.[1] Beyond the United States, municipal contests in France set for March 2020 were suspended on account of the coronavirus, and the London mayoral race, originally planned for May 7, 2020, has been postponed for a year.[2]

The timing of the next American presidential election, scheduled for November 2020, raises a

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[1]Alaska, Connecticut, Delaware, Georgia, Hawaii, Indiana, Kentucky, Louisiana, Maryland, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, West Virginia, and Wyoming all moved their presidential primary dates. See Corasaniti and Saul 2020.

[2]On French municipal elections, see "France Suspends Local Elections Because of COVID-19" (2020). On the London mayoral race, see Proctor 2020.

serious question: how can a national election be safely conducted in the shadow of a pandemic? One potential answer is to allow (and potentially encourage or even mandate) all eligible voters to cast mail-in ballots, thus minimizing the number of voters who appear in person at early voting polling places and on Election Day.[3] If as of November 2020 social distancing guidelines remain in place across the United States and if the turnout in the 2018 midterm elections is any guide, the upcoming 2020 American presidential contest is likely to see extremely high voter turnout.[4] In such a scenario, and with recent primaries as warnings, it is hard to imagine how, without at least a significant number of voters casting mail-in ballots, social distancing can be respected in the November election.[5]

As of the writing of this article, movement toward vote-by mail (VBM) voting in the shadow of the COVID-19 pandemic is not hypothetical. Recent elections in Maine, Nebraska, New York, Ohio, and Wisconsin saw surges in mail-in voting.[6] In Georgia, for example, approximately 53 percent of voters cast mail-in ballots, up from less than four percent in the 2016 primary election (Hood III and Haynes 2020). According to a recent analysis conducted by the *New York Times*, an estimated 76 percent of voters in the American states will be eligible—no excuse necessary—to vote a mail ballot, with some estimates pegging the total number of VBM ballots cast at nearly 80 million mail ballots, more than double that in the 2016 general election (Love, Stevens, and Gamio 2020).

Since the contested 2000 presidential election, the United States has witnessed vitriolic debates—in the public sphere, in the halls of Congress, state capitols, and in state and federal courts—with competing claims over ballot access, election integrity, and the potential normative trade-offs between these two ideals. The novel coronavirus is making matters worse, exacerbating the ongoing rancor surrounding electoral politics in the United States. In the already polarized arena of election rules (Hasen 2020), VBM has entered center stage (Thompson et al. 2020), presently supplanting heated debates over voter identification laws (e.g., Hicks et al. 2015), early voting (e.g., Walker, Herron, and Smith 2019), and voter list maintenance (e.g., Ansolabehere and Hersh 2014).

While the push for VBM voting in the United States has taken on greater urgency in light of the COVID-19 pandemic, this way of voting is not new (Mann 2014; Biggers and Hanmer 2015). Five states—Colorado, Hawaii, Oregon, Utah, and Washington—mail ballots to all registered voters, and several others—including California, Nebraska, and North Dakota—allow counties to opt-in to all-mail elections.[7]

As we review shortly, there is extensive scholarship on the consequences of allowing, encouraging, or even effectively mandating mail voting and whether this produces higher turnout or alters the composition of the electorate in a meaningful way. However, there is surprisingly sparse research on the hundreds of thousands of VBM ballots cast by voters every election that are *not counted*—such as the estimated 430,000 VBM ballots not tabulated in the United States in the 2018 general election, including more than 100,000 with mismatched or missing signatures on return envelopes.[8] And there is even less scholarly attention on whether certain types of voters are disproportionately likely to have their mail ballots not count (Alvarez, Hall, and Sinclair 2008; Shino and Suttmann-Lea 2020). This—the potential disenfranchisement that can unintentionally result from mail ballots not being counted by local election officials—is our focus.

With an eye on the upcoming 2020 general election, our focus is on VBM ballots cast—but not counted—in the perennial battleground state of Florida in the 2016 and 2018 general elections. Our study begins with an overview of existing research on voting by mail. We then discuss the literature on why some VBM ballots are more likely to

[3]Registered voters suffering from COVID-19 during an election are a special case, and all individuals in this group could in principle be provided with mail-in ballots. This is what happened in South Korea during the country's 2020 National Assembly elections. See Jeong and Martin 2020.

[4]For data on record turnout in 2018, see McDonald 2018.

[5]On the potential for adding voting options that could facilitate social distancing, see Hulse 2020.

[6]In Maine, see Shepherd 2020; in Nevada, see Associated Press 2020; in Nebraska, see Schulte 2020; in New York, see Dovere 2020; in Ohio, see Marks 2020; in Wisconsin, see Scheck, Hing, and Hall 2020.

[7]See National Conference of State Legislatures 2020. In the case of Colorado, for example, this means that all registered voters are sent ballots by mail prior to an election. However, voters have the option of voting in-person at designated centers. See Colorado Secretary of State 2020.

[8]Figures from the U.S. Election Assistance Commission's *Election Administration and Voting Survey: 2018 Comprehensive Report* (2019). Data available at U.S. Election Assistance Commission 2020.

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be rejected than others, arguing that individual voter characteristics as well as local election administrative discretion may result in some voters being more susceptible to having their VBM ballots not count. After reviewing the specifics of VBM voting in Florida, we provide some descriptives on VBM ballots not counted in the 2016 and 2018 general elections. We then present results of a selection model that considers the determinants of VBM ballot rejection. Our rationale for employing a selection model is that, when assessing rejection rates of VBM ballots in a state like Florida, one that permits voters to *choose* to vote by mail or in person, those who select to vote by mail may be different than those who do not. We conclude with thoughts about how patterns of cast but uncounted VBM ballots in Florida raise questions about unintended consequences embedded in mail voting and what sort of considerations might be needed in November 2020 if the COVID-19 pandemic continues to push the United States in the direction of increased VBM usage.[9]

VOTING IN THE UNITED STATES

Regular and free elections are the keystone of democratic politics. They are mechanisms that translate voter preferences into elected officials, who then make policies on behalf of constituents (e.g., Downs 1957; Miller and Stokes 1963; Bafumi and Herron 2010; Tausanovitch and Warshaw 2014). Voters participate in elections by casting ballots, and traditionally there are two ways in the United States that voters can do this: in person or via mail. In-person voting takes place on Election Day and, in some states, in the days or weeks prior to Election Day during a designated early voting period. Voting by mail, in contrast, does not require a voter to present him or herself at a local polling or early voting site designated by officials.

In-person voting versus voting by mail

When a voter casts a ballot in person, a local official has the opportunity to validate the individual's identity face-to-face, in real time. Even in states without formal voter identification requirements, an in-person voter must affirm his or her identity to an election official in order to commence the voting process. Once an in-person voter's identity is confirmed, either during an early voting period or on Election Day, the voter is issued a regular ballot to fill out and then cast. There are differences across jurisdictions in ballot forms, paper or electronic, but the key point here is that a voter casting an in-person ballot does not have to reaffirm his or her identity after voting. Indeed, privacy and security of the vote are of utmost importance.

In contrast, rather than self-identifying oneself or providing a form of identification prior to voting a ballot in-person, voting by mail necessitates the disembodied verification of a voter's identity by a local election official *after* the voter has already cast his or her ballot. That is, a VBM voter is not present when his or her ballot is verified prior to tabulation. It is this very absence of voters when election officials are verifying and tabulating ballots that is an obvious advantage of mail voting during a pandemic.[10] The downside risk for VBM voters, though, is ballot rejection *after* having voted, something that does not happen for those casting ballots in person.[11]

Not being physically present when an election official validates a voter's VBM ballot alters the opportunities for the voter to establish his or her identity. If information on a VBM return envelope does not meet the criteria in a given state or jurisdiction, said ballot is at risk of rejection (Mann 2014).[12] From requesting and then receiving a ballot, to correctly filling it out, to placing the completed ballot in a secrecy envelope that is then inserted into an official return envelope, to filling out and signing a voter's certificate (or even having a witness sign) on the back of a return envelope, there are multiple ways a mail ballot may leak out of the "voting pipeline" (Stewart III 2010, 575).

Beyond statutory definitions of what constitutes an acceptable VBM ballot, the decentralized nature of election administration in the United States

[9]We use the terms "rejected" and "not counted" interchangeably to describe vote-by-mail (VBM) ballots cast by a voter, received by a local elections official, but ultimately not counted. See footnote 25 for a discussion of these terms.

[10]Some states have a form of "absentee" voting whereby a voter, prior to Election Day, appears at a designated place, fills out a ballot, and submits it. In our parlance, this is early in-person voting, not mail ballot.

[11]In this article we do not address the subject of provisional ballots that are cast by in-person voters but validated at a later time (Merivaki and Smith 2019).

[12]Voters casting mail ballots in 19 states, including Florida, are permitted to "cure" any deficiencies with their return envelope, although the rules and timeline to do so differ considerably (see Weil et al. 2020).

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means that potentially thousands of local election officials have the opportunity to exercise discretion when determining whether a signature on an VBM ballot envelope should be accepted or rejected. Local discretion in election administration is not limited to VBM voting of course, but this form of voting is uniquely vulnerable to administrative discretion because of the absence of a voter's presence in the VBM verification process.

Growth of VBM voting in the United States

Much of the attention to mail voting in the United States has focused on five states with all-mail voting systems whereby election officials mail ballots to all registered voters. VBM voting extends well beyond this handful of states, however. Nearly half the states (including Florida) allow some local elections to be conducted completely by mail, and two-thirds of states (again, including Florida) allow no-excuse voting by mail, meaning a voter does not need to provide a reason to request a VBM ballot (National Conference of State Legislatures 2020). Although about 20 states still require voters to provide an excuse when requesting a VBM ballot, according to the U.S. Election Assistance Commission, roughly a quarter of all ballots cast nationwide in the 2016 and 2018 general elections were via mail, well in excess of 31 million votes in both years (U.S. Election Assistance Commission 2017a, 2019).

WHO VOTES BY MAIL?

An important first step in any effort to understand the correlates of VBM ballot rejection is considering who is likely to request and vote a mail ballot in the first place. Some scholars find that allowing VBM voting leads to considerable turnout effects (Richey 2008; Southwell and Burchett 2000); others, though, find small and sometimes negative effects of VBM on turnout (Dubin and Kalsow 1996; Oliver 1996; Karp and Banducci 2000; Fitzgerald 2005; Kousser and Mullin 2007; Southwell 2009; Bergman and Yates 2011; Gronke and Miller 2012; Gerber, Huber, and Hill 2013; Burden et al. 2014; Barber and Holbein 2020; Thompson et al. 2020). To the extent that there is a consensus in the literature, it is that VBM has positive albeit modest turnout effects.

With regard to whether the use of mail ballots leads to a shift in composition of the electorate, many studies of this subject are based on data gathered well before the widespread increase in voting by mail. Some have found that older, partisan, and white registered voters, as well as those who have cast mail ballots in previous elections, are more likely to vote by mail (Patterson and Caldeira 1985; Oliver 1996; Karp and Banducci 2001; Berinsky, Burns, and Traugott 2001; Hanmer and Traugott 2004; Kousser and Mullin 2007; Bergman and Yates 2011), although others have found evidence of greater heterogeneity in this matter (Barreto et al. 2006; Amos, Smith, and Ste Claire 2017). There are times at which party mobilization efforts can affect the methods with which voters cast their ballots (Michelson 2005; Herron and Smith 2012; Hassell 2017). However, the most recent and comprehensive studies of the political consequences of VBM voting find no evidence of overall partisan effects or effects of this form of voting on election outcomes (Barber and Holbein 2020; Thompson et al. 2020).

Besides age, partisanship, and race/ethnicity, some registered voters are more likely to vote by mail given their personal circumstances. Most obviously, members of the military (and their dependents) and those living overseas tend to be heavy users of VBM voting, not surprising given their limited voting options and federal laws protecting their ability to cast a VBM ballot (Smith 2009). In particular, the Uniformed and Overseas Civilian Absentee Voting Act (UOCAVA) of 1986 provides ballot protections for civilians overseas, members of the uniformed service in active duty, and their dependents. In addition, the Federal Voting Assistance Program works to administer protections for voters under UOCAVA.[13] In 2009, Congress passed the Military and Overseas Voter Empowerment Act that requires election offices to mail ballots to UOCAVA voters no later than 45 days before each federal election.[14] Deadlines for both requesting and submitting a mail ballot vary considerably across the states.[15]

Voting by mail may benefit registered voters who have disabilities. For registrants in need of assistance,

[13]For details on this program, see the Federal Voting Assistance Program website at <https://www.fvap.gov> (last accessed April 14, 2020).

[14]Following federal law, Florida Statutes § 101.62(4)(b) mandates that each supervisor of election mail VBM ballots to voters who have requested a ballot within two business days of receiving the request.

[15]For VBM rules pertaining to military and overseas voters, see Federal Voter Assistance Program 2020.

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Florida law requires that VBM ballots must be "fully accessible to all voters, including voters having a disability" to ensure that all voters may "cast a secret, independent, and verifiable vote-by-mail ballot without the assistance of another person."[16] As in other states, voting-eligible individuals with disabilities in Florida are given the option to fill out a declaration when registering, confirming that they would like assistance when voting (Tokaji 2004). The level of help one receives can range from marking one's ballot on an accessible machine to having someone assist in filling out a mail ballot, and Miller and Powell (2016) find that individuals with disabilities are more likely to vote by mail.

In many states, there is considerable variation with respect to the degree to which local election officials emphasize VBM voting. In Florida, for example, long-time Pinellas County supervisor of elections, Republican Deborah Clark, led the effort among county election officials to encourage voters to vote by mail, resulting in roughly 55 percent of all Pinellas ballots being cast by via mail in the 2018 general election. "We just started our outreach programs sooner than some of the other counties" said Clark (Romano 2016). In contrast, across the state on the Atlantic, slightly more than a quarter of all votes cast in Florida's Broward County in 2018 were via mail. Indeed, although the southeast Florida county has more than 50 percent more registered voters than Pinellas, nearly 50,000 more voters cast VBM ballots in Pinellas in the 2018 election.[17]

EXPLAINING VBM BALLOT REJECTION RATES

Having provided some context on voting in the United States and described literature on VBM ballot usage in the country, we turn to our subject of interest, VBM ballot rejection. The scholarly literature on this subject is sparse, and we offer two potential explanations for VBM ballot rejections. The first turns on voters themselves and the second on administrative discretion of local election officials.

Explanation 1: Voter characteristics

Individual voter characteristics may affect whether a VBM ballot is deemed invalid (Alvarez, Hall and Sinclair 2008; Shino and Suttmann-Lea 2020). Concerns begin with a voter's socio-demographic background and difficulties some individuals may have in casting valid votes (Knack and Kropf 2003; Kimball and Foley 2009). Scholars have found that voting technology interacts with voter demographics, in some cases leading to racial minorities casting more "residual" (or uncounted) votes (Darcy and Schneider 1989; Herrnson, Hanmer, and Niemi 2012; Tomz and Houweling 2003; Buchler, Jarvis, and McNulty 2004; Herron and Sekhon 2005). Findings like these lead us to incorporate voter race/ethnicity and age in our analysis of VBM ballot rejection. In terms of partisan affiliations, voters registered with a major party, as opposed to those registered with a third party or without a party (in Florida, these registrants are known as NPAs—registrants with "No Party Affiliation"), may be less likely to have their VBM ballots not count, considering the guidance voters receive from parties during get-out-the-vote campaigns that urge supporters to request and cast mail ballots (Michelson 2005; Hassell 2017).

We have already noted the role that signatures play in VBM ballot rejection. Unlike static physiological characteristics (e.g., one's iris or fingerprints), behavioral characteristics (e.g., one's gait, voice, or handwriting), may "change with the passage of time, mood, age, and other factors" (Bibi, Naz, and Rehman 2020, 290). One's signature can be fluid throughout life (Hilton 1992). As such, some individuals may be more likely to have discrepancies between their current signatures and what is on file with local election offices, particularly young registrants, who are not yet accustomed to providing signatures for verification; older registrants, who may have declining fine-motor skills; and registrants in need of assistance when voting.[18] Forensic experiments have found a non-zero chance of "real" signatures being rejected for not matching and forged signatures being accepted as valid (Herbst and Liu 1977).

[16]Florida law dealing with VBM accessibility issues is Title IX, Chapter 101, Section 101.662, "Accessibility of Vote-by-Mail Ballots," available at <http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0100-0199/0101/0101.html> (last accessed March 5, 2020).

[17]Looking beyond Florida, in California the embrace of VBM by county election administrators varies greatly. Since 2016, the state has allowed county election administrators to offer all-mail ballot elections; five counties chose to adopt the new system prior to the 2018 election, but others have resisted (see Kousser, McGhee, and Romero 2019).

[18]Advocates of VBM systems like Neal Kelley, a former president of the California Association of Clerks and Election Officials, does admit that there "are difficulties on occasion" with poor penmanship (see Moretti 2014).

Names are composed of letters, and we consider in our analysis whether individuals with longer or more syntactically complicated names are more likely to face signature match problems. By complicated, we mean a name with a suffix, apostrophe, or hyphen. In addition, the more features of a name, the more signature possibilities exist for it. People with hyphenated last names may choose to use their terminal names in casual circumstances (e.g., at restaurants) but may sign the entirety of their last names on more formal occasions. Therefore, having a hyphenated last names provides an opportunity for signature discrepancies. The same logic applies to middle names. When an individual has a middle name, he or she can be inconsistent in its use. Individuals without middle names cannot be inconsistent in this way.

Moreover, we assess whether voters who have recently updated their names with a local election office may have lower VBM ballot rejection rates. Voters who have updated their names will presumably also have signatures on file that are relatively current. Given that approximately 94 percent of women change their name after marriage (Gooding and Kreider 2010), this suggests that gender may be related to VBM ballot rejection.

Lastly, a voter's physical proximity from an election administration office may play a part in the likelihood that his or her returned VBM ballot will not count. This is particularly important in states that provide voters the opportunity to correct problems with return envelopes. In Florida, for example, a voter who returns a VBM ballot prior to the deadline is permitted to "cure" it if a problem is identified. As a result of litigation prior to both the 2014 and 2016 general elections, expanded opportunities for Florida voters to cure their rejected VBM ballot prior to Election Day were in place by the 2018 general election. However, given time considerations and communication limitations for voters who cast VBM ballots from beyond Florida's borders, members of the military, their dependents, and Florida registered voters residing overseas or out of state presumably have less of an opportunity to cure rejected mail ballots than do in-state voters.

Explanation 2: Administrative discretion

The second potential cause of a VBM ballot's rejection lies in the discretion of local election administrators. In most states, including Florida, responsibility for VBM ballot processing is in the hands of local election officials and their canvassing boards. Functioning as "street-level bureaucrats" (Kimball and Kropf 2006; Lipsky 2010), local elections officials have considerable leeway when evaluating the veracity of a signature on a VBM ballot return envelope. Some, as in Florida, are partisan elected officials. Given that both people and machines are not foolproof in identifying genuine signatures, this discretion may foment non-uniformity in the application of election laws. Imai and King (2004) describe considerable discretion in Florida's 2000 recount with respect to how the 67 local election officials both processed and validated overseas VBM ballots. Similarly, Merivaki and Smith (2016) find considerable variation in rejected provisional ballots across Florida counties in recent elections but no evidence that the partisanship of supervisors of elections (SOEs) in Florida affects the rejection rates of provisional ballots.

More generally, some states have fairly lax standards for VBM envelope design. This may exacerbate VBM ballot rejection rates in jurisdictions whose return envelopes have instructions that are less clear than those in others.[19] In Florida, relatedly, local election officials continue to retain considerable latitude under state law concerning how they are to notify voters if their VBM return envelope has problems.[20] In the 2018 general election, for instance, elections offices contacted voters who had problems with their VBM return envelopes' certificates over the phone, by e-mail, and even through Facebook; other offices simply mailed postal notices (Smith 2018). Indeed, a judicial order by Federal Judge Mark E. Walker prior to the 2016 general election called Florida's statute governing rejected VBM ballots "a crazy quilt of conflicting and diverging procedures" with the "canvassing boards across the state employing a litany of procedures when comparing signatures."[21]

[19]For examples of the wide range of designs for VBM return envelopes in Florida, see Conte 2017.

[20]For details, see footnote 26.

[21]Per Judge Walker: "What [Florida] vote-by-mail voters likely do not know, however, is that their vote may not be counted. In Florida, if a voter's signature on a vote-by-mail ballot does not match the signature on file with the supervisor of elections office then the ballot is declared 'illegal' and their vote is not counted. Moreover, that voter only receives notice that their vote was not counted after the election has come and gone and, further, is provided no opportunity to cure that defect. On the other hand, if a vote-by-mail voter doesn't bother to sign the ballot in the first place, that voter is immediately notified and provided an opportunity to cure." Judge Walker's order appears in *Florida Democratic Party v. Detzner* (2016).

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Discretion of local election officials or county canvassing boards may result in unequal treatment of VBM ballots due to implicit biases or partisanship, allowing racial or party preferences to be subconsciously present (Greenwald and Banaji 1995; Eberhardt 2019). There is ample evidence of such bias in other administrative realms: Black individuals face less favorable mortgage terms regardless of credit (Ross and Yinger 1999) and are less likely to receive job callbacks than white individuals (Pager, Bonikowski, and Western 2009). Elected officials, too, may harbor implicit biases towards minorities. White, Nathan, and Faller (2015) show that local election officials are less likely to respond to e-mails from Hispanics requesting information on the voting process than they are to respond to non-Hispanic white individuals. Similarly, Butler and Broockman (2011) show that when asked to assist an individual to register to vote that state legislators are less responsive to e-mail requests from putative Black individuals relative to white individuals, even when holding constant the partisanship of the individual requesting the information. In addition, some studies suggest that a public officials' partisanship may shape their bias. Kimball, Kropf, and Battles (2006) find that in the 2004 general election, more provisional ballots were cast and counted in jurisdictions in which the local election official belonged to the same party as the majority of voters.

VOTING BY MAIL IN FLORIDA

We use Florida as a laboratory for our study of VBM ballot rejection, and our rationale is as follows. What is presently being debated in the United States is the possibility of increasing or facilitating VBM opportunities for voters in the 2020 general election. Florida allows VBM (no excuse required, as noted earlier), early in-person voting, and Election Day voting. Because voters in Florida can choose from a variety of ways to vote, the state is a useful benchmark for one, say, that is considering transitioning from a limited VBM policy to a more generous one. On account of the ongoing pandemic, there is already some movement in this direction in the United States. New Hampshire, for example, traditionally allows mail-in voting but only if an acceptable reason ("excuse") is provided. This requirement has been effectively lifted during the ongoing pandemic (Gardner and MacDonald 2020). In Texas, however, where voting by mail is more restricted than in Florida, as of the writing of this article no decision has been made by state officials to expand mail-voting opportunities.[22] While states that have fully embraced all-mail voting systems might constitute a useful benchmark for jurisdictions considering effectively eliminating in-person voting in November 2020, the administration of all-mail voting states tends to be rather centralized (see U.S. Election Assistance Commission 2017b). All-mail voting states are not necessarily comparable to the more decentralized election administration apparatuses in states like Florida.

For more than a decade, Floridians have utilized, in nearly equal shares, three methods of casting a ballot: VBM, early in-person, and Election Day. Since the adoption of no-excuse mail voting in the Sunshine State in 2001, the popularity of voting by mail has grown steadily. In the 2008 general election, 21.9 percent of all ballots cast were by mail; by the the 2018 general election, this figure had risen to 31.6 percent, the highest share of any of the last six elections.[23]

Beyond the fact that it offers multiple modes of voting, Florida is a useful location for a study of VBM usage given its large and diverse racial and ethnic population. Florida is also a regular political battleground, implying that voters in the state have real incentives to ensure that their votes count, incentives that may not exist in a state in which elections are more of a formality. Florida also features an election system in which both state and local election officials have control, what the U.S. Election Assistance Commission characterizes as a "hybrid" election system (U.S. Election Assistance Commission 2017b).

Elections are administered in Florida at the county level by county supervisors of elections, all 67 of whom are elected officials except for

[22]In Texas, those wanting to vote a mail ballot must be at least 65 years old, absent their county of residence on Election Day or during the early in-person voting period, sick or disabled in a way that prevents in-person voting, or incarcerated (see Hurley 2020).

[23]In 2018, slightly less than one-third (32.8 percent) of all ballots cast were in-person early votes, with another 35.7 percent cast by voters in-person on Election Day. Over the past six general elections, from the 2008 presidential through the 2018 general election, Floridians have cast nearly 46.4 million ballots, 27.4 percent of them VBM, 30.3 percent early in-person, and 42.3 percent on Election Day. See Florida Division of Elections 2018a. Calculations by the authors.

Miami-Dade's, who is appointed by the Mayor of Miami-Dade. Florida SOEs must follow state statutes as well as rules adopted by the Florida Division of Elections.[24] Florida law sets a uniform standard of review for the validation of signatures on returned mail ballots by elections officials.[25] Despite reforms that allow voters to cure problematic VBM ballots, the rejection rate of VBM ballots in Florida elections has remained relatively constant over time.[26] In the two most recent presidential elections, roughly 1.0 percent of VBM ballots did not count, a slightly lower rejection rate than in the two most recent midterm elections.

The initial decision regarding the acceptance or rejection of a VBM ballot is made by clerks in a county's SOE office, in principle upon receiving said ballot. Final decisions about ballot rejection, however, are made by county-level canvassing boards made up of three elected officials, typically the county SOE, a county court judge, and the chair of the Board of County Commissioners. County canvassing boards meet publicly both before and after Election Day. According to Florida Statutes, "The canvassing board must, if the supervisor has not already done so, compare the signature of the elector on the voter's certificate ... to see that the elector is duly registered in the county and to determine the legality of that vote-by-mail ballot."[27] A VBM ballot is to be initially rejected by a local elections official if a voter did not sign the voter's certificate on the back of her absentee ballot envelope or if the voter did sign the certificate but in a way that did not match the voter's signature on file with the county SOE. Making their decisions by majority vote, if a canvassing board decides that the signature on a voter's certificate does not match a signature on file, the ballot will not be opened or counted and instead will be marked with the phrase, "rejected as illegal."[28]

In Florida, notwithstanding opportunities for voters to cure missing or mismatched signatures, tens of thousands of on-time VBM ballots are still rejected every election. In the 2018 general election, for example, more than 1/100 VBM ballots received by local election officials were ultimately not counted, amounting to some 31,969 uncounted ballots.[29] To put this figure in context, there were two very close contests in Florida in the 2018 general election, including the United States Senate race (final vote margin, 10,033 votes) and the Florida gubernatorial race (32,463 votes).[30] We are not

[24]There are always exceptions to local supervisors of elections (SOEs) complying with state directives. For an example from the 2018 general election, see Atterbury and Caputo 2018.

[25]Florida law dealing with the review of signatures on VBM return envelopes is Title IX, Chapter 101, 101.6103, "Mail Ballot Election Procedure," available at <http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0100-0199/0101/0101.html> (last accessed March 5, 2020). Specifically, a VBM ballot "shall be counted only if: (a) It is returned in the return mailing envelope; (b) The elector's signature has been verified as provided in this subsection; and (c) It is received by the supervisor of elections not later than 7 p.m. on the day of the election. The supervisor of elections shall verify the signature of each elector on the return mailing envelope with the signature on the elector's registration records. Such verification may commence at any time prior to the canvass of votes."

[26]In 2019, Florida changed the law to allow voters up to two days after Election Day to "cure" their problematic VBM ballot. Florida law dealing with the affidavit cure process of rejected VBM ballots is available at <http://www.leg.state.fl.us/statutes/index.cfm.html>, Title IX, Chapter 101, Section 101.68 "Canvassing of Vote-by-Mail Ballot" (last accessed March 5, 2020).

[27]Florida law dealing with the rejection of VBM ballots is available at <http://www.leg.state.fl.us/statutes/index.cfm.html>, Title IX, Chapter 101, Section 101.68 "Canvassing of Vote-by-Mail Ballot" (last accessed March 5, 2020).

[28]When supervisors of elections upload the individual-level vote histories in an election to the Florida Division of Elections, rejected ballots are recorded with a "B" for a "Vote-by-Mail Ballot Not Counted" (see Florida Division of Elections 2018b). We note here that some variation exists across the state's 67 counties in how SOEs report to the state Division of Elections VBM ballots that their canvassing board determines should not counted. After tabulating their rejected VBM ballots, a few counties, including Alachua, Bay, and Escambia, as well as Orange County (in 2016, but not in 2018), include in their uploads to the state VBM ballots that were not counted because they arrived after the state's 7:00 p.m. Election Day deadline. Most other counties, however, exclude late ballots in their vote history uploads, limiting their uploads only to on-time VBM ballots that their canvassing boards "rejected as illegal." As such, it is possible that these few counties may have slightly inflated rates of VBM ballots that are not counted because they include rejected ballots that arrived after Election Day in the official statewide voter history files. We find no evidence that the inclusion of these relatively few late ballots might affect the estimation outcomes, and there is no evidence that the demographic characteristics of these four very different counties might affect the outcome.

[29]We discuss our methodology for calculating uncounted VBM ballots in the sections that follow. According to the U.S. Election Assistance Commission's Election Administration and Voting Survey (EAVS) Dataset Version 1.2 (released February 18, 2020), which is available at <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys> (last accessed April 2, 2020), variable C4a "By-Mail Ballot Rejected: Total" indicates that there were 30,452 rejected mail ballots tabulated in Florida in the 2018 general election.

[30]See Florida Division of Elections archive, available at <https://results.elections.myflorida.com/Index.asp?ElectionDate=11/6/2018&DATAMODE=> (last accessed March 26, 2020).

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suggesting that rejected VBM ballots were pivotal to either of these contests, but in principle they could have been in the former considering the number of rejected VBM ballots was greater than the final Senate race margin. Our point here is that counts of rejected VBM ballots should not be considered rounding errors.

DATA AND VARIABLE DEFINITIONS

Our analysis of rejected VBM ballots in the 2016 and 2018 general elections in Florida relies on individual-level administrative data on registered voters and their vote histories; these are public records in Florida. A voter whose absentee ballot was received but not counted in any given election receives an identifying mark (a voting code) in the state's official registered voter database. We draw on statewide databases provided by the Florida Division of Elections dated January 2017 and January 2019. Each consists of a *details* file for each of Florida's 67 counties as well as a *history* file. The former contains registrant demographics (name, address, date of birth, date of registration, race/ethnicity, gender, and so forth) and the latter, information indicating whether in a given election a voter cast an absentee ballot that was accepted as valid, cast an absentee ballot that was not counted, voted on Election Day or early in-person, or cast a provisional ballot that was rejected.

In contrast with many other states, Florida's voting records are extensive and available for public scrutiny. Each Florida county's details and history files are linked by a nine-digit voter identification number. We calculate the VBM ballot rejection rate as the number of individuals casting a VBM ballot that did not count divided by the number of total VBM ballots cast according to a statewide vote history file.[31] When merged using voter identification codes, the 67 county files contain records on 9,530,929 individuals who participated in Florida's 2016 general election and 8,255,083 individuals who participated in Florida's 2018 general election.

Incorporating Florida's Legislative Report Election/Recap for the 2016 and 2018 general elections, we create indicator variables specifying whether a registered voter is a member of the military, a military dependent, needs voting assistance, and has formerly changed his or her name based on the categorical information available from the voter file. We collapse demographic data, such as age (transformed from birth date on the voter file), party affiliation, race/ethnicity, and gender, into nominal variables. We code a registrant's party affiliation as Democrat, Republican, NPA, and collapse all registered voters with a third party as "Other." In keeping with the official classifications on Florida's voter registration form, we code a registrant's race/ethnicity as white, Black, or Hispanic, collapsing all other entries as "other." We rely on a registrant's stated gender ("M" or "F"), coding those with no code as "other."[32] In some of our analyses, we collapse a voter's age on the day of the November 6, 2018 general election and the November 8, 2016 general election into a nominal variable with age ranges of 18–21, 22–25, 26–29, 30–44, 45–64, and 65–100.

We also for each election create binary variables for registered voters having a foreign mailing address and for those having a domestic mailing address not in Florida. Lastly, we construct variables to capture information about registered voters' names, such as the number of characters in the first and last names combined (we create indicator variables for name lengths from four characters or fewer to 25 or more), and the presence of a hyphen, suffix, or apostrophe. Lastly, we create a flag for voters with a middle initial and another flag for voters with middle names. See the Appendix for data

[31]The January 2017 and January 2019 statewide vote history files contain small numbers of discrepancies. For example, in the 2019 files there are 695 individuals who are recorded as having multiple, and at times differing, vote history codes in the 2018 general election. For these individuals, we drop all history codes but one, retaining whichever vote occurred first chronologically or the vote history that was counted as valid if another one is coded as either a rejected provisional ballot (cast on Election Day or early in-person) or as a rejected VBM ballot. For example, if per official vote history file a voter is said to have cast ballots both early in-person and at the polls on Election Day, we retain the code for the early in-person vote. If a voter cast a rejected provisional ballot on Election Day but cast a VBM ballot that was valid, we retain the vote history code for the valid VBM ballot.

[32]In many states, gender is not a required field on voter registration applications. Florida's form provides applicants the option of volunteering either "M" or "F." Florida's statewide registration database includes this information, and it classifies those who chose not fill in the information as "U" for unknown (Shino et al. 2020).

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definitions along with counts of individuals in our data who have missing or erroneous data.[33]

OVERVIEW OF REJECTED VBM BALLOTS IN FLORIDA

Of the more than 2.7 million VBM ballots cast in November 2016, over 27,700 were not counted, corresponding to a rejection rate of approximately 1.0 percent. And, of the more than 2.6 million VBM ballots cast in November 2018, nearly 32,000 were invalid, a rejection rate of approximately 1.2 percent.[34]

Rejected VBM ballots by age

Younger voters were disproportionately more likely to have their VBM ballots rejected in both the 2016 and 2018 general elections, as Table 1 displays. The rejection rate of VBM ballots cast by 18–21 year-olds was 3.9 and 5.4 percent in 2016 and 2018, respectively, eight times greater than that of the oldest cohort in both years. Although 18–29 year-olds comprised only 2.7 percent of all voters casting VBM ballots in the 2016 presidential election, they accounted for over 11 percent of all rejected VBM ballots; in 2018, those under 30 comprised just 2.1 percent of all VBM voters but 9.2 percent of all rejected VBM ballots. First-time VBM voters also were more likely to have their mail ballots rejected. In 2018, of the roughly 33,000 voters who cast a VBM ballot for the first time (which we determine using the statewide vote history file), 4,137 had their ballots rejected, or 3.1 percent. First-time voters accounted for almost 5.0 percent of VBM ballots cast in 2018 but 12.7 percent of rejected VBM ballots.

Figure 1 plots the VBM ballot rejection rates of those under 30 and those 30 years old and older in the 2018 general election (a corresponding figure from the 2016 general election is similar). Along the horizontal axis is the rejection rate of VBM ballots (from zero to 12.5 percent) cast by voters 30 and older in each county; the vertical axis is the rejection rate of VBM ballots cast by voters younger than 30 years old. If VBM ballot rejection rates were equal for voters under 30 and those 30 years old and older in a county, the circles of all 67 counties would align along the 45-degree line.

As Figure 1 shows, younger voters in the 2018 general election in nearly every Florida county had a greater likelihood of having their VBM ballot rejected than those 30 and older who cast a VBM ballot. In several counties, the VBM rejection rate of young voters is more than three times as great compared to the VBM rejection rate of older voters. For example, in Broward County, roughly seven percent of mail ballots cast by voters under 30 were rejected in 2018, compared to less than 2.5

TABLE 1. VOTE-BY-MAIL BALLOTS BY AGE

Age	*VBM total*	*VBM not counted*	*VBM accepted*	*Percent not counted*
2016 general election				
18–21	74,234	2,928	71,306	3.94
22–25	85,421	2,883	82,538	3.38
26–29	91,570	2,460	89,110	2.69
30–44	366,955	6,121	360,834	1.67
45–64	892,894	6,638	886,256	0.74
65–100	1,224,911	5,390	1,219,521	0.44
Total	2,735,985	26,420	2,709,565	0.97
2018 general election				
18–21	55,252	2,977	52,275	5.39
22–25	65,583	2,704	62,879	4.12
26–29	72,013	2,449	69,564	3.40
30–44	316,023	6,662	309,361	2.11
45–64	850,952	9,162	841,790	1.08
65–100	1,276,673	8,015	1,268,658	0.63
Total	2,636,496	31,969	2,604,527	1.21

VBM, vote-by-mail.

[33]The subject of voter file availability across the United States is beyond our scope, but we note that there is variability in both the extent to which states make public their voter files and the extent to which these files contain demographic information on registered voters. Florida not only makes its voter file public, but this file contains registered voters' self-reported date of birth, race and ethnicity, and partisan affiliation. In contrast, Wisconsin, a state that is prominent vis-à-vis VBM voting in light of its 2020 presidential primary, allows access to its voter file (at a cost for the complete file of $12,500), but this file lacks fields for a registered voter's age, race and ethnicity, or partisan affiliation. See Wisconsin Election Commission 2020. As such, data availability is another reason that Florida provides an excellent laboratory for studying VBM voting.

[34]Florida's official vote total in the 2016 general election is 9,580,489, and is available from the Florida Division of Elections archive at <https://results.elections.myflorida.com/Index.asp?ElectionDate=11/8/2016&DATAMODE=>. The state's official VBM total in the 2016 general election is 2,732,075 votes, and is available at <https://dos.myflorida.com/media/697363/early-voting-and-vote-by-mail-report-2016-gen.pdf>. Florida's official vote total in the 2018 general election is 8,305,929, and is available from the Florida Division of Elections archive at <https://results.elections.myflorida.com/Index.asp?ElectionDate=11/6/2018&DATAMODE=>. The state's official VBM total in the 2018 general election is 2,623,798 votes, and is available at <https://dos.myflorida.com/media/700669/early-voting-and-vote-by-mail-report-2018-genpdf.pdf>. Florida's official total VBM votes cast in both elections exclude uncounted VBM ballots.

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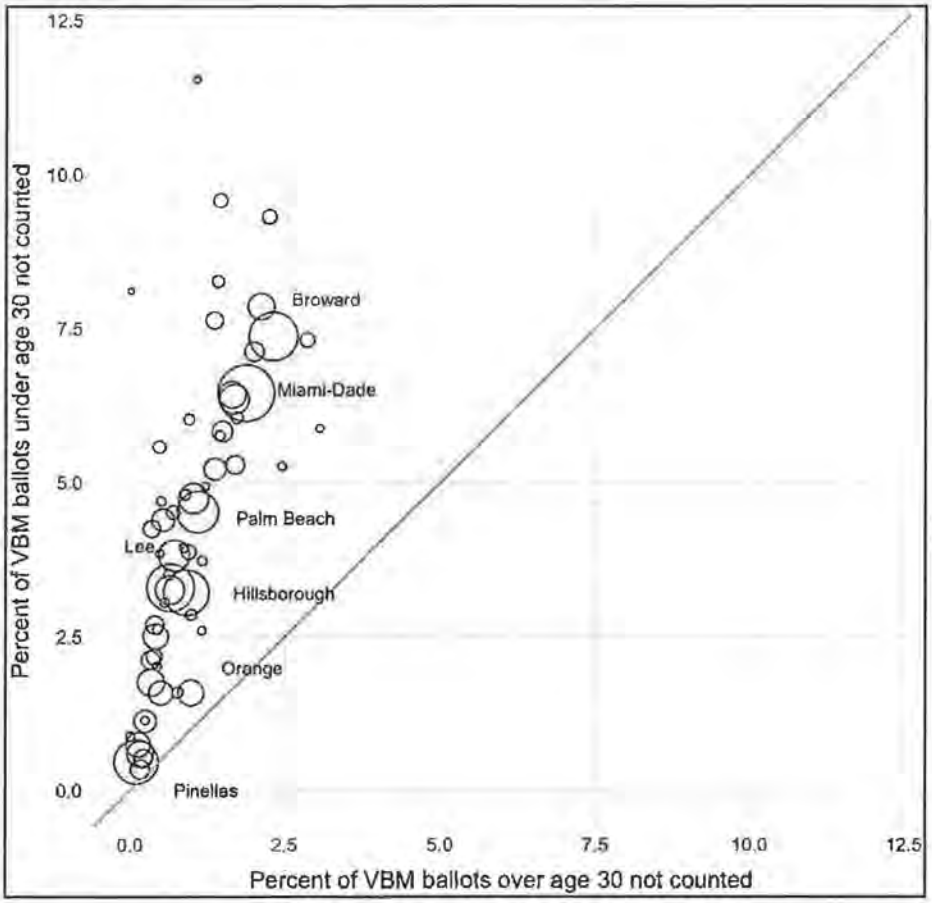

FIG. 1. Percentage of vote-by-mail (VBM) ballots not counted, by age, 2018 general election. *Note:* This figure excludes the seven counties with no rejected VBM ballots cast by voters under 30. Point size is proportional to total rejected VBM ballots cast by voters under 30. Counties are labeled if there were over 90,000 VBM ballots cast in the 2018 general election.

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percent of VBM ballots cast by voters 30 and over. The disparity is even higher in Lafayette, Monroe, Santa Rosa, Volusia, and Walton counties.

Rejected VBM ballots by race and ethnicity

Beyond age, there were differential patterns of uncounted VBM ballots across racial and ethnic groups in the 2016 and 2018 general elections. As Table 2 shows, 0.65 percent of VBM ballots cast by white voters in the 2016 election were not counted by county canvassing boards, compared to 1.86 percent for Black voters, 1.69 percent for Hispanic voters, and 1.77 percent for VBM voters in other racial and ethnic groups. In the 2018 general election, nearly 240,000 Black voters voted by mail, accounting for roughly 9.0 percent of all VBM ballots cast, but they accounted for 14.5 per-

TABLE 2. VOTE-BY-MAIL BALLOTS BY RACE AND ETHNICITY

Race/ethnicity	*VBM total*	*VBM not counted*	*VBM accepted*	*Percent not counted*
2016 general election				
White	1,961,339	12,781	1,948,558	0.65
Hispanic	381,144	6,458	374,686	1.69
Black	244,348	4,534	239,814	1.86
Other	149,154	2,647	146,507	1.77
Total	2,735,985	26,420	2,709,565	0.97
2018 general election				
White	1,898,004	17,039	1,880,965	0.90
Hispanic	353,839	7,241	346,598	2.05
Black	238,200	4,675	233,525	1.96
Other	146,453	3,014	143,439	2.06
Total	2,636,496	31,969	2,604,527	1.21

cent of all the VBM ballots that were uncounted by county canvassing boards. Even more dramatically, even though the 356,000 Hispanics who cast absentee ballots in the election comprised 13.4 percent of all VBM ballots cast statewide, Hispanic voters accounted for 22.6 percent of all rejected VBM ballots.

Figure 2a and Figure 2b display by county the percentage of rejected VBM ballots cast by Black and Hispanic voters, respectively, compared to the percentage of rejected VBM ballots cast by white voters.[35] In both plots, the horizontal axis is the rejection rate of VBM ballots (from zero percent to five percent) cast by white voters. Along the vertical axis (also zero to five percent) is the rejection rate of VBM ballots cast by Black voters (Figure 2a) or Hispanic voters (Figure 2b) in each county. If VBM ballot rejection rates were the same for white and Black (or Hispanic) voters, points in these two figures would fall along diagonal 45-degree lines. It is clear, however, that nearly every county in Florida falls above the 45-degree line, highlighting how VBM rates for minorities exceed those of white voters.

Rejected VBM ballots by uniformed and overseas civilians

Given the various protections in place for overseas and uniformed personnel under UOCAVA, it is perhaps surprising that VBM ballots returned by these voters are rejected at a rate higher than for voters in Florida overall. Table 3 reveals that 2.7 percent of VBM ballots cast by UOCAVA voters in the 2016 general election were not counted by local canvassing boards. Among UOCAVA voters, domestic military voters had the highest rejection rate in the presidential election, at 3.2 percent. In the 2018 general election, the overall rejection rate was even higher for UOCAVA voters than in the 2016 presidential election: 3.6 percent of VBM ballots cast by military and overseas voters—those covered under UOCAVA—were not counted by SOEs. Civilian and military overseas voters had roughly 2.3 percent of their mail ballots rejected in the election. As in 2016, though, domestic military voters had the highest rate of rejection of VBM ballots among UOCAVA voters. As Table 3 shows, at 4.3 percent, the rejection rate in the 2018 general election for mail ballots cast by domestic military voters was higher than any rejection rate broken down by race or ethnicity that year.

Rejected VBM ballots by county

We now turn to the geographic variability of VBM ballot rejection rates. There is significant variance in these rates across Florida's 67 counties, particularly in the 2018 general election, suggesting that there might be some discretion by local officials when it comes to either the design of VBM return envelopes or the practices used by staff to validate or reject VBM ballots.

Figure 3 displays the percentage of rejected VBMs in the 2016 and 2018 general elections across counties. This figure has 67 points, one per county, and each point is sized based on the total number of VBM ballots cast in the county in the 2016 and 2018 elections. The horizontal location of a point in Figure 3 depicts a county's VBM rejection rate in the 2016 general election and the vertical location, the county's VBM rejection rate in the 2018 general election. The figure has a 45-degree line, and counties very close to this line had approximately equal 2016 and 2018 VBM rejection rates.

One key feature of Figure 3 is that the majority of Florida counties had greater VBM rejection rates in the 2018 general election than in the 2016 election. This is evident in the fact that most points in the figure lie above the figure's 45-degree line.

A second key feature of Figure 3 is that, simply, there was across-county variance in VBM rejection rates in 2016 and 2018.[36] In 2018, for example, some counties had rejections rates of literally zero (Baker, Hamilton, and Jefferson); a few counties

[35]Figure 2a excludes two counties due to their small sample sizes, Lafayette and Gilchrist. Gilchrist rejected two of 16 VBM cast by Black voters, and Lafayette one of five. Figure 2b excludes one county, Calhoun, which rejected one of nine VBM ballots cast by Hispanic voters.

[36]Technical reasons may help to explain some of these disparities. For example, in several of the state's larger counties, including Broward, Collier, Duval, Hillsborough, Miami-Dade, Orange, Palm Beach, and Pinellas, election offices rely on Pitney Bowes (now known as BlueCrest) machines to process mail ballots and verify voters' signatures. (Personal email correspondence from Collier County Supervisor of Elections, April 14, 2020, available from the authors). Received VBM ballots in these counties are initially processed through a machine that automatically reviews a signature on the return envelope, matching it to the voter's signature on file; if the signature is missing or mismatched, it goes before the canvassing board for review. In smaller counties, SOE staff members manually process signatures on return envelopes, forwarding those with problematic signatures to a canvassing board for review.

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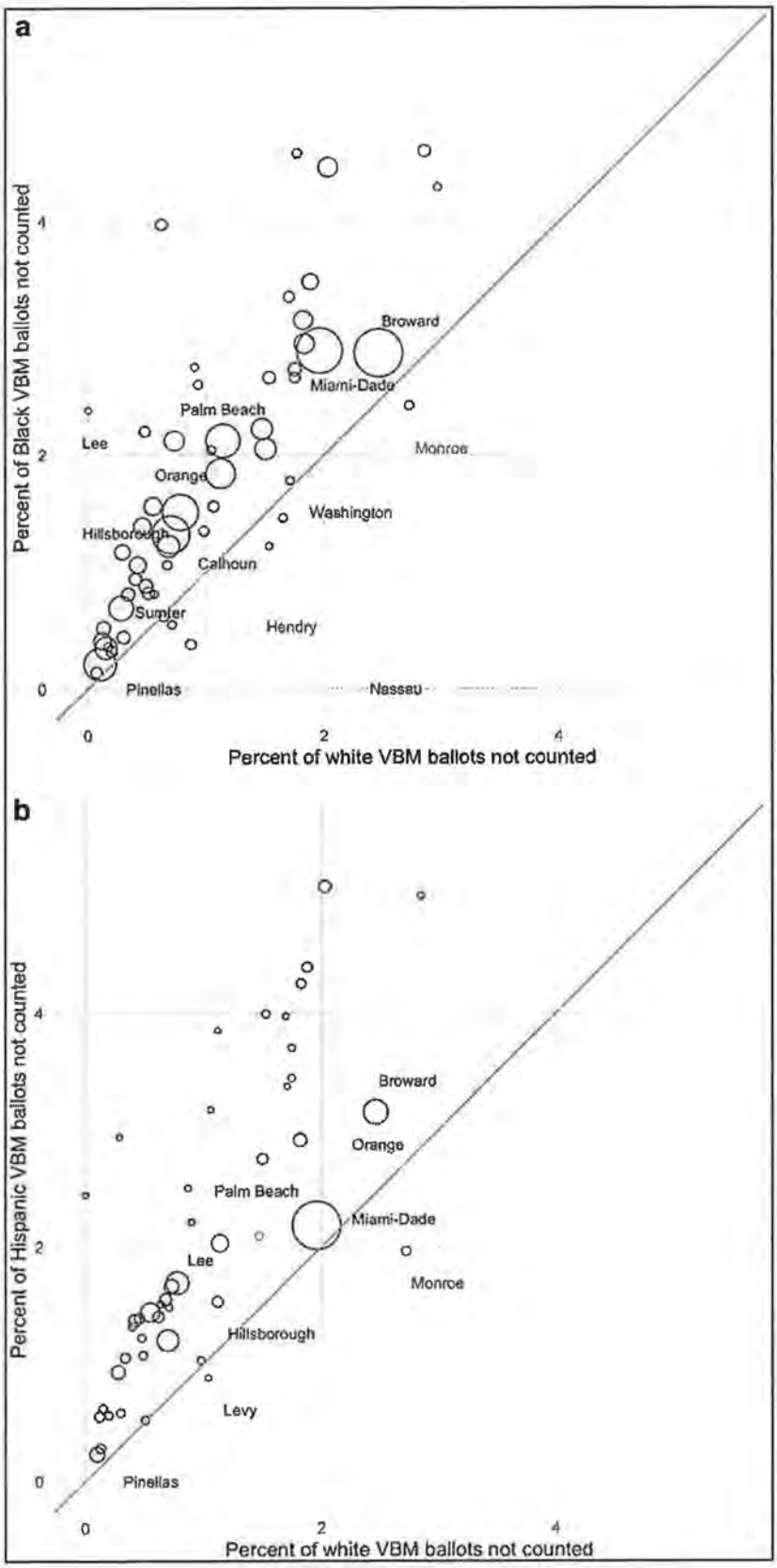

FIG. 2. Percentage of rejected vote-by-mail (VBM) ballots, by race and ethnicity, 2018 general election. **(a)** White vs. Black; **(b)** White vs. Hispanic.

TABLE 3. VOTE-BY-MAIL BALLOTS BY UOCAVA

Group	VBM total	VBM not counted	VBM accepted	Percent not counted
2016 general election				
Civilian overseas	26,894	526	26,368	1.96
Domestic military	56,897	1,818	55,079	3.20
Military overseas	7,714	124	7,590	1.61
Military or overseas	89,037	2,468	91,505	2.70
2018 general election				
Civilian overseas	17,774	412	17,362	2.32
Domestic military	36,438	1,572	34,866	4.31
Military overseas	3,593	84	3,509	2.34
Military or overseas	55,737	2,068	57,805	3.58

UOCAVA, Uniformed and Overseas Civilian Absentee Voting Act.

(i.e., Bay and Gulf) rejected more than three percent of their VBM ballots, and nine counties. (Alachua, Bay, Broward, Miami-Dade, Gulf, Madison, Marion, Seminole, and Volusia) had rejection rates of greater than two percent. There is greater vertical dispersion in Figure 3 than there is horizontal dispersion, and this means that county VBM rejection rates varied more in 2018 than in 2016. As we noted previously, Orange County is an outlier in Figure 3; its rate of VBM ballots not counted in 2018 is only one-third as high as in 2016. This is due to the administrative decision of the Orange County SOE, following the 2016 general election, to alter how it reported to the state Division of Elections the number of VBM ballots that arrived after Election Day. In 2016, the county reported these as rejected VBM ballots, and as such they were included with the county's on-time ballots that were not counted. In 2018, the county altered its practice and did not report late-arriving ballots to the Division of Elections as not counted; they simply did not report them, thus deflating the county's numerator regarding the rate of rejected VBM ballots.[37]

It is possible, of course, that voters in some Florida counties have different abilities in the matter of properly voting a VBM ballot than those in in other counties. That is, the county-wide VBM ballot rejection rates in Figure 3 may be confounded by non-uniform distributions of age groups, UOCAVA voters, and racial and ethnic minorities across Florida. Still, if equal standards are being applied by SOEs and their staffs, VBM rejection rates conditional on demographic groups should not differ substantially across counties, and Figure 3 raises questions about county discretion.

Figure 4 provides an alternative perspective on county variability, displaying the geographic distribution of VBM rejection rates across Florida in both elections. The darker the shade of a county, the greater its VBM rejection rate. Two geographic features stand out. First, the southern tip of Florida is relatively darkly shaded for both elections. This area of the state, home to the populous Miami-Dade, Broward, and Palm Beach counties, had relatively high rejection rates, particularly in the 2018 general election. Second, Figure 4 shows that there is heterogeneity across Florida in VBM rejection rates in both elections. There is no geographical area in Florida that is immune to VBM ballot rejection. The ravishing effects of Category 5 Hurricane Michael, which struck Bay and Gulf counties in the state's Panhandle less than a month prior to Election Day in 2018, are also clearly visible (Zelin and Smith 2020; Morris and Miller 2020).

MODELING VBM BALLOTS CAST AND REJECTED

Our descriptive findings, above, about VBM ballot rejection in the 2016 and 2018 general elections are potentially confounded in the following two ways. First, different types of registered voters in Florida may sort themselves into counties, and this could manifest itself in variability across Florida in VBM rejection rates that looks like county discretion but is actually voter sorting. Second, registered voters who choose to cast absentee ballots may be systematically different from registered voters who cast in-person ballots, either early or on Election Day. Perhaps the most obvious reflection of this consists of registered voters living overseas and those in the military and their dependents, i.e., UOCAVA voters. Thus, what appear to be, say, age-effects in VBM rejection rates in Florida may in part reflect variability in the extent to which young voters cast VBM ballots in the first place.

[37]Following the 2016 general election, Orange County changed the coding of how it reports late VBM ballots to the state, after it was criticized in a report for ACLU FL (see Lemongello 2018).

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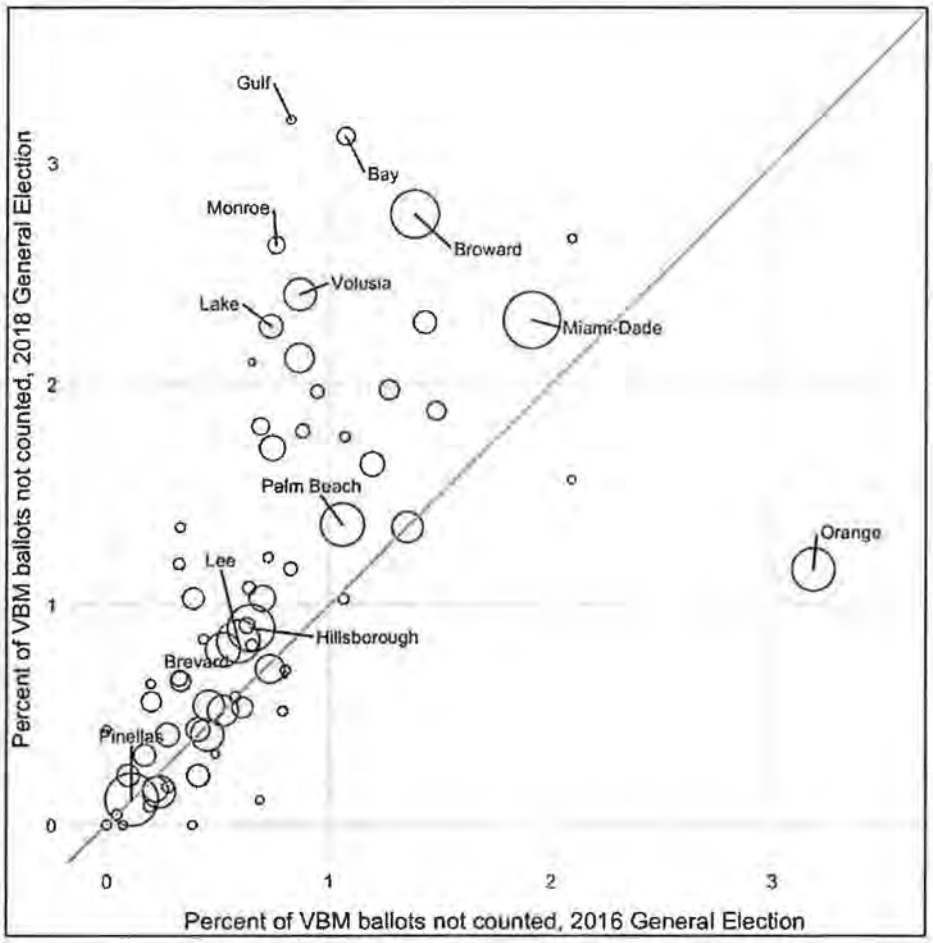

FIG. 3. Percentage of vote-by-mail (VBM) ballots not counted, by county, 2016 vs. 2018 general elections.

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Selection into vote-by-mail and possible VBM ballot rejection

To address these concerns, we estimate a selection model for both elections to account for the choice that Florida voters face when deciding to cast an in-person or a VBM ballot in an election (Heckman 1977). Our model incorporates two steps: first, a selection step in which voters decide whether to cast an absentee ballot or to vote in person (on Election Day, early in-person, or provisionally), and second, a reject-or-not step in which a voter's mail ballot is potentially rejected.

The predictors in our model's selection step (VBM vote or not) and rejection step (rejected ballot or not) consist of variables that we discussed earlier in our data section. They include voter-level characteristics on race/ethnicity, party, gender, age, type (military or not, needs assistance or not, and so forth), and name features (length, presence of a hyphen, and so forth). Our use of these variables follows from the literature we have reviewed as well as considerations about voter features like their names. Our model includes county fixed effects, and we cluster standard errors by county.

To identify our selection model, we must identify predictors, known as exclusion restrictions, that affect selection into VBM voting but not VBM ballot rejection. We use the congressional, Florida state senate, and Florida state house districts in which a voter resides as our exclusion restrictions. Theoretically, we expect that campaigns may affect the rates of VBM use across these types of districts, given that campaigns concentrate different levels of effort into encouraging voters to vote by mail (Leighley 2001; Michelson 2005; Hassell 2017). We have

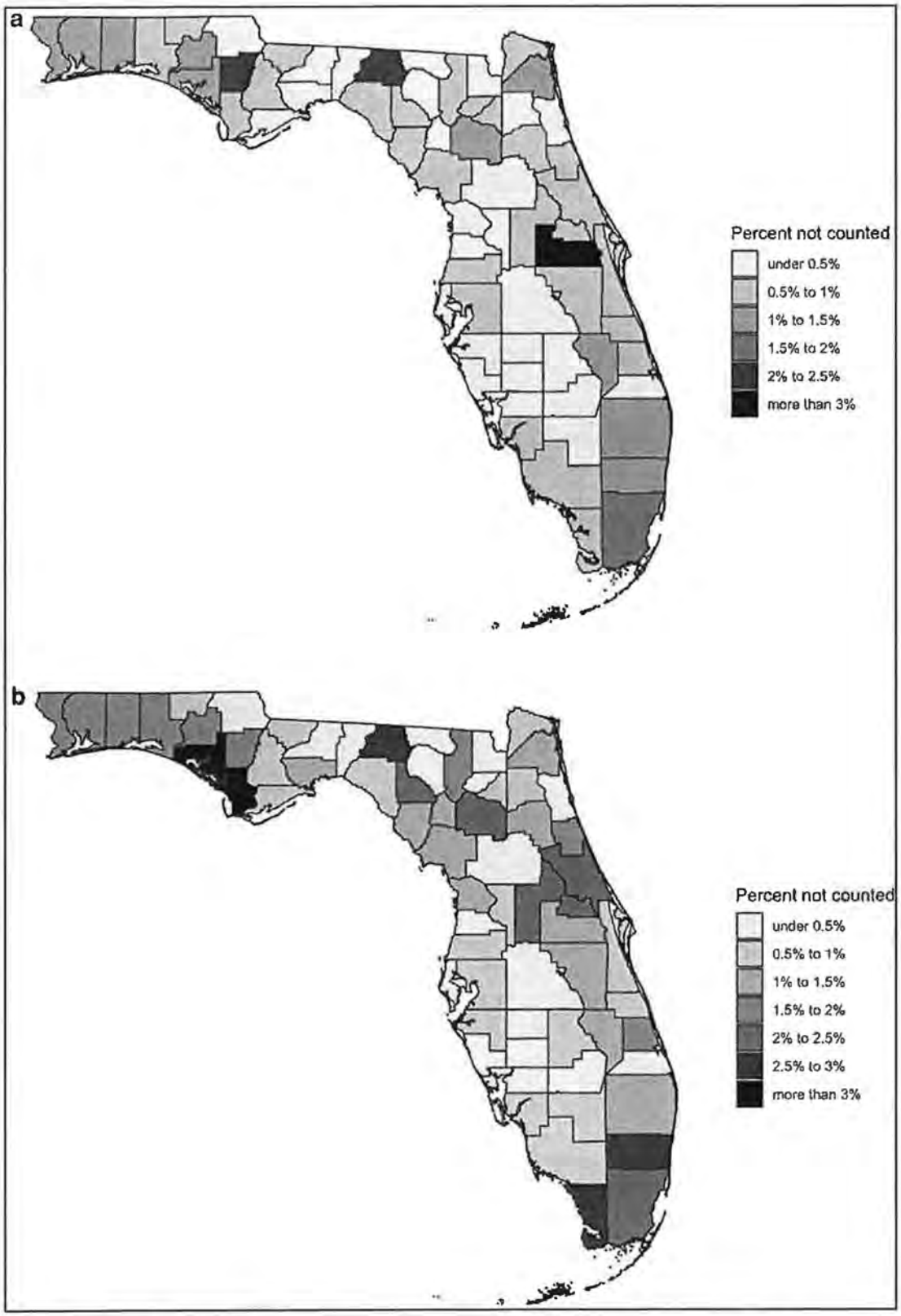

FIG. 4. Maps of vote-by-mail (VBM) rejection percentage, by county. **(a)** 2016 general election; **(b)** 2018 general election.

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no reason to believe that a registered voter's congressional or state legislative district should affect the likelihood of his or her VBM ballot being rejected; Florida election administration is conducted at the county level, as we have already reviewed.[38]

TABLE 4. SELECTION MODEL ESTIMATES FOR VOTE-BY-MAIL BALLOTS CAST AND REJECTED, ABRIDGED

	2016 general election		*2018 general election*	
	Voted VBM	*Rejected VBM*	*Voted VBM*	*Rejected VBM*
Party: Democratic	0.084***	-0.10***	0.10***	-0.089***
	(0.010)	(0.017)	(0.015)	(0.021)
Party: Third	0.0067	-0.046*	-0.032***	0.0010
	(0.0081)	(0.023)	(0.008)	(0.030)
Party: Republican	0.019*	-0.11***	-0.0039	-0.11***
	(0.0078)	(0.012)	(0.0072)	(0.010)
Race: Black	-0.21***	0.27***	-0.25***	0.10*
	(0.017)	(0.023)	(0.014)	(0.048)
Race: Hispanic	-0.077*	0.093**	-0.027	0.083**
	(0.033)	(0.030)	(0.032)	(0.029)
Race: Other	-0.020	0.13***	-0.0010	0.11***
	(0.012)	(0.014)	(0.011)	(0.018)
Gender: Male	-0.11***	0.086***	-0.10***	-0.0019
	(0.0035)	(0.015)	(0.0036)	(0.010)
Gender: Unknown	-0.12***	0.088***	-0.067***	0.016
	(0.021)	(0.017)	(0.011)	(0.015)
Military	0.45***	-0.087	0.32***	0.070
	(0.055)	(0.068)	(0.049)	(0.048)
Military dependent	0.33***	-0.025	0.25***	0.10*
	(0.037)	(0.049)	(0.032)	(0.049)
Overseas	1.52***	-0.31	1.27***	0.13
	(0.078)	(0.26)	(0.069)	(0.12)
Out of state	1.51***	0.041	1.23***	0.65***
	(0.092)	(0.21)	(0.098)	(0.10)
Voting assistance	0.026	0.18***	0.020	0.200***
	(0.049)	(0.040)	(0.043)	(0.028)
Changed name	-0.029**	-0.085***	-0.034***	-0.026**
	(0.010)	(0.019)	(0.009)	(0.008)
Name has middle initial	0.044**	-0.087***	0.016	-0.072***
	(0.013)	(0.012)	(0.013)	(0.015)
Name has middle name	0.044***	-0.066***	0.041***	-0.046***
	(0.009)	(0.007)	(0.010)	(0.013)
Name has apostrophe	-0.041***	-0.0086	-0.044***	-0.025
	(0.010)	(0.043)	(0.008)	(0.042)
Name has suffix	0.0035	-0.018	-0.004	0.012
	(0.009)	(0.017)	(0.010)	(0.011)
Name has hyphen	0.033***	-0.029*	0.00029	-0.027
	(0.0055)	(0.014)	(0.0034)	(0.020)
Intercept	-0.71*	-1.58***	-0.68**	-2.7***
	(0.30)	(0.36)	(0.24)	(0.41)
ρ	-0.39*		0.22	
	(0.16)		(0.12)	
Observations	9,505,204	2,731,319	8,255,083	2,636,496

Note: $^{*}p<0.05$, $^{**}p<0.01$, $^{***}p<0.001$.
Standard errors clustered by county. Includes county, age, and name length fixed effects.

Our model uses a probit link in both of its steps, and we estimate the model with maximum likelihood, once using data from the 2016 general election and a second time with data from the 2018 general election. Each iteration of the model yields two sets of estimates, one that pertains to selection into an election's VBM voter pool and a second that pertains the possible ballot rejection for individuals who did cast VBM ballots.

Selection model results

In Table 4, we present abridged results from our selection model (a full set of results is available from the authors). The table has both 2016 and 2018 sections, reflecting that we estimated the model twice, once for the 2016 general election and once for the 2018 general election. Each year has two sets of estimates, as explained above. We turn first to our model's selection step, which estimates who among voters in the 2016 and 2018 general elections in Florida cast VBM ballots. Insofar as our objective is understanding VBM ballot rejection, not the correlates of VBM casting in the first place, our discussion of the model's selection results is brief.

Correlates of casting a VBM ballot in the 2016 and 2018 general elections

The model's VBM selection coefficient estimates in Table 4's first and third columns ("Voted VBM") are largely consistent with existing literature (e.g.,

[38]There are 27 United States congressional districts in Florida along with 40 state senate and 120 state house districts. Florida Senate District 40 is collinear to the collection of other districts, and we drop it from our list of instruments. As justification for our exclusion restrictions, we searched media outlets in Florida for reports of legislative campaigns differentially engaging with voters on the matter of VBM ballot rejection. If, for example, one congressional campaign were to have emphasized on-time VBM returns in particular, this would be problematic for our assumed restrictions. Our searches covered two time periods: October 1, 2016–November 8, 2016 (for the 2016 general election) and October 1, 2018–November 6, 2018 (for the 2018 general election). We uncovered no evidence that legislative campaigns (actually, any campaigns) in Florida publicized the subject of VBM ballot rejection and what VBM voters can do to ensure that their ballots count. Although we are confident that our exclusion restrictions hold for 2016 and 2018, it does not follow that they will hold in the future. It is possible that campaigns in 2020 and beyond will engage the matter of VBM ballot rejection in differential ways. Whether this happens remains to be determined.

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white voters are heavy users of VBM voting), to the extent that scholars have examined the question of who is likely to choose to cast a mail ballot, but our selection model also identifies some unexpected findings.

As shown in Table 4, our results for the 2016 and 2018 general elections are qualitatively similar. In both elections, Democrats were more likely to vote by mail than NPAs, the reference category in our model for party. We find in 2018 that Republicans were no more likely than NPAs to cast VBM ballots, all else equal, and for many observers of Florida politics this might be a surprising finding, as Republicans in the state have long been assumed to dominate mail voting.[39] It is possible that Democrats in 2018 were especially likely to vote VBM due to the out-sized efforts of the Democratic Party of Florida to mobilize peripheral voters to the polls, encouraging supporters to vote by mail in a midterm election that had historic turnout.[40]

Turning to other determinants of choosing to vote by mail, Table 4 shows that, in the 2016 and 2018 general elections, white voters, the reference category for race and ethnicity, were more likely than Black voters to cast VBM ballots, all things equal. Although Hispanic voters were less likely than white voters to vote by mail in 2016, they were no more or less likely than white voters to cast a VBM ballot in the 2018 general election. We find a consistent result, across 2016 and 2018, that women in Florida are more likely than men to vote a mail ballot, all else equal.

Moving beyond party, race and ethnicity, and gender, we see in Table 4 that the likelihood of casting a VBM ballot by those needing voting assistance—which we take as a proxy for living with a disability—is not statistically significant, but, as expected, members of the military and their dependents are disproportionately likely to vote by mail. Similarly, voters overseas and out of state are substantially more likely to cast mail-in ballots.

Per Table 4, several name-related variables in the VBM selection step are statistically significant. We do not have any strong theoretical explanations for these results, however. For example, we find that individuals whose names have apostrophes were less likely to vote via VBM and that individuals with a middle name are more likely to vote by mail; this latter result obtains only in 2016. We control for name-related features of determining which individuals are more likely to vote by mail because our ultimate interest is in VBM ballot rejection. As to what is driving these results, this is an open matter we leave for future research.

Our selection model includes birth year indicator variables with 18 years of age as the reference category. In Figures 5a and 5c, we plot age-based coefficient estimates for VBM ballots cast in the 2016 and 2018 general elections, respectively. In both figures, the likelihood of voting by mail, ceteris paribus, is highest among older voters. Among those who cast ballots of any type in 2016 and 2018, voters under the age of 50 were quite similar regarding their proclivity to vote by mail, but then the rate of VBM voting increases steadily by age. There is a slight uptick in the probability of voting by mail among younger voters, with the rate slightly higher for voters between the ages of 19 and 25. But overall, Figures 5a and 5c show that, the older the voter, the more likely he or she votes by mail.

Finally, we find evidence of variation across Florida's 67 counties in the rates at which voters cast VBM ballots (not displayed in Table 4 but available from the authors). For purposes of illustration, all else equal in the 2018 general election, a voter's probability of casting a VBM ballot increases when registered in Pinellas County, compared to Alachua County, the home of the University of Florida. This result on Pinellas County provides intuitive confirmation that our selection model functions as expected.

Correlates of VBM ballot rejection in the 2016 and 2018 general elections

We turn now to the correlates of rejected VBM ballots in the 2016 and 2018 general elections and focus attention on the second and fourth columns ("Rejected VBM") of Table 4. These two columns present estimates that characterize the types of individuals who, conditional on casting a VBM ballot, are most likely to have their VBM ballots not count. Since probit model estimates are not easily interpreted on account of underlying model nonlinearity, in that follows we offer average marginal effects for variables of substantive interest.

[39] "Absentee ballots are typically Republicans' friends in Florida," according to veteran GOP operative Mac Stipanovich (see Allen 2020).

[40] In the 2018 election cycle, the Florida state Democratic Party claims to have "signed up 578,000 sporadic voters to receive mail-in ballots" (see Fineout 2019).

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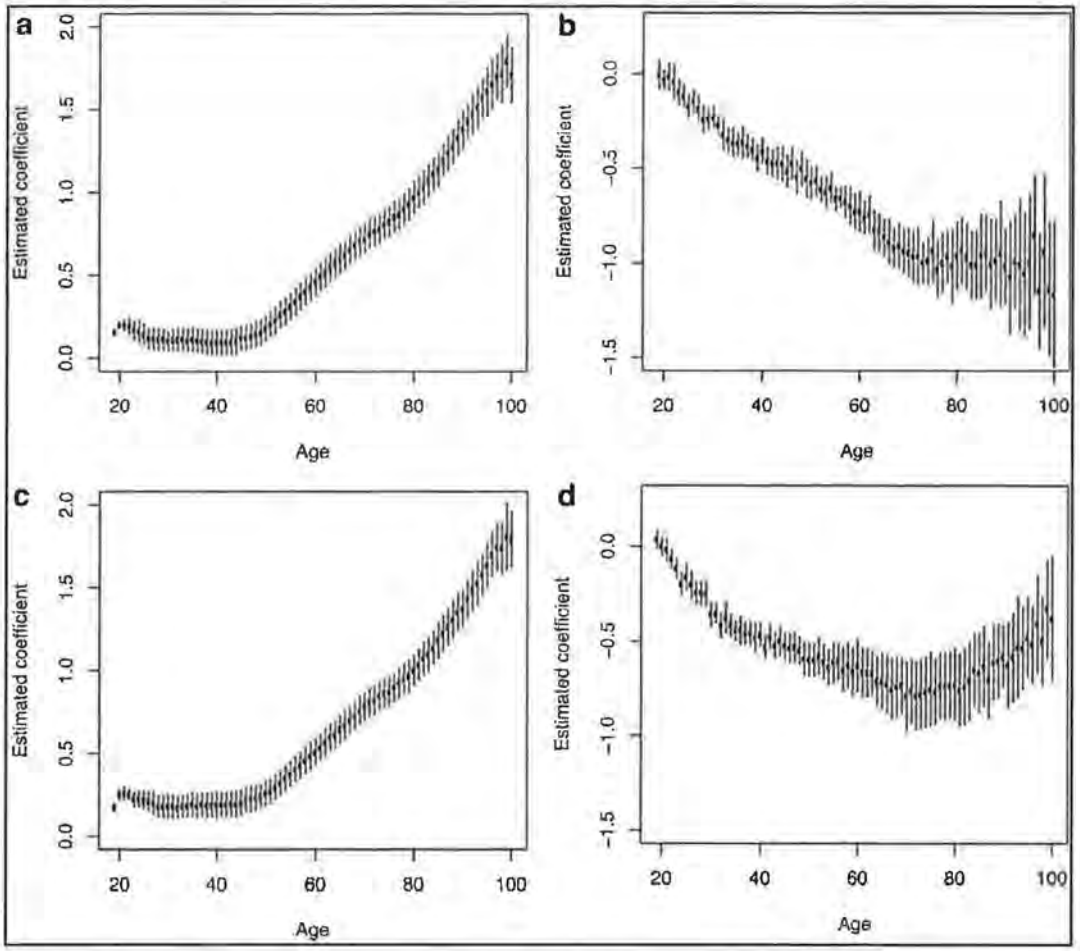

FIG. 5. Estimated age coefficients for vote-by-mail (VBM) ballot cast and rejected. **(a)** VBM ballot cast, 2016; **(b)** VBM ballot rejected, 2016; **(c)** VBM ballot cast, 2018; **(d)** VBM ballot rejected, 2018.

Our first set of marginal effects concerns party, race and ethnicity, and gender, and these can be found in Table 5. With regard to party registration (base category is NPA), the table reveals that in the 2016 general election Republicans had low VBM ballot rejection probabilities, all things equal. And in 2018, both Democrats and Republicans were significantly less likely to have their VBM ballots rejected, all else equal. These party-based findings comport with the notion that individuals registered to vote with a major political party may receive helpful guidance from partisan "get out the vote" and VBM campaigns that assist them in properly filling out and returning their VBM ballots. Regardless, Table 5 implies that VBM rejection in Florida in 2016 and 2018 was not neutral with respect to partisanship.

With regard to race and ethnicity, the reference category in our model is white. In Table 5, the only consistent finding across elections is that individuals in the "Other" race category have disproportionately high VBM rejection probabilities, all things equal. In 2016, VBM ballots cast by Black and Hispanic voters were rejected at higher rates than those cast by white voters, but low z scores for both indicates that the differences are not statistically significant at conventional levels. In the 2018 general election, we again find no significant differences between white and Black VBM voters with respect to ballot rejection, all things equal. However, we do find that Hispanic VBM voters had an elevated risk of ballot rejection, on the order of 0.18 percentage points.

The lower sections of Table 5 (both the 2016 and 2018 panels) present the corresponding marginal effects for gender, with the reference category female omitted from the table. We find no statistically significant evidence that VBM rejection

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TABLE 5. MARGINAL EFFECTS ON VOTE-BY-MAIL BALLOT REJECTION BY PARTY, RACE, AND GENDER

Variable	*Estimate*	*SE*	*z*
2016 general election			
Party: Democratic	-0.0094	0.0061	-1.55
Party: Other	-0.0045	0.032	-1.42
Party: Republican	-0.010	0.0050	-2.00
Race: Black	0.027	0.015	1.81
Race: Hispanic	0.0081	0.0062	1.30
Race: Other	0.012	0.0051	2.28
Gender: Male	0.0078	0.0050	1.55
Gender: Other	0.080	0.0044	1.82
2018 general election			
Party: Democratic	-0.20	0.091	-2.21
Party: Other	0.0025	0.075	0.03
Party: Republican	-0.24	0.058	-4.16
Race: Black	0.21	0.15	1.40
Race: Hispanic	0.18	0.089	1.97
Race: Other	0.24	0.070	3.42
Gender: Male	-0.0040	0.021	-0.19
Gender: Other	0.035	0.035	0.99

Note: Reports the change in the probability of VBM ballot rejection from a base category of have no party affiliation, being white, or being female to being a member of a given partisan, racial, or gender group, respectively. SE is an estimate's standard error, and z is an associated z-statistic.

TABLE 6. MARGINAL EFFECTS ON VOTE-BY-MAIL BALLOT REJECTION OF VARIOUS VOTER CHARACTERISTICS

Characteristic	*Estimate*	*SE*	*z*
2016 general election			
Voting assistance	0.016	0.0057	2.91
Military	-0.0078	0.0096	-0.81
Changed name	-0.0077	0.0030	-2.59
Military dependent	-0.0022	0.0054	-0.42
Overseas	-0.028	0.037	-0.75
Out of state	0.0037	0.017	0.21
Name has middle initial	0.0078	0.0049	-1.60
Name has middle name	-0.0059	0.0033	-1.79
Name has apostrophe	-0.00077	0.0039	-0.20
Name has suffix	-0.0016	0.0011	-1.50
Name has hyphen	-0.0026	0.0019	-1.33
2018 general election			
Voting assistance	0.42	0.14	3.10
Military	0.15	0.11	1.35
Changed name	-0.054	0.020	-2.66
Military dependent	0.21	0.12	1.78
Overseas	0.27	0.19	1.38
Out of state	1.4	0.20	6.71
Name has middle initial	-0.15	0.060	-2.52
Name has middle name	-0.096	0.046	-2.08
Name has apostrophe	-0.052	0.084	-0.62
Name has suffix	0.025	0.026	0.95
Name has hyphen	-0.057	0.048	-1.18

Note: Reports the change in the probability of VBM ballot rejection from a base category of not having the characteristic in the body of the table to having the specified characteristic. SE is an estimate's standard error, and z is an associated z-statistic.

rates in Florida in the 2016 and 2018 general elections varied as a function of voter gender.

Substantively, how large are the party and race and ethnicity marginal effects in Table 5? In the 2018 general election, for example, a difference of 0.18 percentage points in VBM rejection rates between Hispanic and white voters is not large on the surface. But according to the January 2019 statewide voter file, there were 2,337,804 and 8,872,107 Hispanic and white registered voters, respectively, in Florida. In the 2018 general election, the Hispanic turnout rate was 48.3 percent, quite low compared to the white turnout rate of 63.02 percent. Suppose that the Hispanic turnout rate in November 2020 is again 48.3 percent and suppose, hypothetically, that all Hispanics voted VBM. Holding constant all other factors, the 0.18 percentage point gap in VBM rejection rates is equivalent to a difference of 2,035 otherwise valid in-person votes cast by Hispanics that would, hypothetically, be rejected if they all voted mail ballots.

We now turn to Table 6 and its marginal effects associated with estimates of various voter characteristics, e.g., need for voting assistance, military status, and name features. There are two consistent findings across elections.

First, VBM voters who indicated at time of voter registration they would need assistance voting are, all things equal, 0.02 and 0.42 percentage points more likely to have a rejected VBM ballot in the 2016 and 2018 general elections, respectively. This is indicative of a relationship between disability status, as proxied for by the need for voting assistance, and VBM ballot rejection, particularly in the 2018 election. Second, voters with changed names had lower likelihoods of VBM ballot rejection in both 2016 and 2018. Corresponding marginal effect sizes are not large, but they are statistically significant. We suspect that a changed name is proxying for voter engagement with an election official and updated voter record maintenance. A voter who changed his or her name presumably did so at an SOE office (or Department of Highway and Motor Vehicles office), and in the process placed a current signature on file.

Moving beyond findings in Table 6 that obtain in both 2016 and 2018, we also find that, in the latter year's election, VBM voters who reside in Florida but have an out-of-state mailing address had a 1.4 percentage point greater likelihood of VBM ballot rejection. This may reflect the fact that the ballot cure process in Florida was improved between

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2016 and 2018. Ironically, the improvement may have benefited relatively local VBM voters in Florida, thus magnifying the effect of out of state status on VBM ballot rejection. We find no statistically significant evidence in either 2016 or 2018 that military status or military dependent status has an independent effect on VBM ballot rejection.

In terms of name-based features of VBM voters, there is evidence in 2018 that having a middle initial or middle name is associated with 0.15 and 0.10 percentage point decreases in VBM rejection probabilities, respectively. Corresponding estimates from 2016 are negative but not estimated sufficiently precisely to break the statistical significance barrier. In both 2016 and 2018 we find no significant effects on ballot rejection of the presence in voter names of apostrophes, suffixes, or hyphens.

We previously explained our logic regarding name features and VBM ballot rejection: the more features of a name, the greater the number of signature possibilities and thus opportunities for signature inconsistencies. However, to the extent that we have found a relationship between name features and VBM ballot rejection rates, it works in the opposite direction of what we anticipated. We can only speculate post-hoc about this, but one possibility is that individuals who have names with complicated features are extra attentive to their names and thus more likely to have consistent signatures. It is also possible that the types of individuals who even choose to list their middle names on voter registration forms are also the types of people who are consistent with their signatures. Based on our results thus far, name features merit additional research regarding signature matching, beyond the limited approach to this subject that we have employed here.

Although not displayed in Table 4, our selection model estimates the effect of name length on VBM ballot rejection. We noted above how the model includes indicator variables for name length ranging from four to 25. For both the 2016 and 2018 general elections, we find no statistically significant evidence that name length affects the probability of VBM ballot rejection.

With regard to a voter's age and the likelihood of casting a VBM ballot that does not count, Figures 5b and 5d plot probit point estimates and confidence intervals for age-based point estimates. The reference category is 18 years old, and it is evident that the likelihood of having a VBM ballot rejected decreases with age. In terms of what those estimates mean substantively, Table 7 reports a variety of age group marginal effects on the probability of VBM ballot rejection. These effects describe the marginal change in VBM ballot rejection probabilities for the base category 18 year-old voter who moves to another age in the table.

The implication of Table 7 is straightforward: in both the 2016 and 2018 general elections, the older a voter, the less likely his or her VBM ballot will be rejected, all things equal. Compared to an 18-year-old voter, for example, a 30-year-old VBM voter in 2018 had a 1.5 percentage point decrease in ballot rejection probability; a 50-year-old voter had a two percent lower probability. Broadly speaking, these estimates show how VBM ballot rejection disproportionately affected younger voters in Florida in the 2016 and 2018 general elections. These marginal effects and Figures 5b and 5d are consistent with the claim that younger voters may not have a firm grip on their signatures or knowledge about how to fill out a return VBM envelope. Since an individual's signature is never the same, and signature stability is acquired over time, influenced by social and cultural conditions (Pirlo et al. 2014), young voters growing up in a digital world may not yet appreciate their signature as a permanent measure of their identity.

TABLE 7. MARGINAL EFFECTS ON VOTE-BY-MAIL BALLOT REJECTION BY AGE

Age	*Estimate*	*SE*	*z*
2016 general election			
20	-0.0065	0.0066	-0.99
30	-0.039	0.015	-2.52
40	-0.062	0.026	-2.43
50	-0.079	0.034	-2.33
60	-0.091	0.043	-1.99
70	-0.10	0.053	-1.94
80	-0.103	0.055	-1.89
90	-0.11	0.057	-1.88
2018 general election			
20	0.0042	0.15	0.03
30	-1.5	0.53	-3.00
40	-1.9	0.61	-3.07
50	-2.1	0.72	-2.99
60	-2.2	0.78	-2.81
70	-2.4	0.86	-2.83
80	-2.3	0.85	-2.77
90	-2.1	0.78	-2.69

Note: Reports the change in the probability of VBM ballot rejection from a base category of 18 years old to an age listed in the body of the table. SE is an estimate's standard error, and z is an associated z-statistic.

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County variability in VBM rejection rates

We now consider disparities across Florida counties with regards to rejection rates of VBM ballots. To do this, we focus on county fixed effects that are part of the VBM rejection step of our selection model. There are 67 counties in Florida, and three of them—Baker, Hamilton, and Jefferson—had zero rejected VBM ballots in 2016 and in 2018. These counties are not part of our model.[41]

Our base category, chosen without loss of generality, is Pinellas County. The estimated fixed effect for Alachua County, say, captures the additional (or decreased) probability that a VBM ballot cast in Alachua County will be rejected compared to a VBM ballot cast in Pinellas County, all things equal. There are 63 total county fixed effects in the VBM rejection step of our selection model (and also in the model's first step, but that is not of interest here).

There are ostensibly uniform standards in Florida for determining whether the signature on a VBM return envelope is valid or not. This point we have already noted. However, we have also discussed the matter of local discretion, and our county fixed effects estimates are proxies for the extent to which local officials in Florida's counties have independent effects on VBM ballot rejection rates.

We find different county marginal effects in 2016 and 2018. With respect to the former, there are effectively no statistically significant county effects regarding VBM ballot rejection. This means that, once we control for voter characteristics (demographics, name features, and so forth), the county in which a VBM voter cast his or her ballot in the 2016 general election had no significant bearing on whether the ballot was rejected. This suggests that election official discretion at the county level played effectively no role in VBM ballot rejection in 2016.

In the 2018 general election, this situation is quite different. County marginal effects for VBM ballot rejection are displayed in Figure 6, and bars in the figure are sorted from largest to smallest. County names appear under each bar, and bars are colored based on statistical significance at the 0.05 level, black denoting significance and gray a lack thereof. Each bar is a change in the VBM rejection rate of moving from Pinellas County to a different county. As an aside, we do not display a 2016 version of Figure 6, and this is because effectively all bars are gray, indicating that county level marginal effects are not statistically meaningful.

There are two explanations for the 2018 variability in county effects apparent in Figure 6. One, local election official discretion. And two, a missing variable in the VBM rejection step of our selection model that is correlated with county. Given our non-experimental setup, we cannot completely rule out the latter explanation, but our model already includes all of the demographics available to us via Florida voter files. Given the ostensible connection between signature quality and VBM ballot rejection, it seems hard to imagine that, say, penmanship systematically varies across counties, given that our selection model controls for voter age, a voter's race and ethnicity, and so forth.

Many of the 2018 general election county marginal effects in Figure 6 are greater in magnitude than the marginal effects previously discussed, i.e., those concerning party, race and ethnicity, gender, and age. That by itself is a notable result, implying that the most important predictor in November 2018 of whether a VBM ballot cast in Florida was rejected may be the county where it was cast.

That a county's VBM rejection rate might vary over time should not be not surprising. For example, the tallest bar in Figure 6 is associated with Gulf County, which along with Bay County was hit by Hurricane Michael prior to the 2018 general election (Morris and Miller 2020; Zelin and Smith 2020). The Gulf bar height is over two percent, implying that VBM voters in Gulf County had more than a two percentage point greater likelihood of VBM ballot rejection than VBM voters in Pinellas County, all things equal in the 2018 general election. This is despite the observed difference in VBM rejection rates between Pinellas and Gulf being approximately 3.08 percent in 2018. Some of this 3.08 percent reflects voter demographics, which are incorporated in our selection model via inclusion of voter-level predictors. All told, there were 1,251 VBM ballots cast in Gulf County in the 2018 general election, and two percent of this number is about 25 (40 ballots were actually rejected in 2018).

Is two percent large? Gulf County is one of the smallest Florida counties based on voter registration, having 10,792 registered voters as of

[41]This is because these counties exhibit what is called perfect separation. It is not possible to estimate a county fixed effect for VBM ballot rejection if all of the VBM voters in a county either had rejected ballots or none had rejected ballots, as was the case for Baker, Hamilton, and Jefferson in both elections.

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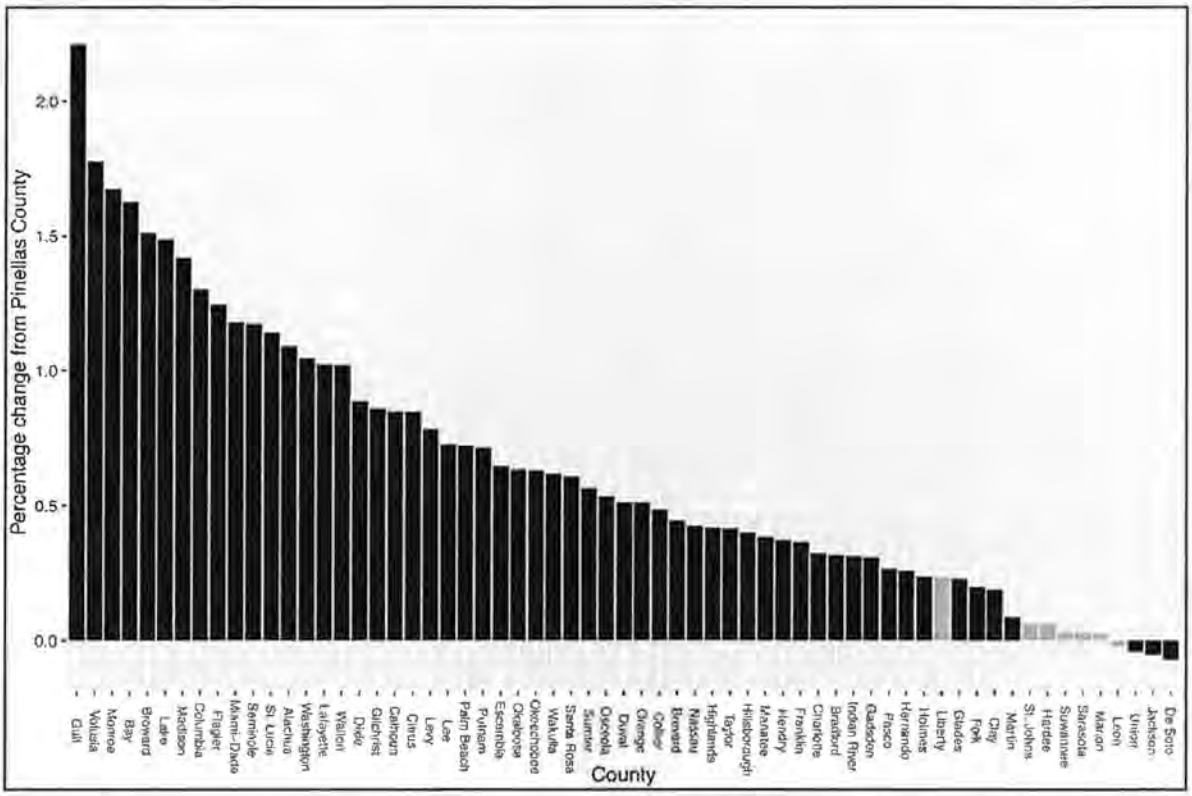

FIG. 6. Estimated county fixed estimates, 2018 general election. *Note*: Each bar denotes one Florida county. Black bars are statistically significant at the 0.05 level and gray bars are not. Each county fixed effect is based on the omitted Pinellas County, and three counties (Baker, Hamilton, and Jefferson) do not appear in the figure because they had no rejected vote-by-mail (VBM) ballots in 2018.

November 2018, as opposed to 1.5 million in, say, Miami-Dade County. Of Gulf County's registered voters, roughly 6,000 voted in the 2018 general election. If in November 2020 all of these voters cast a VBM ballot, the aforementioned two percent rejection penalty in the county would lead to an excess of roughly 120 VBM ballots being rejected. This is unlikely to be pivotal in an election, which is a reflection of Gulf County's small population. These calculations, however, say nothing about the fact that a VBM ballot that is valid in one county but on account of discretion rejected in another reflects a lost opportunity for a properly registered voter to exercise the right to vote. We would argue that no voter's franchise should be considered expendable on the basis of not being pivotal. From this perspective, the question, "Is two percent large?" has nothing to do with pivotality.

Table 8 lists four Florida counties, their estimated marginal effects for VBM ballot rejection (i.e., the additional percentage of rejected VBM ballots due to this county compared to Pinellas County), the standard error of the margin effects (all estimates are significant at the 0.05 level), and two columns named "New rejections" and "New percent." The latter two columns operate as follows.

Suppose that every county in Florida (disregarding the three counties that had no rejected VBM ballots) were administered like Pinellas County with respect to VBM ballot rejection. As Pinellas is our

TABLE 8. PROJECTED BALLOTS REJECTED GIVEN HYPOTHETICAL SCENARIOS

County	*Marginal effect*	*SE*	*New rejections*	*New percent*
Volusia	1.776	0.471	32,216	1.224
Broward	1.511	0.427	32,131	1.221
Miami-Dade	1.179	0.280	32,025	1.217
Pinellas	0.000		31,648	1.202

SE, standard error.

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reference category, this would mean that the marginal effect of Volusia County, for example, would be zero rather than 1.776. In this scenario, Volusia County would have had fewer rejected VBM ballots than it actually had in the 2018 general election (because zero is less than 1.776), and the amount fewer can be calculated by subtracting 1.776 percentage points from Volusia County's observed VBM ballot rejection percentage, dividing the difference by 100 to convert it to a rate, and then multiplying this rate by 80,667, which is the number of VBM ballots cast in Volusia County in the 2018 general election. Similar calculations can be made for all Florida counties under the assumption that each had a VBM ballot rejection rate like Pinellas.

This said, the "New rejections" column in Table 8 reports the estimated number of VBM ballot rejections across Florida in the 2018 general election in the hypothetical scenario in which all counties had the same fixed effect as the county in one of the table's rows. The "New percent" column lists the corresponding statewide VBM rejection percent. As Table 8 reveals, county variability in VBM rejection rates does affect rejections, but the raw numbers are not appreciably large compared to many Florida election vote margins. The reason that Volusia County appears in the table is because this county had the largest fixed effect (which means, the greatest VBM rejection rate, all things equal) among reasonably populous counties in Florida. With that in mind, the Pinellas-Volusia difference in rejected VBM ballots is 32,216 – 31,648 = 568 ballots. In other words, the difference in rejected VBM ballots in Florida between all counties decreasing their rejection rates to the level of Pinellas County versus all counties increasing their rejection rates to the level of Volusia County is 568 ballots. One perspective of the extent to which 568 is large turns on whether 568 ballots is likely to be pivotal in an election. Another perspective focuses on diminished voting rights: 568 VBM ballots rejected that would not have been rejected if all Florida counties had a Pinellas-like standard for VBM ballot rejection is 568 individuals who lost their franchise in an election.

What if the number of VBM ballots cast in Florida doubled?

There were 2,632,349 absentee ballots cast in Florida in the 2018 general election across the 64 counties with positive VBM rejection rates. If this number were to, say, double in the 2020 general election, the statewide number of rejected VBM ballots based on Table 8 ranges from 63,281 (if all counties were like Pinellas) to 64,439 (if all Florida counties were like Volusia). These numbers are calculated holding all things equal.

Holding all things equal is not a simple assumption here, and this applies to the thought experiment about what might occur in Florida if the state were to hold essentially an all-mail election in November 2020. Even though certain types of voters have disproportionately high VBM rejection rates (i.e., Hispanic voters in some cases), if these types of voters are more likely to turn out in an all-mail election, then the share of votes coming from them could increase. The issue here is the extent to which turnout effects (i.e., the extent to which the distribution of voter types changes with a shift to all-mail voting) interacts with VBM rejection rates. We have little information about what the electorate in Florida would look like if the state, hypothetically under siege from COVID-19, were to shift literally to VBM voting, and this should be kept in mind when extrapolating from our results to an election in which methods of voting differ greatly from what is typical in Florida.

As evidence that major changes to VBM voting rates can have unpredictable and large effects on ballot rejection, one need only look at recent elections in New Jersey and New York. In the former, the rejection rate of VBM ballots in elections held in 32 communities throughout the state on May 12, 2020 was roughly 10 percent. Nearby in New York City, approximately 20 percent of mail ballots were rejected in the June 2020 primary.[42]

Concern about these types of figures might induce county election officials in Florida to be sensitive to the exigencies of voting in a crisis and thus perhaps be more forgiving in their assessments of VBM signatures. On the other hand, if the number of VBM voters in Florida surges, many voters who have never voted by mail will suddenly be doing so. A surge of inexperienced VBM voters, particularly in what is expected to be a high-turnout election, may lead to an increase in the number of signature-related errors in November 2020. Ultimately, we do not know which of these factors will be stronger, but

[42]On New Jersey, see O'Dea 2020. And on New York City, see Timm 2020.

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the potential for multiple interacting forces on VBM ballot rejection is one that should be kept in mind as the push for VBM in the United States intensifies.

Correlation between VBM ballot casting and rejection

Finally, Table 4 contains two estimates—one for 2016, one for 2018—of a correlation parameter ρ. This parameter is a measure of the extent to which the two steps in the VBM process—casting a VBM ballot, or not, and having it rejected, or not—modeled in our selection model are correlated, conditional on observed predictors. The estimate of ρ is approximately -0.39 in 2016 and approximately 0.22 in 2018, with estimated standard errors of 0.16 and 0.12, respectively. Together these yield χ^2 statistics of 4.88 ($p \approx 0.027$) in 2016 and 3.15 ($p \approx 0.076$) in 2018.

There are two noteworthy points about these results, which may explain the lack of county marginal effects in 2016 as discussed above, plus the smaller (in magnitude) marginal effects on VBM ballot rejection for party, race and ethnicity, and age that we observe in 2016 compared to 2018.

First, the point estimate of ρ in 2016 is negative and significant. This means that, conditional on covariates, the type of individual in the 2016 general election who had a proclivity for casting a VBM ballot was also the type who was less likely to have a rejected VBM ballot. We arrive at this conclusion from the fact that the sign of the estimated ρ parameter in 2016 is negative and significantly so. Second, and in contrast, the point estimate of ρ in 2018 is positive and nearly significant at conventional confidence levels. A positive estimate of ρ implies that a voter in the 2018 general election who, conditional on covariates, was disproportionately more likely to cast a VBM ballot was also disproportionately more likely to be the type of individual who casts a VBM ballot that is rejected. In the case of the 2018 general election, this should raise a red flag.

An important question, one beyond the scope of this article, is thus: what changed between 2016 and 2018 regarding selection into VBM voting? Three possibilities come to mind. One, the 2016 and 2018 general election are different types, the former including a presidential contest. Perhaps midterm election voters are fundamentally different regarding the ways that they cast VBM ballots. Two, across the United States, the 2018 general election had unusually high turnout for a non-presidential election. In Florida, turnout was particularly high among young and minority voters, driven in large part by the candidacy of Andrew Gillum, the Democratic Party's young African-American nominee for Florida governor, who lost in a close contest. A plethora of new VBM voters could have led to different types of VBM ballots cast. Three, as a result of a successful federal lawsuit immediately prior to the 2018 November election, registered voters in Florida were given more opportunity to cure their VBM ballot envelope if it had a problem with the voter's signature, having two days after Election Day to provide an absentee cure form. It is possible that expanded ballot cure opportunities provided additional leverage to local elections officials in 2018, allowing them to exercise discretion in a way that was not possible in 2016. These conjectures could explain the differences we have found in the correlates of VBM ballot rejection in 2016 and 2018, but they remain speculative at this point and a valuable subject for future research.

It is an open question whether in other elections in Florida and across other states there is a positive or negative correlation between the likelihood that an individual votes a VBM ballot and his or her ballot is rejected. Table 4's estimates of two correlations cover just two elections in one state. How much this result generalizes is unclear. Still, as the push for mail-voting grows in the shadow of the COVID-19 pandemic, a positive correlation between casting a VBM ballot and subsequent ballot rejection is a warning about the importance and potential difficulty of ensuring that all voters in American elections, those who vote VBM and those who vote in-person, have equal voices in political processes.

DISCUSSION

The spread of the novel coronavirus across the United States left the 2020 presidential primary season in disarray and ushered in a surge in vote-by-mail voting. Based on recent elections held during the COVID-19 pandemic, there is every reason to expect that we will see a dramatic rise in voters casting mail ballots in the upcoming 2020 general election.

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Who is most at risk of VBM ballot rejection? Our results, focusing on Florida, highlight age, disability status, geography, and race/ethnicity. Simply, younger voters in Florida in the 2016 and 2018 general elections had disproportionately high VBM rejection rates, and the same is true for voters who need assistance with voting. With respect to geography, we have shown that, in the 2018 general election, some counties in Florida had VBM rejection rates that can raise an older voter's VBM ballot rejection probability, which is normally low, to a level approaching that of a younger voter. We also find that, across elections, non-white voters who cast VBM ballots, particularly Hispanics, are disproportionately likely to have their VBM ballots rejected.

Our empirical assessment of VBM ballots cast and rejected in Florida draws attention to present inequities—at the individual level and jurisdictional—that have affected VBM voting in the state. For example, if we were to apply the rejection rate of VBM ballots to ballots cast in person (early or Election Day) in Florida's 2018 general election, over 100,000 of the 8.2 million ballots cast would have been rejected, with those rejected disproportionately cast by young voters, those with disabilities, Hispanics, and individuals who are not affiliated with a major political party. As such, our findings should be of interest not only to scholars of voting rights but also to federal, state, and local election officials who are encouraging VBM voting in response to the COVID-19 pandemic. The findings suggest that a wholesale transformation in the United States away from in-person voting must be promulgated carefully if those implementing this transformation want to ensure that ballot rejection rates do not disproportionately affect some voters more than others.

Our results provide an important caveat to recent research concluding that the use of VBM ballots has a marginal impact on turnout and does not affect the partisan balance of elections. For example, in their study of three decades of elections in two states, Washington and Utah, that gradually adopted mail voting over time, Barber and Holbein (2020) find that mail voting does not preference one party over the other. Similarly, Thompson et al. (2020) examine turnout in three states, California, Utah, and Washington, that staggered implementation of VBM from 1996–2018, finding that neither Republicans or Democrats benefited from a greater share of their supporters turning out to vote. If, as we find in Florida across two general elections, certain groups of voters—in particular, younger, disabled, racial and ethnic minorities—are more likely to have their VBM ballots rejected due to signature issues, and if, as there is every indication, more of these voters cast mail ballots in the 2020 general election rather than voting in person, there is certainly the possibility that outcomes of electoral contests may hang in the balance due to a higher rate of mail ballots cast by these voters not counting.

We also note that our study of rejected VBM ballots in Florida likely only captures the tip of the iceberg when it comes to VBM ballots that do not count. Our study of rejected VBM ballots cast in Florida is restricted to mail ballots returned on time to local election officials, excluding domestic VBM ballots that arrived at a proper local election office *after* the state's 7:00 p.m. Election Day deadline.[43] In our study, late ballots were never formally cast, and thus, are not included in the rejection rates. There is every indication that there will be postal delays in the November 2020 general election, as the United States Postal Service itself has warned (Cox, Bogage, and Ingraham 2020). Our study also does not consider VBM ballots that were "undeliverable," i.e., that never reached their intended voters. Unlike regular mail, VBM ballots may not be forwarded to a voter.

In addition, our study does not address barriers in states beyond Florida that may make it difficult for some voters to request or return their VBM ballots. In some states with all-mail voting systems (like Washington) or those temporarily pushing mail voting due to COVID-19 (like Georgia), only active registered voters are automatically sent mail ballots—this excludes eligible voters on the rolls who are listed as inactive.[44] Even in states where voters do not need an excuse to request a VBM ballot, many require voters to request a mail ballot in writing, well in advance of Election Day.

Though the public health threat of the ongoing pandemic raised the importance of voting by mail, many concerns over the equity of voting by mail

[43]See above for our discussion concerning the handful of counties with late-ballot rejection reporting exceptions.

[44]For Washington's law, see Wash. Rev. Code § 29A.40.010, "Ballots by Mail," available at <https://app.leg.wa.gov/RCW/default.aspx?cite=29A.40&full=true> (last accessed April 15, 2020); for Georgia's decision in 2020 to mail ballots only to active voters, see Niesse 2020.

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are not new. Across the country, United States Postal Service mail delivery and pickup in some jurisdictions is neither regular nor reliable; some prospective VBM voters might not have their ballots delivered expeditiously (Government Accountability Office 2006). Some local election officials include pre-paid postage on their VBM return envelopes; not including pre-paid postage could impede some voters from returning their ballots (see Merelli 2018). Mail in some zip codes does not process letters with postmarks, even in states where the deadline for returning a VBM ballot is Election Day; it can be impossible to pinpoint the date on which a ballot was returned (see Chapin 2020). And many voters with disabilities or those who have limited English proficiency may not be able to vote privately or independently by mail (see Wilkie 2020).

There are many open questions concerning voting by mail, and these questions are increasingly salient in a world where social distancing is important. Because of the heterogeneity in the adoption and regulation of VBM systems across the American states, case selection is important in any effort to identify why some registrants may be more likely to cast a mail ballot (Kousser and Mullin 2007), and, just as significantly, why some voters may be more likely to have their mail ballot rejected. Florida's longstanding system of mixed voting—which does not require registrants to have an excuse to vote by mail, allows them to opt-in to receive a ballot prior to Election Day, and is relied upon by Republicans and Democrats alike—is a valuable case to better understand the considerable discretion that local election officials have when it comes to making sure all voters casting a mail ballot have an equal opportunity to have their vote count.

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Appendix

APPENDIX A1. VARIABLE DEFINITIONS

This appendix describes the variables that we use throughout the article. All of the data are drawn from statewide voter files "(Voter Detail" and "Voter History") and statewide Legislative Report Election/Recap files from January 2017 and January 2019 maintained by the Florida Division of Elections.

- *Age.* Available from the Florida voter file in date format. Only the 49,485 registered voters with records exemptions are missing birth dates. For the rest, we transform birth dates to age at the time of the 2018 general election. We exclude 1,155 registered voters who have ages which fall outside of 18–100 years.
- *Party affiliation.* Available from the Florida voter file. Collapsed to include Democrat, Republican, NPA (no party affiliation), and all other parties ("Other"). No voters are missing party affiliations.
- *Race.* Available in the Florida voter file. We code a voter's race and ethnicity as white, Black, or Hispanic, collapsing all other entries as "Other." No registered voters are missing a race and ethnicity code in the voter file, although eight contain an invalid value in the field and are thus placed in the "other" category.
- *Gender.* We rely on a voter's stated gender ("M" or "F") in the Florida voter file, coding those with no code as "Other." 5,476 individuals are categorized as "Other" as a result of a missing gender field, and 43,237 registered voters already had an "U" ("Unknown") gender as coded in the voter file.
- *Military status.* From the January 2019 Recap voter file, this variable comes as a "Y" or "N."
- *Military dependent.* This field is taken from the January 2019 Recap voter file, in which it is "Y" or "N."
- *Voting assistance.* From the January 2019 Recap voter file, this variable is either "Y" or "N," identifying voters who indicate that they have a disability when they register to vote. There are 23 registered voters with erroneous codes.

(*Appendix continues* →)

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- *Overseas.* Available as a "Y" or "N" item from the January 2019 Recap voter file.
- *Out of state.* We create this variable from registrants' mailing states in the voter file. Coded as one if a voter's mailing state is not Florida; otherwise coded as zero. Our assessment of state abbreviations is case-insensitive.
- *Changed name.* Derived from the January 2019 Recap voter file, which contains a voter's previous name, if an SOE ever had a different name on file. We create a variable which takes a value of one if there is any number of characters in this field and zero if the field is empty.
- *Name has middle initial.* We say that a registered voter has a middle initial if the voter's middle name field in the voter file contains one letter.
- *Name has middle name.* We say that a registered voter has a middle name if the voter's middle name field in the voter file contains more than one letter.
- *Name has apostrophe.* From a registered voter's name in the voter file, we create a variable which takes a value of one if the voter has at least one apostrophe in their first, middle, or last name fields.
- *Name has suffix.* From a voter's name in the voter file, we create a variable which takes a value of one if the voter has a suffix in the designated name suffix field. Our set of standard name suffixes is as follows: "Jr," "Sr," "I," "II," "III," "IV," "IX," "V," "VI," "VII," and "VIII." Our assessment of whether a registered voter has a standard name suffix is insensitive to case and punctuation.
- *Name has hyphen.* From a voter's name in the voter file, we create a variable which takes a value of one if and only if the voter has at least one hyphen in his or her first, middle, or last names.
- *Name length.* Defined as the number of characters in a voter's first and last name. There are registered voters in the voter file who are missing a first or last name.

Appendix Table A1. Dropped Records from the 2016 and 2018 Florida Voter Files

Exclusion criteria	2016	2018
Records exemption	48,429	49,485
Invalid flags	8,470	23
Florida Senate District 0	2,093	1,048
Age range	1,297	1,155
Missing flags	1,013	273
Congressional district 0	381	19
Missing name	40	31
Total	61,723	52,034

Based on the above definitions, we drop 52,034 individuals who voted in the 2018 general election (out of 8,307,118, approximately 0.63 percent). These individuals are broken down in Appendix Table A1.

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'We're Not Ready': Experts Sound Alarm as US Embraces Mail-Focused Election

THOMAS F. HARRISON August 3, 2020

A Miami-Dade County Elections Department employee places a vote-by-mail ballot for the August 18 primary election into a box for rejected ballots on Thursday, as the canvassing board meets at the Miami-Dade County Elections Department in Doral, Fla. (AP Photo/Lynne Sladky)

BOSTON (CN) — Tens of millions of Americans are planning to vote by mail this November, but many election officials and experts are leery of putting their faith in absentee ballots, systems that have been around for years but have proved error-prone for even a tiny number of votes.

"We're not ready for this," said Edward Foley, a professor at Ohio State University who has written several books on election law. "I'm very worried. I guarantee you we'll have problems."

Lengthy delays as well as enormous numbers of inaccuracies, rejected ballots and disputes are just a few of the issues expected to arise. In many state and local elections, it is all but certain that winners will not be declared for weeks and only after litigation.

As for the White House race, former Vice President Joe Biden has already hired 600 lawyers in anticipation of voting disputes all over the country.

"We are opening ourselves up to post-election events that we have never seen before, and that could be confrontational, violent or controversial at the least," said Charles Stewart, director of MIT election data and science lab. "Buckle in."

A lot of people — including President Trump — have suggested that mail-in ballots are rife with potential for fraud. But the biggest problem isn't fraud; it's simply the inability of an antiquated system to cope with a massive and unprecedented number of voters.

Absentee ballots were originally designed for a small number of people who were physically unable to get to the polls; to qualify, these people usually had to prove absence or disability. But 34 states and the District of Columbia now allow "no excuse" absentee balloting, which means that anyone can vote by mail. In other states, the pandemic may qualify as an excuse.

All elections are now conducted entirely by mail in the relatively small states of Colorado, Hawaii, Oregon, Utah and Washington. Those states switched over to the mail-in system deliberately, however, and with lots of preparation. In the rest of the country, a minor ancillary process designed for a few scattered votes could now be overwhelmed in the middle of a crisis.

Americans are already worried. A recent Pew Research poll showed that only 14% of Americans — 20% of Republicans and only 9% of Democrats — are very confident that the November election will be conducted accurately. Another 45% said they were "somewhat" confident, and more than 40% had no confidence that the system will work properly.

The first — and most minor — problem that the public will notice on Election Day is that they probably won't find out all the results that night.

Mail-in ballots are processed at the Chester County Voter Services office in West Chester, Pa., on May 28, prior to the primary election. (AP Photo/Matt Rourke, File)

Mail-in ballots take a long time to process because they can't simply be tabulated on a machine or fed into a scanner. They have to be opened and go through a verification process that typically includes manually checking the signature on the envelope against a signature on file in the election office, among other things.

In New York City, the state's primary was held on June 23 and a month later one congressional race was still undecided as local officials struggled to cope with processing more than 65,000 mail-in votes.

Some 1.5 million Pennsylvanians mailed in votes for the state's June 2 primary, and it took days to tabulate the results. The delays will likely be much greater in November because far more people typically vote in general elections than in primaries.

"Voters should be prepared with the new reality that Pennsylvania's results are probably not going to be known on election night," Nick Custudio, deputy city commissioner of Philadelphia, told CBS.

Some states allow officials to begin opening and processing votes prior to Election Day, but many don't — including key swing states such as Pennsylvania, Michigan and Wisconsin.

In Wisconsin's April primary, there were more than a million mail-in votes and they took a week to count. If the vote is close come November — in 2016 President Trump carried the state by fewer than 23,000 votes — the results in many swing states that decide the election might not be known for weeks.

On top of this, while many states say that a vote is valid if received by Election Day, some count votes as valid if they're postmarked by Election Day and received up to a week later. Still others now face lawsuits from groups that want late-arriving ballots counted.

Foley pointed to litigation already underway in the swing states of Pennsylvania, North Carolina, Michigan and Wisconsin. "There's so much litigation that it's hard to keep track of," Foley added.

In an ordinary election, a small trickle of late ballots wouldn't make much difference, but when most people are voting by mail, Foley said: "You're setting yourself up for not knowing the answer for a few weeks."

Voters head to the designated area to fill out their ballots in the kentucky primary at the Kentucky Exposition Center in Louisville, Ky., on June 23. (AP Photo/Timothy D. Easley)

Americans are not used to, or prepared for, a lengthy day in getting the results. In an already heated and contentious atmosphere intensified by social media, the delay could create numerous accusations and suspicions, even if the count is fair and accurate.

Beyond the simple delay in results, though, the absentee-ballot system could completely break down when too many people try to use it at once. For instance, when hundreds of thousands of people request mail-in ballots, officials can become overwhelmed and not everyone will get a ballot in time.

That's because verifying ballot requests is complicated, and it's not a simple as simply dropping a form in the mail.

In Wisconsin's April primary, some 12,000 properly who requested ballots had yet to be mailed out as of two days before the election. A federal court said the remedy for this was to let people who got a ballot late vote after Election Day was over, but the U.S. Supreme Court —

in a 5-4 decision — said post-Election Day voting was illegal, meaning that thousands voters ended up being disenfranchised even though they followed all the rules.

Similar problems have happened in most states that have held primaries this year, said Foley.

Stewart noted meanwhile that the problem might be far worse in the general election than in the primaries.

"People who vote in general elections are not like people who vote in primaries," Stewart explained. "Low-propensity voters may be much more likely to wait until the last minute to request a ballot."

Voters who don't get a ballot in time can still go to the polls, but many are afraid to do so due to the pandemic. And even if they do, they may still have difficulty voting. In Maine's primary last month, the city of Bangor, pop. 33,000, opened only one polling place and only allowed in 20 people at a time.

Stickers reading "I Voted" rest on a voting machine is set up inside a high school polling station on June 23, 2020, in Yonkers, N.Y. (AP Photo/John Minchillo)

Polls might not open in part because poll workers decide at the last minute not to show up, Stewart said. That happened in Milwaukee during the primary this year, and the result was that the entire city had only five functioning polling places, he noted.

One solution that has been proposed is for the government to email ballots, but this invites fraud. Most official ballots are printed on specialty paper, but if people can print ballots at home this safety feature is lost.

In general, "voters should request an absentee ballot as soon as possible," Foley recommended.

Even if voters get ballots on time, they may have difficulty using them. Instructions are complicated and are often written at a college level.

All states require a signature, and it's not uncommon for people who have never voted absentee before to forget to sign. In California this year, 27,500 primary votes were rejected because they didn't have a signature or the wrong person signed.

"We know that these signature requirements have already affected thousands of voters during the pandemic and our concern is that they'll affect thousands or even tens of thousands more as the election cycle continues," Dale Ho, director of the ACLU's Voting Rights Project, told NPR.

In addition, eight states also require voters to get a signature from a witness. (The witness isn't supposed to see who the person voted for, but this can be confusing.) In Wisconsin's primary this year, 14,000 ballots were thrown out because they didn't include a witness signature.

In South Carolina, a federal judge suspended the witness requirement for the June primary on the grounds that it could put voters' health at risk.

Colorado officials included these examples for signature-verification judges to hone their fraud-detection skills. The test has 30 signatures made by 15 authors, including numbers 7 and 15 from the selection here. (Courthouse News image)

Other states have more onerous requirements. For instance, Alabama and Arkansas require voters to submit ballots with a photocopy of their driver's license or some other ID. Three states require that a voter's signature be notarized. These requirements can easily trip up voters, particularly first-time voters or voters without a lot of education.

In Oklahoma, the state Supreme Court invalidated the notary requirement in May but the legislature immediately reinstated it.

Foley says that in some parts of New York this year, the rejection rates for mail-in ballots were as high as 20%.

One indication that mail-in ballots are confusing and hard to use is that an enormous number of people who request one don't end up sending it back. Between 2012 and 2018, almost 20% of absentee ballots were never returned, according to the federal Election Assistance

Commission. That's more than 28 million ballots that are simply unaccounted for.

And even if a ballot is correctly filled out, it won't count if the Postal Service doesn't deliver it by the deadline — and voters have no control over how slow the mail is.

The Postal Service suggests budgeting a week for delivery. There have been a lot of delays due to the pandemic, however, and a crush of last-minute ballots could further clog the system.

In this year's California primary, a staggering 70,000 ballots were disqualified for arriving too late, according to a study by the Associated Press.

In Virginia's primary, well over 5% of mail-in ballots were discarded because they missed the deadline. In Arkansas and Oklahoma, the figure was over 3%, more than enough to affect a close election.

In the mayor's race in Montclair, New Jersey, in May, 9% of the ballots were rejected for being late: That's 1,100 ballots in a race that was decided by only 195 votes.

Some states say that a late ballot will still count as long as it's postmarked by Election Day. But a big problem is that many states send out ballots with a "business reply mail" return envelope — no postage required — and it's very common for the Postal Service not to apply a postmark to business reply mail. As a result, there's no way to know for sure whether the ballot was mailed on time.

"There's an assumption that every piece of mail automatically gets postmarked, and that's just not the case," said Katie Hobbs, Arizona's secretary of state. "Our ballots are postage-paid, so they're sent with bulk permits and oftentimes those pieces of mail are not postmarked."

According to Foley: "The legal system hasn't caught up with modern post office reality, which is that not every ballot gets a postmark."

While a shaky signature could indicate fraud, Colorado election officials warn verification judges to consider reasonable explanations such a voter's advanced age, decreased muscle strength or an uneven writing surface. (Courthouse News image)

In a close election, this could lead to legal disputes over a large number of ballots where it simply cannot be determined whether they were timely and valid.

This year's Wisconsin primary featured thousands of ballots with illegible or missing postmarks. The state election commission left it up to each local official to decide whether to count the ballots, with the result that some cities and towns counted all the questionable ballots and others threw them all out.

Still another huge problem is ballot verification. Among other things, election officials are supposed to compare the signature on the ballot with a signature on file in the clerk's office to make sure they match.

In the small city of Portland, Maine, one official said there was "total chaos" at the city clerk's office during the July primary as employees tried to verify the signatures on some 17,000 mail-in ballots.

"It's crazy. There are no words," the city clerk, Katherine Jones, told Courthouse News.

And the process of verifying ballots is necessarily subjective. Although some training is typically provided, virtually no local election officials have extensive forensic education in handwriting analysis. Even if they did, it can be extremely difficult to determine if two signatures match because there is so little to compare.

"Even major treatises on handwriting analysis concede that it is extremely difficult for anyone to be able to figure out if a signature or other very limited writing sample" is genuine, Jonathan Koehler, a professor at Northwestern Pritzker School of Law, told the website FiveThirtyEight.

The fact that election officials are making weighty decisions based on such a tiny handwriting example is "scary," said Mark Songer, an FBI-trained handwriting analyst.

No two signatures are ever identical, he said, and most people's handwriting changes considerably over time. Registrars in California have noted that when they're young, many people print their name rather than signing it, and add "smileys and hearts."

Some studies have shown that untrained people make mistakes comparing signatures in as many as 40% of cases.

In many places, election officials hire temps to check signatures and review them only if the temp finds a mismatch. If a temp OKs a signature, elections officials never look at it.

Some states use computers with signature-matching software. But there are at least six major software companies, all using different algorithms, plus local election officials often adjust the settings to be more or less picky in a number of respects.

States vary tremendously in terms of how often they reject ballots, Stewart said. In general, states that historically don't have a lot of absentee ballots — including potential swing states such as North Carolina, Georgia and Texas — reject them at a higher rate, sometimes routinely throwing out 5–10%.

Nadette Cheney picks up a box of printed ballots as others work on preparing mail-in ballots at the Lancaster County Election Committee offices in Lincoln, Neb., on April 14. (AP Photo/Nati Harnik)

In the 2016 general election, as many as 45,000 votes were rejected for a signature mismatch in California alone. A California court later ruled that ballots can't be rejected for a mismatch unless the voter is contacted and given an opportunity to fix the problem.

The court noted that there are "several reasons a person's signature may differ on two occasions: physical disability, injury, a primary language that does not use Roman characters ... or simply the passage of time."

Also, "Many Californians register to vote on computer touch pads, yielding signatures that differ in appearance from those made on paper ballot envelopes."

Some election offices compare touch-pad signatures from the state Department of Motor Vehicles. But one California registrar complained that people don't realize when they sign a motor vehicle touchpad that it will later be used to verify their ballot, and as a

result they simply produce a "scribble."

Another problem is that it's common for people living in the same household to sign each other's ballot envelopes by mistake, a Stanford University study found.

Far more signatures could be rejected all over the U.S. this year due to the flood of mail-in ballots — and if officials have to contact all the voters who were rejected, especially in states that don't begin processing the ballots until Election Day, this could create massive delays and confusion.

If a race is close, and thousands of people show up at an office after election Day to complain about their ballot being rejected, "it could be a circus," said Stewart.

Fraud is not the biggest concern — "it's not like Boris and Natasha are running around trying to stuff 50,000 ballots into a box," Stewart added — but he said absentee ballots do create far more potential for fraud and coercion that in-person voting. For one thing, a ballot that's not filled out in the privacy of a voting booth might not be entirely secret.

Foley said that "absolutely, it's historically been true" that mail-in voting results in less secrecy, because ballots get filled out over a kitchen table or at a union hall.

And, he adds, "If anybody tells you there's no concern about fraud, they're overstating the case."

While it's highly unlikely that widespread fraud could tip the presidential election, local instances of fraud could taint many other elections and create the perception that the whole process is unfair. That's especially true if there are a few disputed elections that could determine control of the U.S. Senate or of state legislatures during a redistricting year.

Fraud at the local level is not all that uncommon. The Heritage Foundation maintains a database of 1,290 recent examples of proven election fraud, including 1,113 criminal convictions.

In 2018, an entire election for a seat in Congress was thrown out by the North Carolina state elections board due to ballot fraud, including illegal "harvesting" of absentee ballots. The seat was vacant for almost a year before a new election could be held.

In the 1997 Miami mayor's race, absentee-ballot fraud was so common that a state appeals court ordered that all absentee ballots be disqualified.

Foley and Stewart both noted that when elections are contested in court, the arguments very often center on absentee ballots because the system is so prone to confusion and error.

A dispute over absentee ballots in the 2008 U.S. Senate race in Minnesota took eight months of litigation to resolve. Republican Norm Coleman appeared to have won the race by 215 votes, but a recount resulted in the inclusion of 953 absentee votes that had been rejected the first time and Democrat Al Franken was declared the winner by 312 votes.

Ballot disputes on a large scale are far more likely when most people are voting absentee, something that could paralyze the country and undermine confidence in the system.

"If we can't handle this, we've lost our ability to engage in self-government," warned Foley. "We can't have an election if we can't trust the results."

Katherine Katsekes (left) and Diane Scott, both paid volunteers, help sort absentee ballots by ward to be opened on election day at Brookfield City Hall on March 31. (Rick Wood/Milwaukee Journal-Sentinel via AP)

Florida Voters Head to Polls in Pandemic Primary
August 18, 2020
In "Government"

California Sued Over Voters' Discarded Ballots
August 25, 2017
In "Courts"

Bellwether Ohio Could Flip to Biden in 2020
October 4, 2020
In "Government"

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT Anchorage
(City or town where the court is located)

The Alaska Center Education Fund, et al. Plaintiff/Petitioner, v. Gail Fenumiai, et al. Defendant/Respondent.	)	Case No. 3AN-20-08354 CI **SELF-CERTIFICATION (NO NOTARY AVAILABLE)**

[If a notary public or other person with the power to take oaths is not available to notarize a document that you are filing with the court, you may fill out this form and attach it to your document.]

As allowed by AS 09.63.020, I, *(Name)* Amy Olson, certify under penalty of perjury that the following is true:

1. I am attaching this *Self-Certification* to the following attached document:
   Affidavit of Amy Olson
   If the attached document is required to be served on another party, I have attached a copy of this *Self-Certification* to the document when I served it.

2. No notary public or other person with the power to take oaths is available to watch me sign because:
   ☐ I live somewhere with no available notary public or other person who can take oaths.
   ☐ I cannot access the courthouse or private notary for medical reasons including quarantine.
   ☒ I cannot access a notary as a result of COVID-19.

3. I told the truth to the best of my knowledge and belief in the attached document.

Signature: AOlson
Signed on: *(date)* 10/12/2020 at: *(city)* Milton, *(state)* WI
Mailing Address: 5542 N Lilly Lane
Cell Phone: 608-774-5933 Work Phone: 608-774-5933
Home Phone: 608-774-5933 Email*: amy.jo.olson@gmail.com
*☒ I authorize the court to email me court documents in this case to the email address above.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

THE ALASKA CENTER EDUCATION FUND, ALASKA PUBLIC INTEREST RESEARCH GROUP, and FLOYD TOMKINS, Plaintiffs, v. GAIL FENUMIAI, in her official capacity as the Director of the Alaska Division of Elections, KEVIN MEYER, in his official capacity as the Lieutenant Governor of Alaska; and THE STATE OF ALASKA, DIVISION OF ELECTIONS, Defendants.	Case No. 3AN-20-08354 CI

AFFIDAVIT OF AMY OLSON

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

I, Amy Olson, declare under penalty of perjury that the following is true and correct:

1. My name is Amy Olson. I am a U.S. citizen and a registered Alaska voter. I am currently in the Air Force Reserves, and I am thus eligible to vote absentee under the Uniformed and Overseas Citizens Absentee Voting Act.

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2. I requested to receive my ballot electronically for the upcoming 2020 general election, and received access to my ballot via email from the Alaska Division of Elections on September 18, 2020.

3. The email provided a link to a website where I accessed my voting materials by entering an access code from the Division email and my birth year.

4. Once logged into the site, I was able to download a zip file titled "BallotPackage.zip" that contained five separate documents, which are respectively attached to this affidavit as Exhibits A-E, titled "01 - Instructions.pdf" (Ex. A), "02 - Voter Certificate.pdf" (Ex. B), "03 - Voter Ballot.pdf" (Ex. C), "04 - Secrecy Sleeve.pdf" (Ex. D), and "05 - Return Mailing Envelope.pdf" (Ex. E).

5. The instructions stated that I was to "sign and provide ONE identifier on the voter certificate form," and "have someone witness [my] voter certificate." I was then instructed to "[w]rap [my] completed voter certificate around the secrecy sleeve with [my] ballot inside," and to "[f]old the return addressed envelope around the outside of [my] voting packet," which contained the voter certificate as a stand-alone sheet of paper.

6. I followed the instructions and submitted my ballot by facsimile.

7. If at any point I was informed that I had not properly executed the certificate, I would take all steps necessary and possible to ensure that my vote is counted.

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It is my strong intent to have my vote count in the 2020 general election, as is my right as an eligible Alaska voter, given what is at stake for our country.

Date: October 12, 2020

/s/ Amy Olson
Amy Olson

SUBSCRIBED, SWORN TO OR AFFIRMED before me this 12th day of October 2020.

_____
Notary Public in and for Alaska
My commission expires:_____

CERTIFICATE OF SERVICE
I hereby certify that on October 12, 2020,
a true and correct copy of the foregoing document
was served via e-mail on the following:

Lael A. Harrison
Alaska Department of Law
P.O. Box 110300
Juneau, AK 99811-0300
lael.harrison@alaska.gov

Thomas S. Flynn
Alaska Department of Law
1031 West Fourth Avenue, Suite 200
Anchorage, AK 99501
thomas.flynn@alaska.gov

Samantha Reardon
Legal Practice Assistant

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Anchorage, AK 99501-1981
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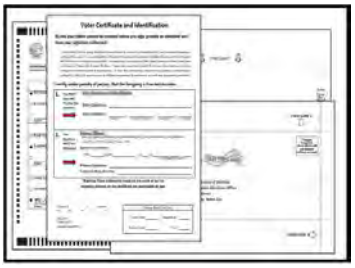
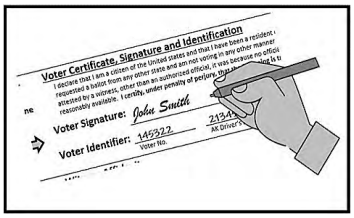
Kevin R. Feldis | KFeldis@perkinscoie.com

Online Voting Instructions



1. Print Downloaded Ballot Package Documents

- Print your Voter Certificate and Identification form.
- Print your voted ballot.
- Print your origami secrecy sleeve and return envelope.

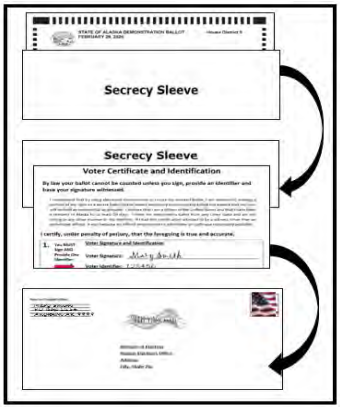


2. Sign and Provide ONE Identifier on the Voter Certificate Form

- Sign the Voter Certificate and Identification form in front of your witness.
- Provide ONE of your identifiers:
  - Voter number, Alaska driver's or state ID number, date of birth or last four of SSN.

3. Have Someone Witness Your Voter Certificate

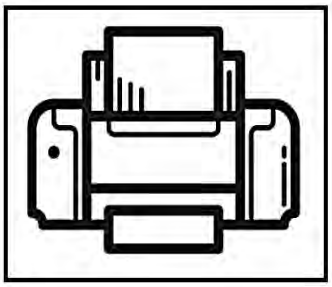
- **Have your signature witnessed by anyone 18 years of age or older**.
- Or, you may choose to have your signature witnessed by an official if reasonably accessible. (Notary public, commissioned officer of the armed forces, district judge or magistrate, registration official or other person qualified to administer oaths.)



4A. Return Your Ballot By-Mail (do NOT mail if you return ballot by-fax)

<u>Returning you ballot by-mail maintains the secrecy of your ballot.</u>

1) Fold your ballot. Then, fold the secrecy sleeve around your ballot.
2) Wrap your completed voter certificate around the secrecy sleeve with your ballot inside.
3) Fold the return addressed envelope around the outside of your voting packet and seal it with scotch tape. Write your return address in the upper left-hand corner.
4) Your ballot must be **POSTMARKED** on or before Election Day, Tuesday, November 3, 2020.



4B. OR, Return Your Ballot By-Fax (do NOT fax if you return ballot by-mail)

- When returning your ballot by-fax, you voluntarily waive your right to a secret ballot, and you are assuming the risk that a faulty transmission may occur.
- Fax your voted ballot and completed voter certificate to the Regional Elections Office at:

  Toll Free (within U.S.): 855-977-3592
  Fax Number: 907-677-3592

- Your ballot must be RECEIVED on or before 8:00 p.m. Alaska Standard Time on Election Day, Tuesday, November 3, 2020.
- The first complete voting packet (ballot and voter certificate), as determined by date and time received by the division, will be accepted. All others will be rejected.

Voter Certificate and Identification

By law your ballot cannot be counted unless you sign, provide an identifier and have your signature witnessed.

I understand that by using electronic transmission to return my marked ballot, I am voluntarily waiving a portion of my right to a secret ballot to the extent necessary to process my ballot but expect that my vote will be held as confidential as possible. I declare that I am a citizen of the United States and that I have been a resident of Alaska for at least 30 days. I have not requested a ballot from any other state and am not voting in any other manner in this election. If I had this certification attested to by a witness other than an authorized official, it was because no official empowered to administer an oath was reasonably available.

I certify, under penalty of perjury, that the foregoing is true and accurate.

1. **You MUST Sign AND Provide One Identifier**

Voter Signature and Identification

Voter Signature: _____

Voter Identifier: _____ _____ _____ _____

Voter No. | AK Driver's License No. | Date of Birth | Last 4 of SSN

2. **Your Signature MUST be Witnessed**

Witness Affidavit

Have your signature witnessed by an authorized official or, if an authorized official is not reasonably available, by someone 18 years of age or older.

Signed in my presence:

This: _____day of_____ 20 _____, at_____

(City & State or Country)

Witness Signature: _____

If authorized official, official title: _____

Warning: False statements made by the voter or by the attesting witness on the certificate are punishable by law.

OBSCURED # D52512760286 O 20GENR

19 19-525 D 3 REGION 2

AMY OLSON

5542 N LILLY LN

MILTON WI 53563

Review Board Use Only	
Count Code: _____	Sequence No.: _____
No Count Code: _____	Initials: _____

State of Alaska Official Ballot
General Election
November 3, 2020

District 19 - Absentee

United States President / Vice President
BLANK CONTEST

United States Senator
BLANK CONTEST

United States Representative
BLANK CONTEST

State Senator District J
BLANK CONTEST

State Representative District 19
BLANK CONTEST

Supreme Court - Justice Carney
BLANK CONTEST

Court of Appeals - Judge Wollenberg
BLANK CONTEST

Third Judicial District - Superior Court - Judge Crosby
BLANK CONTEST

Third Judicial District - Superior Court - Judge Guidi
BLANK CONTEST

Third Judicial District - Superior Court - Judge Henderson
BLANK CONTEST

Third Judicial District - Superior Court - Judge Lamoureux
BLANK CONTEST

Third Judicial District - Superior Court - Judge Miller
BLANK CONTEST

Third Judicial District - Superior Court - Judge Reigh
BLANK CONTEST

Third Judicial District - Superior Court - Judge Wells
BLANK CONTEST

Third Judicial District - Superior Court - Judge Woodman
BLANK CONTEST

Third Judicial District - District Court - Judge Dickson
BLANK CONTEST

Third Judicial District - District Court - Judge Franciosi
BLANK CONTEST

Third Judicial District - District Court - Judge Hanley
BLANK CONTEST

Third Judicial District - District Court - Judge Logue
BLANK CONTEST

Third Judicial District - District Court - Judge McCrea
BLANK CONTEST

Third Judicial District - District Court - Judge Wallace
BLANK CONTEST

Third Judicial District - District Court - Judge Washington
BLANK CONTEST

Ballot Measure No. 1 - 19OGTX
BLANK CONTEST

Ballot Measure No. 2 - 19AKBE
BLANK CONTEST

Fold Line 1

Fold Line 3

Secrecy Sleeve

Fold Line 2

Fold Line 4

Tape Here

BALLOT RETURN ENVELOPE

FOLD LINE 1

FOLD LINE 4

Name and Complete Address

_____

_____

_____

U.S. POSTAGE PAID
39 USC 3406

PAR AVION

OFFICIAL ELECTION MAIL
Authorized by the U.S. Postal Service ®

OFFICIAL ABSENTEE BALOTTING MATERIAL - FIRST-CLASS MAIL

NO POSTAGE NECESSARY IN THE U.S. MAIL - DMM 703.8.0

DIVISION OF ELECTIONS
REGION II ELECTIONS OFFICE
2525 GAMBELL ST STE 100
ANCHORAGE AK 99503-2838

USA

FOLD LINE 3

FOLD LINE 2

TAPE HERE

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT Anchorage
(City or town where the court is located)

The Alaska Center Education Fund, et al. Plaintiff/Petitioner, v. Gail Fenumiai, et al. Defendant/Respondent.	)	Case No. 3AN-20-08354 CI **SELF-CERTIFICATION (NO NOTARY AVAILABLE)**

[If a notary public or other person with the power to take oaths is not available to notarize a document that you are filing with the court, you may fill out this form and attach it to your document.]

As allowed by AS 09.63.020, I, *(Name)* Amy Olson, certify under penalty of perjury that the following is true:

1. I am attaching this *Self-Certification* to the following attached document:
   Affidavit of Amy Olson
   If the attached document is required to be served on another party, I have attached a copy of this *Self-Certification* to the document when I served it.

2. No notary public or other person with the power to take oaths is available to watch me sign because:
   ☐ I live somewhere with no available notary public or other person who can take oaths.
   ☐ I cannot access the courthouse or private notary for medical reasons including quarantine.
   ☒ I cannot access a notary as a result of COVID-19.

3. I told the truth to the best of my knowledge and belief in the attached document.

Signature: _____
Signed on: *(date)* 10/12/2020 at: *(city)* Milton, *(state)* WI
Mailing Address: 5542 N Lilly Lane
Cell Phone: 608-774-5933 Work Phone: 608-774-5933
Home Phone: 608-774-5933 Email*: amy.jo.olson@gmail.com
*☒ I authorize the court to email me court documents in this case to the email address above.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

THE ALASKA CENTER EDUCATION FUND, ALASKA PUBLIC INTEREST RESEARCH GROUP, and FLOYD TOMKINS, Plaintiffs, v. GAIL FENUMIAI, in her official capacity as the Director of the Alaska Division of Elections, KEVIN MEYER, in his official capacity as the Lieutenant Governor of Alaska; and THE STATE OF ALASKA, DIVISION OF ELECTIONS, Defendants.	Case No. 3AN-20-08354 CI

AFFIDAVIT OF CLAIRE RICHARDSON

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

I, Claire Richardson, declare under penalty of perjury that the following is true and correct:

1. My name is Claire Richardson. I am a U.S. citizen and a registered voter living in Juneau, Alaska.

2. From 2014 to 2018, I served as the Chief of Staff to former Lieutenant Governor Byron Mallott, who oversaw elections in Alaska. As the Lieutenant Governor's

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Chief of Staff, I had extensive interactions with the Alaska Division of Elections, including the 2015 settlement and implementation of expanded language services in the *Toyukak v. Treadwell* federal lawsuit inherited by Lt. Gov. Mallott and the creation of a statewide Alaska Election Policy Work Group that included city clerks, Alaska Native leaders, U.S. Post Office officials, former Lt. Governors, legislators, and party representatives that grappled with upgrading aging election equipment and improving voter accessibility with declining budgets and increased security concerns.

3. Based on my experience, I am confident that the Alaska Division of Elections has the ability right now to implement a system that provides notice to absentee mail-in ballot voters who inadvertently omit information on their ballot certificates, as well as provide them with an opportunity to correct such mistakes before the election is certified.

4. More Alaskan voters than ever before are choosing to vote using mail-in ballots during the 2020 general election, particularly in the face of the ongoing COVID-19 pandemic. The Division's mission is to provide a fair election that gives every eligible Alaskan an opportunity to vote. Disenfranchising hundreds or thousands of voters by setting aside the ballots of voters who make an honest mistake, without any opportunity to cure, runs counter to that mission.

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5. Based on my experience, I believe that notice and cure can be implemented in time for the 2020 general election. The district ballot review boards are just now convening and will be trained to identify ballot certificates that omit a voter signature, voter identifier, or witness attestation. Instead of setting aside ballot envelopes with defective certificates until after the election, when it is too late for the vote inside to be counted, those same ballot review board members can flag any such ballot for immediate voter notification using one or more notification methods readily available, including sending immediate notice by mail, email, text, or telephone call.

6. The district absentee ballot boards could begin this process as soon as they start reviewing absentee mail-in ballot certificates, and conduct it on a rolling and ongoing basis until the deadline for certifying the election results, which occurs 15 days after a general election.

7. I know from personal experience that the City and Borough of Juneau can and does take these necessary steps during municipal elections. In the October 6, 2020 Municipal Election, I voted my municipal ballot by mail. After sending it in, roughly four days later I received a notice in the mail informing me that there was in issue with the signature on my ballot that would prevent it from being counted if not remedied.

8. I remember it standing out in my mind that the notice letter arrived quickly after I submitted my mail-in ballot, since I know from my work experience that all Juneau

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municipal ballots are routed through and processed in Anchorage, given its more extensive vote-by-mail infrastructure.

9. The notice included a form for me to sign to remedy the issue. I did so and returned the form via mail. I was grateful for the opportunity to ensure my vote counted, and think it is critical that the Alaska Division of Elections provide a similar notice and cure opportunity before unnecessarily disenfranchising voters who make honest, predictable mistakes in statewide and federal elections.

10. I understand that the State has several methods of verifying a voter's identity including signature, date of birth, driver's license number, or the last four digits of my social security number. However, it is concerning to me on a personal level that the Division will not be making any attempts to provide timely notice and a cure opportunity during the 2020 general election, given my own experience in almost having a ballot rejected due to an inadvertent issue with my signature.

11. I am confident that the Division has the resources to implement a notice and cure opportunity in time for the 2020 general election based on the extensive funds available to it under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). On August 14, 2020 I sent a query to Lt. Gov. Meyer regarding the $3 million that the Division had received from the Election Administration Commission for COVID-related election expenses. Lt. Gov. Meyer's September 16, 2020 response to me via email

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indicated that only $872,737 of those funds had been spent as of September 1, 2020, and that the remainder had not yet been allocated. *See* Ex. A. Because absentee mail voting is increasing exponentially this year due to COVID, it is a statistical certainty that inadvertent errors on mail-in absentee ballot certificates will increase as a result. Providing notice of and an opportunity to cure those errors during the upcoming November general election would allay some of COVID's impacts on the election in Alaska, and thus the Division should allocate some CARES Act funding to additional personnel hours or other resources needed, if any, to implement the proposed notice and cure opportunity. As I said in a recent op-ed that was published in the Anchorage Daily News, Fairbanks Daily News Miner, Juneau Empire, and SitNews regarding CARES Act funding for the upcoming election, the cornerstone of our democracy is our right to vote. That right should not be taken away due to inadvertent mistakes that can be easily remedied without undermining any part of Alaska election integrity.

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Date: October 12, 2020

/s/ Claire Richardson
Claire Richardson

SUBSCRIBED, SWORN TO OR AFFIRMED before me this 12th day of October 2020.

_____
Notary Public in and for Alaska
My commission expires:_____

CERTIFICATE OF SERVICE
I hereby certify that on October 12, 2020,
a true and correct copy of the foregoing document
was served via e-mail on the following:

Lael A. Harrison
Alaska Department of Law
P.O. Box 110300
Juneau, AK 99811-0300
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Kevin R. Feldis | KFeldis@perkinscoie.com

Letter to Lt. Governor Meyer regarding increasing voter accessibility for the General Election

Lieutenant Governor Kevin Meyer (GOV sponsored) <lt.governor@alaska.gov> Wed, Sep 16, 2020 at 4:52 PM
To: "Story, Andrea (LEG)" <Rep.Andi.Story@akleg.gov>, Claire Richardson <snowoman60@gmail.com>
Cc: "Smith, Gregory R (LEG)" <Greg.Smith@akleg.gov>

Representative Story and Ms. Richardson,

Thank you both for contacting my office. I apologize for the delay in my response, it took a little longer than anticipated to gather the correct data.

This is a high-level breakdown of the division's expenditures applied to the $3M received (but not yet allocated) from the Election Administration Commission for COVID related election expenses.

To date, expenditures have been for personal protective equipment and other safety costs, added temporary elections workers and office space, additional absentee by-mail ballots, instructions and envelopes, additional postage costs, and cleaning costs. Looking forward to the general election, we anticipate higher expenses to meet the increased volumes of absentee ballots and delivery costs of equipment and supplies to rural locations. One area we are doing well in is the personal protective equipment which, we believe, we have in sufficient supply for the general election.

Of particular note we have increased the number of drop boxes from having 4 available in the Primary to having 9 available for the General. Use of these boxes will require additional election workers as well. 2 workers are required to collect the ballots from these boxes to maintain ballot security.

Also, we are still looking to hire additional workers to help with the increased volume of absentee ballots. These efforts are ongoing.

Here is a combined summary of where the expenses were spent as of September 1, 2020.

COMBINED SUMMARY	EXPENSES
Personal Services	20,547
Travel-72000	0
Contractual-73000	314,829
Supplies-74000	537,361
Capital Outlay-75000	0
Total	**$872,737**

Thank you for your interest in Alaska's elections.

Kevin Meyer
Lt. Governor for the State of Alaska
Lt.Governor@alaska.gov
LtGov.alaska.gov