Print Form

IN THE SUPREME COURT OF THE STATE OF ALASKA

DOCKETING STATEMENT A
For Use in Appeals Under Appellate Rule 204 and 218

(for court system use)

No. _____

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

1. TYPE OF APPEAL

a. ☒ General Civil Rule Appeal (App. Rule 204)	b. ☐ Appeal in Child Custody Case (App. Rule 218)

2. PARTY FILING APPEAL (Appellant)

a. Name: See attached	b. Status in the Trial Court: ☒ Plaintiff ☐ Defendant ☐ Other. Specify: _____
c. Party Mailing Address (**not** attorney's address)	
City / State / Zip Code	d. Telephone

3. APPELLANT'S ATTORNEY

a. Name: Stacey C. Stone		b. Bar Number: 1005030
c. Attorney Mailing Address: 701 W. 8th Avenue, Suite 700	d. Telephone: 907-274-0666	e. Fax: 907-277-4657
City: Anchorage / State: AK / Zip Code: 99501		f. Firm/Agency: Holmes Weddle & Barcott, P.C.

4. PARTY APPEALED AGAINST (Appellee)
[All parties in the trial court when the final order/judgment were entered are appellees and must be listed if they did not file a notice of appeal. AR 204(b)[1] & (g).]

a. Name: See attached	b. Status in the Trial Court: ☐ Plaintiff ☐ Defendant ☐ Other. Specify: _____
c. Party Mailing Address	
City / State / Zip Code	d. Telephone

5. APPELLEE'S ATTORNEY

a. Name: Margaret Paton-Walsh		b. Bar Number: 0411074
c. Attorney Mailing Address: 1031 W. 4th Avenue, Suite 200	d. Telephone: 907-269-5100	e. Fax: 907-276-3697
City: Anchorage / State: AK / Zip Code: 99501		f. Firm/Agency: Attorney General's Office

6. SUPERIOR COURT PROCEEDING

a. Case No.	b. Superior Court Judge	c. Date Judgment Distributed
3AN-22-09325CI	Herman Walker	1/9/2023

d. Post-Judgment Motions: List all post-judgment motions that affect time for filing appeal. See Appellate Rule 204(a)(3).

DATE OF FILING			Type of Post-Judgment Motion	DATE ORDER DISTRIBUTED		
Month	Day	Year		Month	Day	Year

7. CONSTITUTIONAL ISSUES

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

If yes, cite statute or regulation: _____

8. FINALITY OF JUDGMENT OR ORDER BEING APPEALED

a. ☒ The judgment or order being appealed is final and disposes of **ALL** claims by **ALL** parties. (The judgment or order is final under City and Borough of Juneau v. Thiboudeau 595 P.2d 626 (AK 1979).)

b. ☐ The judgment or order being appealed does not dispose of all claims by all parties but is final under Civil Rule 54(b). (The trial court's Civil Rule 54(b) order must be attached.)

c. ☐ The judgment or order being appealed is not final. The authority for this appeal is _____

9. ATTACHMENTS

The following items are submitted with this form (except that cross-appellants need not submit item a.):

a. ☒ A copy of the final order or judgment from which the appeal is taken.

b. ☒ A statement of points on appeal.

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

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

☐ an application for exemption from filing fee under AS 9.19.010.

☐ no filing fee is required because appellant is ☐ represented by court-appointed counsel, and AS 9.19.010 does not apply.

☐ the state or an agency thereof.

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

d. A $750 cost bond or deposit or

☐ a copy of a superior court order approving appellant's supersedeas bond or a copy of appellant's motion to the superior court for approval of a supersedeas bond.

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

☐ a motion to appeal at public expense (financial statement affidavit form must be included.)

☐ no cost bond is required because appellant is ☐ represented by court-appointed counsel.

☐ a state agency, municipality, or state or municipal officer.

☐ an employee appealing denial of compensation by Alaska Workers' Compensation Board or denial of benefits under AS 23.20 (Employment Security Act).

e. Designation of transcript ☐ submitted ☒ not submitted (no transcript being requested) ☐ motion to extend submitted

1305.37 fr

1/10/23
Date

Signature of Appellant or Appellant's Attorney

CERTIFICATE OF SERVICE

I certify that on 1-10-2023 a copy of the notice of appeal, this docketing statement, and all attachments (except filing fee and cost bond) were

emailed	delivered	to **All Parties** (listed)
☒	☐	Scott Kendall
☒	☐	Samuel Gottstein
☒	☐	Laura Wolfe
☒	☐	Margaret Patton-Walsh
☒	☐	Thomas Flynn

Signature: _____

FILING INSTRUCTIONS

File original docketing statement and notice of appeal with all attachments listed in #9 and ONE copy of ALL except filing fee and cost bond.

DOCKETING STATEMENT A
CONTINUATION PAGE

2. PARTY FILING APPEAL (APPELLANT)

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a. Randy Eledge
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a. Steve Strait
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b. Defendant
c. Office of the Lieutenant Governor
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a. Michaela Thompson, in her official capacity as Director of the Division of Elections
b. Defendant
c. Division of Elections
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a. Jennie Armstrong
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IN THE SUPREME COURT FOR THE STATE OF ALASKA

LIZ VAZQUEZ, CHRIS DUKE, RANDY ELEDGE, STEVE STRAIT, and KATHRYN WERDAHL, Appellants, v. LT. GOVERNOR NANCY DAHLSTROM, in her official capacity as Lt. Governor for the State of Alaska, and MICHAELA THOMPSON, in her official capacity as Director of the Division of Elections, Appellees.	
JENNIE ARMSTRONG, Intervenor.	Supreme Court No.: S-_____

Superior Court Case No: 3AN-22-09325 CI

DESIGNATION OF ELECTRONIC RECORDING IN LIEU OF TRANSCRIPT

COME NOW Liz Vazquez, Chris Duke, Randy Eledge, Steve Strait, and Kathryn Werdhal ("Appellants"), by and through their counsel of record Holmes Weddle & Barcott, P.C., hereby designate portions of the record in this matter in lieu of a designation of transcript. Trial was held on December 22, 2022. Appellants received the

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Superior Court's order at approximately 3:45p.m. on January 9, 2023. Therefore, attorneys for Appellants were not able to confer with Appellants regarding this appeal until after 3:45p.m. on January 9, 2023, and thus, are unable to prepare a transcript of the record with enough time for this court to decide this matter before the Legislature convenes on January 17, 2023. Appellants hereby designate the following portions of the record for this court's review:

1. Evidentiary hearing held on December 22, 2022, before the Honorable Herman Walker.

The Appellants respectfully request that this Court distribute the record to the parties as soon as possible, including the electronic recording of the evidentiary hearing described above, for the purposes of briefing.

DATED this 10th day of January, 2023, at Anchorage, Alaska.

HOLMES WEDDLE & BARCOTT, P.C.
Counsel for Appellants

By: */s/ Stacey C. Stone*
Stacey C. Stone
Alaska Bar No. 1005030
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CERTIFICATE OF SERVICE

The undersigned certifies that on this 10th day of January, 2023, a true and correct copy of the foregoing document was served via Email to:

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I further certify that the typeface used in the foregoing is 13 point Times New Roman, in accordance with Appellate Rule 513.5(c)(2)

By: */s/ Brian J. Fontaine*
Brian Fontaine
Legal Assistant
Holmes Weddle & Barcott, P.C.

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

LIZ VAZQUEZ, CHRIS DUKE, RANDY ELEDGE, STEVE STRAIT, And KATHRYN WERDAHL,	)	
Plaintiffs,	)	
v.	)	
LT. GOVERNOR NANCY DAHLSTROM, in her official capacity ss Lt. Governor for the State of Alaska and MICHAELA THOMPSON, in her official capacity as Acting Director of the Division of Elections,	)	
Defendants,	)	
JENNIE ARMSTRONG,	)	
Intervenor.	)	
	)	Case No. 3AN-22-09325CI

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

Plaintiffs allege that Intervenor, Jennifer Armstrong ("Armstrong"), is ineligible to hold public office under Article II, sec. 2 of the Alaska Constitution because Armstrong has not been a resident of Alaska for the required three years before filing her declaration of candidacy. Plaintiffs claim Armstrong was unlawfully certified as elected by Defendant, Division of Elections ("Division") and Lieutenant Governor, Nancy Dahlstrom, and acting

Director, Michaela Thompson. Plaintiffs request the Court order Armstrong ineligible and pronounce Liz Vazquez the official winner of the November, 2022 general election.

This Court held an evidentiary hearing December 22, 2022. Having considered the evidence and applicable law, the Court finds that Armstrong meets the residency requirement to take office.

I. FINDINGS OF FACT

Three witnesses provided testimony at the hearing. The Court received documents, photos, and sworn depositions from Plaintiffs and Armstrong. The Division did not provide additional testimony, examine the witnesses, or submit any additional evidence prior to the hearing.

A. Jeffery Congdon

Jeffery Congdon was called by Armstrong. Congdon is regional supervisor of region II for the Division, which includes District 16. He has been in his position for approximately one year. Congdon's job duties include processing declarations of candidacy, which included Armstrong's declaration. Congdon testified that the declaration form was prepared by the Division to be filled out by prospective candidates. Congdon testified that he used an internal form—a checklist[1]—to aid in processing declarations, as is the policy of the Division. Congdon said the Division's policy is to look up the

[1] Intervenor's Ex. 3023.

applicant's voter records (VREMS) and verify the applicant's political party, current residence, and district in which that residence is located. Congdon said the length of the applicant's residency is not verified. The information listed by the applicant is "taken at face value" because the form is a sworn declaration.

B. Jennifer Armstrong

Armstrong was called by the Plaintiffs. She was born and raised in Louisiana. She attended college at Louisiana State University from 2007 to 2011 and then went on to complete her Master's degree is Paris, France in 2012. Armstrong then moved to Seattle, where she worked for an ad agency from 2012 to 2014. While living in Seattle, she obtained a driver's license and registered to vote; though Armstrong did not recall voting in any election.

Armstrong moved to Washington D.C. in 2014 where she worked remotely for a bank. She did not obtain a driver's license or register to vote. Armstrong testified she lived in two different apartments in Washington D.C., where she kept personal items.

In 2016, Armstrong began working for herself full time. She sold the majority of her belongings—keeping some clothes, her laptop, and memorabilia—stored her remaining items in a shared storage unit in Louisiana, and began travelling. During this time, approximately summer of 2016 to December of 2018, Armstrong said she considered herself to be "location independent." From 2017 to 2018, Armstrong testified she sublet an

apartment in Austin, Texas. While in Texas, she did not register to vote or obtain a driver's license.

While on a video call with a friend from graduate school, Armstrong met her now husband, Benjamin Kellie (Kellie). In that call, Armstrong said Kellie invited her to make a trip to Alaska. In the meantime, Armstrong and Kellie remained in regular communication and their relationship became romantic. Kellie enticed Armstrong to Alaska with two power point presentations. She later booked a flight into Anchorage for May 10, 2019,[2] to depart May 20, 2019.[3] Armstrong testified that it was not her original intent to move to Alaska.

Armstrong testified to significant events that occurred in Alaska prior to May 20, 2019. On May 14, 2019, while visiting Chena Hot Springs, Armstrong began considering a move to Alaska to begin a life with Kellie. On May 18, 2019, while visiting Seward, Armstrong and Kellie addressed their future together, which included the prospect of kids and marriage. In the late hours of May 19 to the early hours of May 20, 2019, Armstrong decided to accept Kellie's proposal to live with him in Anchorage. Armstrong testified that at this time, she "was all in."

[2] Pl.'s Ex. 1016.
[3] Pl.'s Ex. 1015.

As previously planned, Armstrong departed Anchorage May 20, 2019 to attend "prior commitments."[4] Armstrong testified her intent was to return to Anchorage once her obligations were complete. Armstrong said she considered returning between appointments to Anchorage, though she determined this choice did not make financial or logistical sense. She presented evidence of her search for airline tickets.[5] Armstrong returned to Anchorage June 8, 2019.[6] She and Kellie then departed Anchorage for Toronto on June 11, 2019 to attend one of Kellie's work events. They returned to Anchorage on June 14, 2019.[7]

In June 2019, Armstrong obtained two non-resident sport fishing licenses—one single day license and one non-resident annual license.[8] She listed her childhood home in Louisiana as her permanent address on these licenses.[9] Armstrong testified that she did not intend to make Louisiana her home at this time, despite listing the address. Armstrong further testified that Kellie instilled in her how serious Alaska takes residency requirements when applying for fishing licenses. She erred on the side of caution by using her Louisiana address at that time.

Armstrong obtained annual resident sport fishing licenses in 2020, 2021, and 2022.[10] Armstrong listed her length of residency on the June 21, 2020 resident sport fishing

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[4] Armstrong testified her "prior commitments" were that she was scheduled to give a paid presentation in Washington D.C., to attend a baby shower in Rhode Island, and attend a wedding shower in New Orleans, Louisiana.
[5] *See* Intervenor's Ex. 3011.
[6] Pl.'s Ex. 1017.
[7] Pl.'s Ex. 1018.
[8] Pl.'s Ex. 1002.
[9] *Id.*
[10] *Id.*

license as one year and zero months. Armstrong listed her length of residency on the July 20, 2021 resident sport fishing license as two years and one month. Armstrong listed her length of residency on the July 26, 2022 resident sport fishing license as three years and two months. Armstrong testified she listed her length of residency in 2020 and 2021 as falling on or about June 1, 2019 in "an abundance of caution" to avoid claiming extra time on her length of residency. Armstrong said she listed her length of residency in 2022 as falling on or about May 1, 2019, because she had "recently determined the exact date she became a resident of Alaska."

Armstrong obtained an Alaska driver's license August 26, 2019.[11] Armstrong first registered to vote in Alaska August 26, 2019.[12] Armstrong re-licensed her businesses, Wild Awake Creative, LLC and Wild Awake Publishing, LLC, in August, 2019. Armstrong and her husband purchased a home together in Anchorage on September 29, 2020.[13] This home is where Armstrong currently resides.

Armstrong testified to a text message she drafted and published August 5, 2019. In that text message she indicates she moved to Alaska in May of that year.[14] Armstrong testified she did not intend to run for office when she drafted and published this text message.

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[11] Pl.'s Ex. 1014.
[12] Intervenor's Ex. 3024.
[13] Intervenor's Ex. 3018.
[14] Intervenor's Ex. 3014, at 2.

Armstrong testified she did not intend to run for office until sometime in May of 2022. Armstrong said she decided in the first week of May, 2022 she would run contingent upon Representative Matt Claman's race for Alaska State Senate. At that time, she reviewed the declaration of candidacy. Armstrong said she first learned of and researched the residency requirement when she decided she would run for office, sometime in mid to late May. Her declaration was filled out and submitted June 1, 2022.[15]

C. Benjamin Kellie

Kellie was born in Fairbanks and raised in Nikiski. He attended college at Ohio State. He worked for SpaceX in California after graduating. Kellie moved back to Alaska in 2015, where he has remained since.

Kellie is Armstrong's husband. They were married October, 2020. He and Armstrong met in January, 2019 on a video call with a mutual friend. In that call, Kellie said he invited Armstrong to come visit Alaska. Kellie testified that he and Armstrong maintained regular communication before she came to Alaska in May, 2019. His intent was to "showcase" Alaska so that Armstrong might choose to live here. He furthered testified that their communications became romantic between the video call and Armstrong's arrival.

[15] Intervenor's Ex. 3001.

Kellie testified he wanted a committed relationship with Armstrong. He also informed her he never intended to make a home anywhere but Alaska. Kellie said he and Armstrong discussed their relationship throughout the period of May 10 to May 20, 2019. On May 14, 2019, while visiting Chena Hot Springs, Kellie recalled talking about the seriousness of his relationship with Armstrong. On May 18, 2019, while in Seward, Kellie first broached the topic of kids and marriage with Armstrong. Kellie said he then asked Armstrong to move in with him and live in Anchorage. Kellie testified Armstrong vocalized her intent to live with him on May 20, 2019.

In a text message drafted and published by Kellie on January 15, 2020, he states "Jennie is my partner who moved up here last May from NOLA!"[16] Kellie testified Armstrong was not considering running for public office when this text message was drafted and published. Kellie testified he did not assist Armstrong in filling out her declaration for candidacy.

II. LAW

A. Qualification of members under the Alaska Constitution.

Under Article II, sec. 2 of the Alaska Constitution, members of the legislature must be a qualified voter, a resident of the state for three years, and a resident of the district in which they are elected for at least one year, "immediately preceding [ ] filing for office."[17]

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[16] Intervenor's Ex. 3015.
[17] AK Const. art. II, sec. 2.

The three-year residency requirement for candidates for public office in Alaska was confirmed in *Gilbert v. State*.[18] There, the Supreme Court found the residency requirement was not violative of the prospective candidate's right to equal protection and served two, distinct compelling state interests: the requirement is necessary 1) to permit exposure of the candidate to her constituency, and 2) to ensure legislators are familiar with the diverse character of the state where they will participate in lawmaking.[19]

B. Title 15 applies to residency requirements for public office candidates.

Plaintiff argues Title 1 of the Alaska Statutes applies to residency requirements for candidates for political office because it can be read in harmony with Title 15. Intervenor and the Division maintain that Title 15 defines residency requirements for political candidates. The Court finds that Title 15 controls the analysis for qualification of candidates.

Residency qualifications codified in Title 1 are broad by design—they are general definitions. These provisions are meant to apply "in the construction of the laws of the state unless the construction would be inconsistent with the manifest intent of the legislature."[20] The definition of residency in Title 1 provides "[a] person demonstrates the intent required…by maintaining a principal place of abode in the state for at least 30 days *or for a longer period if a longer period is required by law*…and, by providing other proof of

[18] 526 P.2d 1131 (Alaska 1974).
[19] *Id.* at 1134.
[20] AS 01.10.020.

intent *as may be required by law*[.]"[21] Therefore, residency requirements found elsewhere in the Alaska Statutes may be more restrictive than this general definition or otherwise cater to the subject matter of the requirement at issue.

The rules for determining residency of a public office candidate are set out under AS 15.25.043. Per this section, residency of a candidate for the purpose of abiding by Article II, sec. 2 of the Alaska Constitution is determined through application of AS 15.25.043—determination of residency of a candidate—together with AS 15.05.020—rules for determining residence of a voter.

C. Residency of a candidate requires intent and an act of removal.

Alaska Statute 15.25.043 provides a candidate must be 1) physically present, 2) maintains habitation in the district she intends to be a candidate, and 3) if the candidate is absent, they must have the intent to return.[22] The prospective candidate does not lose her residence while away for employment, education, military service, or vacation, so long as she does not establish residency elsewhere or vote in another district or state.[23]

The rules for determining the residency of a voter are set out under AS 15.05.020. Under this provision, a person has only one residence—where "habitation is fixed."[24] A change in residence is made only by 1) removal from one place, and 2) the intent to remain

[21] AS 01.10.055(b) (emphasis added).
[22] AS 15.25.043(1)-(2).
[23] *Id.* at (2)-(3).
[24] AS 15.05.020(2).

in another place[25] and 3) if absent, the person has the intent to return.[26] A person does not lose residency by temporarily leaving home with the intent to return.[27] A person must have the "present intention to establish a permanent dwelling at that place."[28] That is, hindsight plays no role in establishing intent to reside in a place—a person must have the intent to make a place their residence contemporaneously with an act of removal.

i. Intent is supported by subjective and objective evidence.

The Alaska Supreme Court examined residency requirements for the purpose of voter registration in *Lake & Peninsula Borough Assembly v. Oberlatz*.[29] There, the Court found one's residency is a "question of fact determined . . . after sifting and weighing the evidence[.]"[30] The Supreme Court accepted the trial court's conclusion that "[a]bsent any indicia of fraud or unreasonableness or implausibility, the court should accept the statements of the voter as to their intended residency if supported by sufficient indicia of residency."[31] That is, the Court considers subjective evidence of residency that is supported by sufficient objective evidence.

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[25] *Id.* at (3).
[26] *Id.* at (2).
[27] *Id.* at (4).
[28] *Id.* at (5).
[29] 329 P.3d 214 (Alaska 2014).
[30] *Lake & Peninsula Borough Assembly v. Oberlatz*, 329 P.3d 214, 222 (Alaska 2014).
[31] *Id.*

ii. An act of removal is necessarily coupled with intent.

Alaska Courts have not specifically examined what constitutes and "act of removal" under AS 15.05.020(3). Montana Statute 13-1-112 provides that "[a] change of residence may be made only by the act of removal joined with the intent to remain in another place."[32] Because Montana law so closely relates to the language in AS 15.05.020(3), this Court finds Montana Supreme Court case, *Carwile v. Jones*, persuasive as to the case at bar.[33]

In *Carwile*, the Montana Supreme Court analyzed what constitutes "removal" for the purposes of residency under its voter qualification statute. The Court found "residence cannot be lost until another is gained."[34] Inversely, when one residency is lost, it follows that another is gained.[35] The Court ascertained certain "determining factors" that emphasize the resident's purpose in making a new home.[36] The Court ultimately found the voters' act of coming to Montana, coupled with the selection of their new homes constituted the required "removal" under the statute.[37] The Court made this finding despite hearing evidence that one of the residents in question—Leonard—returned to his former residence, Iowa, to "arrange his affairs to return" to Montana.[38] Therefore, some

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[32] MT ST 13-1-112(8) (formerly Rev. Code 481, Rule 9).
[33] 38 Mont. 590, 101 P. 153, 157-59 (1909). In *Carwile*, a general election for the office clerk of the district court of Yellowstone County was contested by the losing candidate, Carwile. A trial as to the contest found Carwile won by two votes. Jones, the original winner, appealed. The Montana Supreme Court examined, among several exhibits, four ballots the trial court invalidated because as former residents of Iowa, the voters did not meet the required residency qualifications.
[34] *Id.* at 158.
[35] *Id.*
[36] *Id.* at 158-59.
[37] *Id.* at 159.
[38] *Id.* at 157.

affirmative act, such as selecting a home, coupled with the intent to make that place a home may constitute a sufficient act of removal.

III. ANALYSIS

The Plaintiffs have the burden to prove that Armstrong is not a resident of Alaska pursuant to AS 15.20.540.[39] Based upon the subjective and objective evidence presented at trial and the credibility of the witnesses, the Court finds that Armstrong meets the residency requirements required by AS 15.25.043.

A. The Alaska Constitution requires a candidate must be a resident for three years on the date of filing.

As a threshold matter, the Court must address the express intent of the drafters of the Alaska Constitution as it relates to residency requirements for public office candidates. Intervenor suggests that the correct reading of Article II, sec. 2 requires that the candidate have been a resident for three years *prior to taking office*.[40] This conjecture is incorrect.

The proposal to replace "filing for" with "election to" was specifically considered by the Constitutional Convention. The intent of the Committee on Drafting was that a prospective candidate "complete the qualifications" required, and "not run on the basis of incomplete qualifications, assuming that if you were elected, you would be qualified to hold office."[41] Additionally, the Convention considered the variability of actual notice or

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[39] *See Pruitt v. Off of Lieutenant Governor*, 498 P.3d 591, 600 (Alaska 2021) ("[Plaintiff] must allege and prove the necessary elements of an election contest claim[.]").
[40] Intervenor's Trial Brief at 15.
[41] *See* Alaska Constitutional Convention, Proceedings: Jan. 25, 1956 at 3090.

certification of elections and the role that may play in qualifications if left to the candidate's discretion versus upon "election," which is not inherently a "fixed" point in time.[42] The Convention also considered a change in language made by the Committee from "have resided" to "a resident of" where the former means where one is actually living and keeping a home, where the latter means "merely a resident in name."[43] The Committee advised Convention members that "reside" and "resident" are considered synonymous.[44] Therefore, to find Armstrong meets the residency requirements to run for public office, the Court must find she became a resident on or before June 1, 2019.

B. Objective evidence of Armstrong's move to Alaska was present on May 20, 2019.

Alaska Statute 15.05.020 requires an act of removal in making a place one's residence. The Court's reasoning in *Oberlatz* and *Carwile* assist in the analysis for discerning this act. Plaintiffs have not proved Armstrong's objective evidence fails to meet the requirements of AS 15.05.020.

First, Plaintiffs argue Armstrong's trip to Alaska from May 10 to May 20, 2019 amounted merely to a vacation. However, AS 15.05.020 clearly states that a resident may temporarily leave Alaska and maintain her residency so long as she has the intent to return.[45] Armstrong left for her prior commitments, May 20, 2019 and when she returned on June 8, 2019. She was only out of the state for a few weeks. She attempted to return on

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[42] *Id.* at 3092-93.
[43] *Id.* at 3084.
[44] *Id.*
[45] AS 15.05.020(2).

an earlier flight in between her obligations.[46] The Court finds her absence from Alaska beginning May 20, 2019 was temporary and she maintained her intent to return while she was away.

Second, Plaintiffs argue Armstrong did not have a principal place of abode in Alaska on May 20, 2019, citing her lack of mailing address and location of the majority of her personal belongings.[47] This argument fails.

Under the Montana Supreme Court's reasoning in *Carwile*, the intent to make a home in one place causes one to lose their residence in another. Because there can be only one residence, residence lost in one place causes residence to be gained in another. Armstrong sufficiently gained residence in Alaska when she selected her home with Kellie and intended to remain there, May 20, 2019. Armstrong testified she left some personal belongings in Alaska when she departed on May 20, 2019. Her mother shipped books to her from Louisiana at a later date. Armstrong emptied a shared storage unit containing her personal belongings in Louisiana sometime in 2020. It is immaterial, here, that Armstrong delivered or had delivered a significant number of personal items at a later date. The amount or type of belongings Armstrong left in Alaska when she departed May 20, 2019 is also not in itself indicative of her removal.

[46] Intervenor's Ex. 3011.
[47] Plaintiff's Trial Brief at 13-18.

Third. Plaintiffs cite to several public documents—Armstrong's registration to vote, her Alaska driver's license, and her fishing licenses—as evidence to establish her residency began later than June 1, 2019.[49] The Court finds that voter registration and the issue date of a driver's license are not dispositive of the exact date of residency.[50] Residency requirements under Article II, sec. 2 of the Alaska Constitution require members to be registered voters for one year in the district in which they intend to run—apart from this requirement, evidence of voter registration does not establish the date of residency.

The Court also finds evidence of Armstrong's fishing licenses as insufficient to support she considered anywhere else other than Alaska. It was not unreasonable or otherwise fraudulent to list her length of residency in the manner she did for any of her fishing licenses.[51] Armstrong testified that she did not intend to make Louisiana her home at this time, despite listing the address.

Armstrong testified she listed her length of residency in 2020 and 2021 as falling on or about June 1, 2019 in "an abundance of caution" to avoid claiming extra time on her length of residency. She listed her length of residency in 2022 as falling on or about May 1, 2019 because she had "recently determined the exact date she became a resident of Alaska." The Court finds this testimony credible. Armstrong was not aware of any

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[49] Plaintiff's Trial Brief at 12-13.
[50] *Lake & Peninsula Borough Assembly v. Oberlatz*, 329 P.3d 214, 224 (Alaska 2014).
[51] Alaska Statute 16.05.415 requires that an individual be a resident of Alaska for twelve months to obtain a resident fishing license. The application itself does not require the applicant to list the exact day of residency. For this reason, it is reasonable that an applicant would round to the nearest month to mark the lapse in time in which the applicant qualifies.

challenge to her length of residency until October, 2022. As such, listing her length of residency to include May on her 2022 resident sport fishing license is not indicative of an intent to "back-date" her residency or commit fraud.

Finally, Armstrong and Kellie both testified to referencing May of 2019 as the time when Armstrong moved to Alaska. Kellie sent a text message January, 15 2020 referencing "last May" as the date Armstrong moved to Alaska.[52] Similarly, Armstrong sent a text message August, 5 2019 stating that she moved to Alaska in May.[53] The court finds Armstrong and Kellie's testimony credible. There is no evidence of fraud or misrepresentation in their testimony.

C. Subjective evidence of Armstrong's intent to move to Alaska was present prior to and on May 20, 2019.

Alaska Statute 15.05.020 requires an intent to make a place one's residence. The Court's reasoning in *Oberlatz* sets forth the analysis for discerning this intent. Armstrong's intent was to be an Alaska resident on May 20, 2019.

Armstrong came to Alaska and fell in love with her husband Kellie. Armstrong testified that her intent to move here was made in the early morning hours of May 20, 2019. Following that pronouncement, Armstrong departed on May 20, 2019 on a pre-scheduled flight to conduct her prior commitments. Once residency is established, a resident may temporarily leave Alaska and maintain their residential status if they intend to return.[54]

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[52] Intervenor's Ex. 3015.
[53] Intervenor's Ex. 3014, at 2.
[54] *See* AS 15.05.020(2).

Armstrong testified she intended to return to Alaska after prior commitments caused her to leave. She returned on June 8, 2019.[55]

Case law authorizes the Court to consider the emotional and physical connection to one's residence.[56] Armstrong made an emotional decision to make Alaska her home—she fell in love. Armstrong's emotional attachment to Alaska did not start when she arrived in May, 2019; it began after the video call she made to a friend from graduate school in January, 2019. Both Armstrong and Kellie testified that their relationship became "romantic" prior to her arrival in May based on their initial meeting on the video call. Armstrong further testified that after traveling the world and living "location independent," she was attracted to Alaska by Kellie's two power point presentations, showcasing Alaska. Armstrong made the decision to "go all in," and move to Alaska because she was in love. She left the state for less than three weeks and tried to come back between her commitments.[57] The Court considers Armstrong's May 20, 2019, emotional decision to spend the rest of her life with Kellie, a factor relevant to establish her residency.

CONCLUSION

The Alaska Constitution requires that members of the Alaska legislature are Alaska residents for three years, and in the district that they seek election for one year immediately prior to filing for candidacy. The Alaska Supreme Court validated the constitutionality of

[55] Intervenor's Ex. 3013.
[56] *Lake & Peninsula Borough Assembly v. Oberlatz*, 329, 224 P.3d 214 (Alaska 2014).
[57] Intervenor's Ex. 3011.

this requirement in Gilbert, citing two compelling state interests: 1) the candidate is sufficiently familiar with her constituency, and 2) the constituents are sufficiently familiar with a prospective law-maker. For the November, 2022 election cycle, Armstrong must be a resident of Alaska prior to June 1, 2019. This Court finds that Armstrong became a resident of Alaska on May 20, 2019 based on the evidence supplied at trial. Plaintiffs have not met their burden of proving that Armstrong lacked the statutory requirements to become a resident on that date. Armstrong is therefore qualified for public office under Alaska Statute and the Alaska Constitution. The result of the November 2022 election is accepted and Armstrong remains the certified winner.

Dated this 9th day of January, 2023, at Anchorage Alaska.

Hon. Herman G. Walker, Jr.
Superior Court Judge

I certify that on 1/9/2023
a copy of the above was emailed to:

Cometa. A. / Moses, R. / Stone, S. /
Paton-Walsh, M. / Flynn, T. /
Gottstein, S. / Kendall, S.

C. Hess, Judicial Law Clerk