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 Acting Director of the Division of Elections, Appellee. Jennie Armstrong, Intervenor.	Supreme Court Case No. S-18619

Trial Court Case No.: 3AN-22-09325CI

APPELLANTS' BRIEF

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE
HON. HERMAN G. WALKER, JR.

Filed in the Supreme Court
for the State of Alaska on
this ____ of _____ 2023.

Meredith Montgomery, Clerk
Appellate Courts

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ISSUES PRESENTED

1. Did the superior court err when it applied AS 15.25.043 (along with AS 15.05.020), which provides factors for "determining the residence [of a candidate] *within a house district* of a qualified voter" in the district they wish to represent, and excluded AS 01.10.055, to interpret the establishment of residency as required per Article II, sec. 2 of the Alaska Constitution?
2. Did the superior court erroneously rely on Montana State Law, specifically Montana Statute 13-1-112(8) and *Carwile v. Jones*, 38 Mont. 590 (1909), to interpret acts constituting an establishment of residency instead of AS 01.10.055?
3. Did the superior court erroneously apply this court's holding in *Lake & Peninsula Borough v. Oberlatz*, instead relying on Armstrong's "emotional decision to make Alaska her home" on May 20, 2019 as evidence supporting Armstrong's establishment of residency?
4. Was the superior court's conclusion that Armstrong established residency in Alaska at the end of her vacation on May 20, 2019, despite leaving Alaska as previously planned, supported by sufficient evidence, including sufficient objective evidence of intent?
5. Did the superior court misapply or fail to consider all of the factors in AS 15.05.020 when weighing objective evidence of Armstrong's intent, despite failing to make findings addressing each factor?

STATEMENT OF THE CASE

In her own words, Jennifer Armstrong ("Armstrong") was "location independent" between sometime in 2016 when she moved away from Washington, DC and the summer of 2019 when she moved to Alaska. [R. 11:51:30-11:51:55]. But during that time, Armstrong was a resident of Louisiana with a permanent physical and mailing address of 1625 N. Cumberland Street in Metarie, LA. [R. 9:14:00-9:18:05]. During that time, she placed her most important possessions – those that she did not sell when she moved – in a storage unit in Louisiana. [R. 9:14:00-9:18:05]. Also during that time, Armstrong had a Louisiana driver's license. [R. 9:14:00-9:18:05]. Further, Armstrong was registered to vote in Louisiana during that period of time, and did, in fact, vote in Louisiana on at least four occasions. [R. 9:14:00-9:18:05; 11:52:23-11:54:00; Exc. 47].

Louisiana was home and where Armstrong always returned between trips. [R. 11:52:23-11:54:00]. However, this is despite the fact that she sublet an apartment in Texas during that time. [R. 9:17:00-9:18:05] According to Armstrong, she never became a resident of Texas because she did not register to vote there, she did not actually vote there, nor did she garner a driver's license there. [R. 9:17:00-9:18:05]. And this is because, subjectively, Armstrong believes that to establish residency a person must show up, put their head down, and *decide* to become a resident. [R. 10:19:47-10:20:40].

Armstrong traveled to Alaska for the first time on May 10, 2019, and prior to that day, she had never been to the state. [R. 9:58:55-9:21:38]. Armstrong traveled to Alaska for a planned ten-day road trip – vacation – to visit Benjamin Kellie ("Kellie"), who is now

her husband. Armstrong and Kellie had never met in person prior to May 10, 2019. [R. 9:18:55-9:19:17; 9:27:00-9:29:00; Exc. 62-85].

Kellie enticed Armstrong to vacation in Alaska by sending her two PowerPoint presentations that highlighted the state as a tourist destination [Exc. 62-85]. Said PowerPoint presentations were entirely travel-related and tourist-related information consistent with the hundreds (if not thousands) of travel-related and tourist-related pamphlets, websites, blogs, etc. that are used to market Alaska to short-term visitors. [Exc. 62-85]. Nothing therein alluded to anything more than a vacation, specifically concluding that she would leave Alaska ready to take on the world. [Exc. 62-85].

On May 10, 2019, Armstrong arrived in Alaska at Anchorage International Airport on a Delta Airlines flight. [R. 9:19:38-9:21:38; Exc. 59]. Armstrong was originally scheduled to fly into Anchorage on flight 1957 at approximately 11:46 PM, but she was able to standby for an earlier flight out of Seattle; however, there is no longer any confirmation, ticket, or other record of said earlier flight. [R. 9:19:38-9:21:38; Exc. 59]. Prior to her arrival in Alaska, Armstrong had purchased a ticket and had the intention to leave Alaska on Alaska Airlines flight 92 on May 20, 2019. [R. 9:27:00-9:29:00; Exc. 58].

While in Alaska for approximately ten days, Armstrong and Kellie traveled around the road system on vacation, spending almost no time in Anchorage or at Kellie's residence. [R. 9:29:55-9:31:10]. As scheduled and intentioned, Armstrong departed Alaska at Anchorage International Airport on May 20, 2019 on Alaska Airlines flight 92 at approximately 4:00 AM. [R. 9:27:00-9:29:00; Exc. 58].

Between May 20, 2019 and June 8, 2019, Armstrong traveled throughout the United States. She visited the following places (though not necessarily in this order): New York City, Seattle, East Hampton, Rhode Island, New Orleans, and the District of Columbia. [R. 9:57:40-10:11:10; Exc. 35-38]. Armstrong did not return to Alaska until she arrived at Anchorage International Airport on June 8, 2019 on Alaska Airlines flight 757 at approximately 8:05 PM. [R. 9:34:50-9:37:00; Exc. 60]. It was during this period – sometime between May 20, 2019 and June 8, 2019 – that Armstrong returned home to Louisiana to swap her luggage out because that is where she kept her clothes and other necessary belongings. [R. 11:54:44-11:55:47; Exc. 38].

Just three days later, Armstrong again left Alaska at Anchorage International Airport on June 11, 2019 on Delta flight 2462 at approximately 2:10 PM. [R. 9:34:50-9:37:00; Exc. 61]. She traveled to Toronto, Ontario, and while there, publicly declared via Instagram on June 13, 2019 that she had moved to Alaska the weekend prior – June 7-9, 2019. [9:57:40-10:11:10; Exc. 36]. Armstrong traveled back to Alaska on June 14, 2019, landing at Anchorage International Airport, on Delta Airlines flight 1228 at approximately 11:40 PM. [R. 9:34:50-9:37:00; Exc. 61].

Over the course of the last several years, Armstrong has applied for and received several fishing licenses – non-resident and resident. [Exc. 26-32]. Armstrong applied for her first one-day non-resident fishing license on June 15, 2019. [R. 10:12:55-10:19:45; Exc. 28.] And on it, she certified as true that her address was 1625 N. Cumberland St., Metarie, LA 70003. [R. 10:12:55-10:19:45; Exc. 28].

On June 23, 2019, Armstrong applied for and received an annual non-resident fishing license. [R. 10:12:55-10:19:45; Exc. 29.] On it, Armstrong certified that 1625 N. Cumberland St., Metarie, LA 70003 was her address. [R. 10:12:55-10:19:45; Exc. 29].

It was not until at least June of 2019 that Armstrong began objectively demonstrating her intent to establish residency in Alaska, by incorporating one of her two businesses in the state. [R. 9:24:23-9:26:55; 9:36:57-9:37:20]. She then incorporated her second business in Alaska on July 24, 2019 and finally dissolved the same in Louisiana on July 30, 2019. [R. 9:24:23-9:26:55; 9:36:57-9:37:20].

As the summer of 2019 faded into fall, Armstrong objectively took more steps toward establishing residency in Alaska by registering to vote on August 26, 2019, and by garnering an Alaska driver's license on that same day. [R. 9:38:00-9:39:15; Exc. 57]. Also, Armstrong's mother shipped her books to Alaska around this time, which were/are her important possessions. [R. 10:11:11-10:12:35]. However, Armstrong did not, and apparently never has, forwarded her mail to any address in Alaska. [R. 9:36:57-9:37:20].

The following summer, on June 21, 2020, Armstrong applied for and received an annual resident sport-fishing license. [R. 10:12:55-10:19:45; Exc. 30]. Here, Armstrong certified that she had been an Alaska resident for 1 year and 0 months – since June, 2019. [R. 10:12:55-10:19:45; Exc. 30]. It was also that summer – summer of 2020 – that Armstrong and Kellie traveled to Louisiana to empty her storage unit and move her belongings to Alaska. [R. 9:14:00-9:17:00].

On July 20, 2021, Armstrong applied for and received an annual resident sport-fishing license. [R. 10:12:55-10:19:45; Exc. 31]. On it, Armstrong certified that she had

been an Alaska resident for 2 years and 1 month – since June, 2019. [R. 10:12:55-10:19:45; Exc. 31].

And the following summer, in 2022, Armstrong decided to run in the election for House District 16 and filed a declaration of candidacy to do so on June 1, 2022. [Exc. 86]. In so doing, Armstrong certified that she became a resident of Alaska on May 20, 2019 on her declaration of candidacy, which she filed with the Division of Elections ("Division"). [Exc. 86].

The Division certified Armstrong's candidacy. [R. 8:54:40-8:57:13]. But, as a matter of standard operating procedure, the Division does not investigate candidates' assertions, specifically their length of residency. [Exc. 89-90; R. 8:47:00-8:51:31; R. 8:59:00-09:02:50] Rather, they take said statements at "face value." [Exc. 89-90; R. 8:47:00-8:51:31; R. 8:59:00-09:02:50]. In fact, the Division merely completes a checklist to ensure that all of the information required by the relevant forms is included and facially valid. [Exc. 89-90; R. 8:47:00-8:51:31; R. 8:59:00-09:02:50]. Accordingly, the Division's role in administering elections can be summarized as ministerial rather than investigative, and the Division interprets it as such. [Exc. 89-90; R. 8:47:00-8:51:31; R. 8:59:00-09:02:50]. Accordingly, the Division did not certify that the information Armstrong provided it was true and/or accurate; rather, the Division merely certified that the required information was present and facially valid. [Exc. 89-90; R. 8:47:00-8:51:31; R. 8:59:00-09:02:50].

As to the constitutional requirements regarding residency, Armstrong first learned of the three-year residency requirement under Art. II, § 2 after she decided to run for office.

[R. 9:55:45-9:56:44]. This is also necessarily means that Armstrong learned of the three-year requirement prior to filing her declaration of candidacy, which she filed on June 1, 2022. [R. 9:55:45-9:56:44].

Later, on July 26, 2022, Armstrong applied for and received an annual resident sport-fishing license. [R. 10:12:55-10:19:45; Exc. 32]. On it, Armstrong certified that she had been an Alaska resident for 3 years and 2 months – since May, 2019. This was the first time that Armstrong certified on a public document, other than on her aforementioned declaration of candidacy, that she became a resident of Alaska in June of 2019, and she did so after both learning of the residency requirement for state legislators and filing to run in the election for House District 16. [R. 9:55:45-9:56:44; 11:57:25-11:58:00].

Finally, Armstrong ran against Elizabeth Vazquez ("Vazquez") in the 2022 General Election for State House District 16. Armstrong received more votes than Vazquez, and the Division certified Armstrong as the winner on November 30, 2022.

STANDARD OF REVIEW

The court has repeatedly exercised its independent judgment when interpreting statutes, which do not implicate an agency's special expertise or determination of fundamental policies.[1] The court reviews questions of law de novo, "adopting the rule of

[1] *Nageak v. Mallott*, 426 P.3d 930 (Alaska 2018) citing *Cissna v. Stout*, 931 P.2d 363, 366 (Alaska 1996); *Keane v. Local Boundary Comm'n*, 893 P.2d 1239, 1241 (Alaska 1995).

law most persuasive in light of precedent, reason, and policy."[2] Underlying of facts are reviewed for clear error, which exists when the court is left with a "definite and firm conviction that the Superior Court has made a mistake" after review of the record.

ARGUMENT

I. The Superior Court misapplied AS 15.25.043, and misconstrued AS 01.10.055 in its interpretation of the definition of residency under Article II, Sec. 2 of the Alaska Constitution.

Residency status is important to Alaskans. Establishing and maintaining residency in Alaska comes with specific benefits – obtaining a state loan, attending public schools, obtaining a sport-fishing license at low cost, qualifying for in-state college tuition, becoming a registered voter, applying for the PFD, and running for office. The legislature and some state agencies that oversee these benefits have required a period of residency in the state in order to be eligible for these benefits, including establishing factor tests for determining whether a person has established residency in the state.

Alaska's Constitution mandates that any candidate for state legislature must have resided in the state for three years prior to the date they file to run for said office, and a have been a resident of the house district for at least one year prior to filing.[3] This court has acknowledged that the three-year residency requirement furthers a compelling state interest – "assuring that those who govern are acquainted with the conditions, problems,

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[2] *Comsult v. Girdwood Mining Co.*, 397 P.3d 318 (Alaska 2017), quoting *ConocoPhillips Alaska, Inc. v. Williams Alaska Petroleum, Inc.*, 322 P.3d 114, 122 (Alaska 2014).

[3] Alaska Const. Art. II, § 2.

and needs of those who are governed . . . because Alaska is unique in its geography, the ethnic diversity of its peoples and the character of its economy, this interest may well assume even greater importance here than in many other states."[4]

While the constitutionality of the durational residency requirement has been upheld and is not challenged here, whether or not a candidate has met the constitutionally mandated requirement of Alaska residency under Article Art. II, § 2 is an issue of first impression in Alaska. As such, the court must first examine the plain language in the Alaska Constitution and statutes flowing therefrom.[5]

Art. II, § 2 of the Alaska Constitution states in pertinent part: "A member of the legislature shall be a qualified voter who has been a resident of Alaska for at least three years and of the district from which elected for at least one year, immediately preceding his filing for office."[6] A plain reading of this provision provides the following interpretation: a legislator must have resided in Alaska for three years prior to the date they filed for office and must have resided in the district from which they seek election for at least one year prior to filing for office. The phrase "immediately preceding his filing for office" applies to both requirements, as there is no comma or other grammatical indicator between the "three year" requirement and "one year" requirement to indicate that the

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4 Gilbert v. State, 526 P.2d 1131 (Alaska 1974) (upholding constitutionality of durational residency requirement; attorney fee award superseded by statute).

5 *See Nelson v. Municipality of Anchorage*, 267 P.3d 636, 642 (Alaska 2011) (stating that statutory interpretation begins with the plain meaning of the statutory text0.

6 Alaska Const., art. II, §. 2.

phrase "immediately preceding his filing for office" only applies to one of those requirements and not both.

In this matter, the superior court correctly found the same because Armstrong filed her declaration with the Division on June 1, 2022, so in order to be eligible to run for office, she must have been a resident of Alaska for three years immediately preceding that date.[7] Therefore, Armstrong must have established residency in Alaska on or before June 1, 2019.

a. The plain language of AS 15.25.043 makes clear that the statute applies only to the requirement that the candidate reside within the house district they seek to represent.

The superior court erred in its determination of how and when a person *establishes* residency in order to meet the aforementioned constitutionally mandated requirement. The superior court found that AS 15.25.043 applies to the entirety of Art. II § 2 despite its express language to the contrary.[8] "Statutory interpretation begins with the plain meaning of the statutory text."[9] When we interpret a statute, we presume that the legislature intended every word, sentence, or provision of a statute to have some purpose, force, and effect, and that no words of provisions are superfluous.[10]

AS 15.25.043 states in pertinent part:

> In determining the residence *within a house district* of a qualified voter for the purposes of compliance with art. II, sec. 2, Constitution of the State of Alaska,

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7 *See* Exc. 100 (stating Armstrong 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.* This conjecture is incorrect).

8 Exc. 97.

9 *Nelson v. Municipality of Anchorage*, 267 P.3d 636, 642 (Alaska 2011).

10 *Allen v. Municipality of Anchorage*, 168 P.3d 890, 894 (Alaska App. 2007) (internal citations omitted).

> the director shall apply the rules established in AS 15.05.020 together with the following rules…[11]

This section falls within Article 1, Chapter 25 of Title 15, entitled "Primary Elections." The statute immediately preceding, AS 15.25.042 (c) and (d), also addresses residency in two distinct subsections as it relates to the Division Director's responsibility to determine candidate eligibility. Per AS 15.25.042(c), the Division may not certify a candidate that "has been registered to vote at any time during the 12 months preceding the filing of the declaration of candidacy in a district other than the district in which the declaration of candidacy has been filed . . . except under a standard of clear and convincing evidence." AS 15.25.042(d) separately states that "a personal may not be a resident of two districts at the same time."

These sections of AS 15.25.042, separate and distinct from the first two sections in the statute, provide context to AS 15.25.043, which further demonstrates the legislature's intent that the rules established in AS 15.25.043 apply expressly to the constitutional requirement that a candidate must reside in the house district and be a qualified voter of said house district in which they seek to be elected from for at least one year preceding filing for office.

Accordingly, the superior court erred when it found that AS 15.25.043 encompassed the three-year durational residency requirement in Art. II, § 2 of the Alaska Constitution to the exclusion of other statutes.

b. AS 01.10.055 provides a baseline for establishing residency in Alaska, and is consistent with Title 15.

AS 01.10.055 was enacted in 1983.[12] It was vigorously debated in the House State Affairs Committee on March 21, April 13 and April 14, 1983, and entitled "House Bill

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11 AS 15.25.043 (emphasis added).

12 § 1 ch 67 SLA 1983.

323, "An Act relating to residency and residency requirements; and providing for an effective date." According to the minutes from the House State Affairs Standing Committee meeting on March 21, 1983, several witnesses testified in "urgent support of residency requirements," and some suggested that the "proof of residency" requirement should be more stringent.[13] At the committee hearing on April 13, 1983, Bob Maynard, legal counsel, stated that HB 323 was a "general catch-all bill," in response to the statements of some committee members who wished that the statute required a person to "provide more" proof of established residence.[14] Several instances of residency in the state were discussed – such as the residency required to receive an education loan or benefits for senior citizens.

The bill and subsequent law defined *what it means* to be a resident of Alaska – that one must be present in the state with the intent to remain and to provide proof of that intent as maintaining a principle place of abode for 30 days *and* by providing other proof of intent as may be required. The final version, unchanged by the legislature since its enactment, states:

> (a) A person establishes residency in the state by being physically present in the state with the intent to remain in the state indefinitely and to make a home in the state.
> (b) A person demonstrates the intent required under (a) of this section (1) 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 or regulation; and
> (2) by providing other proof of intent as may be required by law or regulation, which may include proof that the person is not

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13 HB 323, House State Affairs Standing Committee. Proceedings: April 13, 1983.

14 *Id*.

> claiming residency outside the state or obtaining benefits under a claim of residency outside the state.[15]

Additionally, AS 01.10.020 mandates that AS 01.10.055 "shall be observed in the construction of the laws of the state unless the construction would be inconsistent with the manifest intent of the legislature."[16] The definition of residency in AS 01.10.055 has been referred to and read in conjunction with other statutes that define residency – domestic relations matters, PFD eligibility, and sport-fishing license eligibility.[17]

While the state is free to define residency differently for different purposes, this Court has recognized the application of AS 01.10.020 as a "default" provision, also noting the importance of distinguishing "bona fide" residents from "residents of other states who are temporarily living in Alaska," "particularly given that 'Alaska's economy is a magnet for seasonal workers and other visitors.'"[18] Ironically, in its analysis of Title 1, the superior court properly found that residency requirements found elsewhere in the Alaska Statutes may be more restrictive than the general Title 1 definition, but there is no authority for determining that residency requirements elsewhere may be less restrictive than the general Title 1 definition.

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15 AS 1.10.055 (emphasis added).

16 AS 1.10.020 (outlining the applicability of AS 01.10.040 through 01.10.090).

17 *Mouritsen v. Mouritsen*, 459 P.3d 476 (Alaska 2020) (reading UCCJEA term "presently resides" in conjunction with AS 01.10.055); *Harrod v. State*, 255 P.3d 991 (Alaska 2011) (recognizing authority of PFD to regulate eligibility requirements that exceed default 30 days in AS 01.10.055); AS 16.05.415 (incorporating a standard of presence in the state with the intent to remain indefinitely into standards for obtaining residential fish and game licenses).

18 Jones v. State, Dep't of Revenue, 441 P.3d 966, 975, 978 (Alaska 2019).

AS 01.10.055 is not in conflict with AS 15, *et seq.*, and therefore, the provisions can be read in harmony. As a result, the superior court's finding that AS 01.10.055 did not apply to these proceedings was erroneous, even if it correctly applied AS 15.25.043.

c. The superior court's misapplication of AS 01.10.055 was error and led to an erroneous finding that Armstrong established Alaska residency on May 20, 2019.

Per AS 01.10.055, to have established residency in Alaska, Armstrong must be able to demonstrate her intent by maintaining a principal place of abode for a period of at least thirty days and be present in Alaska with the intent to remain indefinitely. Apart from its error regarding the failure to apply this statute, the Superior Court erred in finding that Armstrong was a resident prior to June 1, 2019 because, as discussed above, she left the state on May 20, 2019 as originally planned. Therefore, she wholly lacked the intent to remain indefinitely when she was in Alaska for a mere four hours on May 20, 2019.

The superior court's finding that one can establish residency in Alaska by mere future intention without action has significant and detrimental public policy implications. If the Court were to affirm the decision, any number of the millions of tourists who come to Alaska each year to visit could decide on a day when they are in Alaska for a mere four hours that they are indeed an Alaska resident. And when they return they could then subsequently backdate their date of residency to that date where they decided they wanted to be a resident of Alaska while merely in the state only on a planned vacation. That is why both statutes, AS 01.10.055 and as 15.25.043 require specific action beyond intent, the establishment of an abode and the removal from the prior location of residence.

In the instant case, there is no *indicia* of residency until at least June 8, 2019. The objective evidence all supports the fact that residency did not occur until at least this date. The only evidence that exists to support he May 20, 2019 date, wherein Armstrong was in the state for a mere four hours and left that day as planned, is her own testimony and two text messages where she recounts the date of her move based on her errant interpretation of how one gains residency. Ultimately, since there is no showing of residency before June 8, 2019, the court erred in its findings.

II. The superior court erred when it relied upon Montana law rather than relevant and controlling Alaska law.

The court erred by relied upon Montana law and *Carwile v. Jones* as persuasive authority to determine whether Armstrong engaged in an "act of removal…coupled with intent" because Montana's statute is substantively incompatible with Alaska law and ignores the unique implications of residency status in Alaska.[19] Additionally, *Carwile v. Jones* was decided in 1909 – more than 110 years ago – and the facts are distinguishable.

a. Montana defines residency differently than Alaska's Statutes.

MCA 13-1-112 states:

> For registration, voting, or seeking election to the legislature, the residence of an individual must be determined by the following rules as far as they are applicable:
>
> (1) The residence of an individual is where the individual's habitation is fixed and to which, whenever the individual is absent, the individual has the intention of returning.

[19] MCA 13-1-112, *Carwile v. Jones,* 38 Mont. 590 (1909).

(2) An individual may not gain or lose a residence while kept involuntarily at any public institution, not necessarily at public expense; as a result of being confined in any prison; or solely as a result of residing on a military reservation.
(3)

(a) An individual in the armed forces of the United States may not become a resident solely as a result of being stationed at a military facility in the state.

(b) An individual may not acquire a residence solely as a result of being employed or stationed at a training or other transient camp maintained by the United States within the state.

(c) A member of a reserve component of the United States armed forces who is stationed outside of the state but who has no intent of changing residency retains resident status.

(4) An individual does not lose residence if the individual goes into another state or other district of this state for temporary purposes with the intention of returning, unless the individual exercises the election franchise in the other state or district.

(5) An individual may not gain a residence in a county if the individual comes in for temporary purposes without the intention of making that county the individual's home.

(6) If an individual moves to another state with the intention of making it the individual's residence, the individual loses residence in this state.

(7) The place where an individual's family resides is presumed to be that individual's place of residence. However, an individual who takes up or continues a residence at a place other than where the individual's family resides with the intention of remaining is a resident of the place where the individual resides.

(8) A change of residence may be made only by the act of removal joined with intent to remain in another place.

MCA 13-1-112 was first amended in 1969. It was not until 1993 that the Montana legislature amended the statute to include individuals "seeking election to public office."[20] It was also amended to replace the word "can" with "may" in subsection 8, the provision of the law substantially relied on by the superior court in this matter.[21] Montana's statute does not contemplate a durational residency requirement, however, the superior court held that subsection 8 "so closely relates" to AS 15.05.020(3) so as to render MCA 13-1-112 persuasive.[22] The plain language of AS 15.05.020(3) suggests that the Alaska legislature intended the requirement to be more strict for Alaska voters: "[a] change of residence is made *only* by the act of removal joined with the intent to remain in another place. There can only be one residence."[23]

The superior court failed to distinguish the vast difference between the discretionary nature of MCA 13-1-112(8) and the strict language of AS 15.05.020(3). Simply put, the superior court's reliance on the foreign statute was unnecessary and erroneous given that AS 01.10.055 provides the default definition of residency. Further, AS 15.05.020(3) requires *more* of an Alaskan voter who intends to establish residency elsewhere than Montana's statute – it requires a clear act of removal and severance from one's residence,

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20 MCA 13-1-112, amd. Sec.1 Ch. 74, 1993.

21 *Id*.

22 Exc. 99-100.

23 AS 15.05.020(3).

further clarifying that "there can only be one residence." As such, it was error for the superior court to apply Montana's residency statute with the facts in this case.

b. The superior court erred in relying upon the facts in *Carwile v. Jones* to define residency in Alaska.

Similarly to its error in reliance upon Montana statutory law, the superior court erred when it applied a case decided in 1909 by the Montana Supreme Court to the facts in the instant case. In *Carwile*, the Montana Supreme Court held that two voters whose ballots were challenged in an election contest were qualified voters in Montana.[24] In that case, the voters had arrived in Montana and had filed on homestead claims.[25] The court examined as part of its determination a provision in MCA 13-1-112 that "the place where a man's family resides is presumed to be his place of residence."[26] The court stated, "[i]n attempting to define the term 'residence,' as used in election laws generally, the courts and text-writers have encountered great difficulty . . . every case must stand upon its own facts, and a decision in any event must, of necessity, be the result of a more or less arbitrary application of the rules of law to the facts presented."[27]

The superior court could have avoided an "arbitrary application of the rules of law" to the facts in this matter. Unlike the Montana Supreme Court when it decided *Carwile* in

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24 *Carwile v. Jones*, 38 Mont. 590 (Mont. 1909).

25 *Id* at 600-01.

26 *Id* at 601.

27 *Id* at 602.

1909, Alaska's legislators have defined residency. In fact, this court has interpreted several statutes related to residency, including the application of AS 15.05.020.[28]

The superior court's reliance upon *Carwile* to find that Armstrong was a resident of Alaska on May 20, 2019 is erroneous and simply baffling. Unlike the homesteaders in *Carwile,* Armstrong had not signed a lease or otherwise objectively indicated by any conduct or action that she had *established* residency on May 20, 2019. Further, there is no objective evidence that Armstrong had even begun to establish a principal place of abode in Alaska until at least June 8, 2019. Instead, the superior court appeared to rely entirely on Armstrong's testimony regarding her subjective intent, which was erroneous.

On May 19, 2019, nothing separated Armstrong from a seasonal worker, tourist, or anyone else that temporarily resides in or visits Alaska who then decides to one day come back – whenever that may be. As such, the court's application of Montana law led to an erroneous interpretation of the definition of residency that has far-reaching implications for those who are temporarily residing in the state but wish to seek the public benefits of residenc.

III. <u>The superior court misconstrued controlling precedent.</u>

In *Lake & Peninsula Borough Assembly v. Oberlatz*, the Alaska Supreme Court analyzed what it means to be an Alaska resident for purposes of voter registration.[29] In

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[28] *See e.g. Lake & Peninsula Borough Assembly v. Oberlatz,* 329 P.3d 214 (Alaska 2014); *Jones v. State,* 441 P.3d 966 (Alaska 2019); *Heller v. State, Dept of Revenue*, 314 P.3d 69 (Alaska 2013).

[29] 329 P.3d 214 (Alaska 2014).

Oberlatz, several ballots in a 2011 local election were rejected by the Borough Canvassing Committee because the voters had mailed in their ballots from addresses outside of the Borough.[30] The Court affirmed the trial court's analysis, weighing subjective intent with "sufficient indicia of residency," and citing to "ample objective evidence supporting the court's findings regarding the voters' intents."[31] Thus, the court found that two things must be present in order to support a finding of residency: 1) subjective intent *and* 2) ample objective evidence.

Oberlatz is distinguishable from the instant case because each of those voters had already established residency in some way before voting. Voter Oberlatz had registered to vote in the Borough in 1995 and purchased a parcel in the Borough shortly before trial to build a family home.[32] Voter Holman also had a house in the Borough and was involved in the Borough's civic community.[33] Voter Petersen registered to vote in the Borough around 1998, and lived in the Borough six months out of each year after having spent significant time in the Borough as a child.[34] Voter R. Gillam built a home in the Borough in 1984, and voter J. Gillam maintained a room and his personal affects in his family home in the Borough.[35]

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30 *Id*.

31 *Id* at 222-223.

32 *Id* at 224.

33 *Id*.

34 *Id*.

35 *Id*.

In the instant case, and as discussed above, Armstrong had never visited Alaska prior to her vacation on May 10, 2019. Both Armstrong and Kellie testified that Armstrong did not intend to move to Alaska until May 20, 2019, the day she left the state as originally planned. While Armstrong may subjectively believe that she became a resident of Alaska when she "showed up, put her head down, and decided" on May 20, 2019, the objective evidence says otherwise. The superior court, however, instead relied on this belief and Armstrong's new relationship at the time as "emotional and physical" connection to Alaska. Somehow the court found the same was enough to establish residency in Alaska, without Armstrong having to take any other steps that would objectively demonstrate her intent to become a resident of Alaska.

a. The superior court's evaluation of the evidence has detrimental policy implications.

Additionally, the superior court failed to consider whether Armstrong's testimony was reasonable or plausible under the circumstances. In *Oberlatz*, this Court impliedly adopted the trial court's determination that "absent any indicia of fraud or unreasonableness or implausibility, the court should accept the statements of the voter as to their intended residence if supported by sufficient indicia of residency."[36] In the instant case, the superior court only addressed indicia of fraud, but failed to make findings regarding whether Armstrong's statements were unreasonable or even implausible.[37] Even though the superior court did not find evidence that Armstrong's testimony was fraudulent,

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36 *Id* at 222.

37 Exc. 104.

nothing in *Oberlatz* prevents a court from determining that the candidate's testimony was *unreasonable or implausible* under the correct application of the law to the facts. In light of the facts in this case, the superior court should have included findings regarding the unreasonable or implausible nature of Armstrong's circumstances in making its credibility determination.

As such, the consequence has broader public policy implications for the establishment of residency in Alaska that when someone comes to Alaska for a predetermined period for vacation and leaves as planned after that vacation, as Armstrong did. It would be unreasonable to confer residency without making a finding regarding conduct evidencing an act of removal, which the superior court failed to do in the instant case.

It would also be unreasonable for a person, like Armstrong, to be physically present in the state for a mere four hours on the day they claims to establish residency. Construing Armstrong's testimony without considering the reasonableness of her statements in light of controlling law could mean that any of the millions of cruise ship passengers who visit Alaska each year could form the intent to reside in Alaska, and upon their return backdate the day of residency to their vacation.

The court failed to consider the reasonableness of her testimony, and that, coupled with a failure to make specific findings on the specific "act of removal," likely because an act of removal didn't exist until at least June 8, 2023 – after Armstrong returned to her state of residence, Louisiana, and swapped out her bags (as her items were at her permanent

residence) that Armstrong then came to Alaska on June 8, 2019 with the intent to remain indefinitely. This application of *Oberlatz* was error.

b. The superior court's decision was not supported by sufficient evidence.

The erroneous application of *Oberlatz* led to the superior court rendering a decision that was not supported by substantial evidence because said decision was not supported by sufficient objective evidence as required by *Oberlatz*. The court's error can be summarized by the table below to demonstrate the absurdity of its erroneous decision.

SUBJECTIVE EVIDENCE OF INTENT	OBJECTIVE EVIDENCE OF INTENT
1. Armstrong's personal definition of residency. [R. 10:19:47-10:20:40].	1. Armstrong arrived for a ten-day vacation on May 10, 2019 and left as previously planned on May 20, 2019. [Exc. 58-59].
2. Armstrong's decision that she became a resident on May 20, 2019.	3. Armstrong returned to Louisiana between May 20, 2019 and June 8, 2019 to swap suitcases because that is where she kept her necessary belongings. [Exc. 38].
4. Kellie's affirmation of Armstrong's – his wife's – decision that she became a resident on May 20, 2019.	5. Armstrong certified that her address was in Metarie, LA on two 2019 fishing license applications, dated June 15, 2019 and June 23, 2019. [Exc. 28-29].
	6. Armstrong certified that she had been a resident of Alaska since June 2019 on a fishing license application dated June 21, 2019. [Exc. 30].
	7. Armstrong certified that she had been a resident of Alaska since June 2019 on a fishing license application dated July 20, 2021. [Exc. 31].
	8. Armstrong certified that she had been a resident of Alaska since May 2019 on a fishing license application

	dated July 26, 2022, which was *after* she first learned of the three-year residency requirement and filed to run in the election for House District 16. [Exc. 32].
	9. Armstrong publically stated that she moved to Alaska "last weekend" on June 13, 2019, which necessarily meant June 7-9, 2019. [Exc. 36].
	10. Armstrong flew into Alaska on June 8, 2019, which was during the weekend of June 7-9, 2019. [Exc. 60].
	11. Armstrong did not garner an Alaska driver's license until August 26, 2019. [Exc. 57].
	12. Armstrong did not register to vote in Alaska until August 26, 2019. [R. 9:38:00-9:39:15].
	13. Armstrong did not incorporate her businesses in Alaska until June and July of 2019, nor did she dissolve her Louisiana business until July of 2019. [R. 9:24:23-9:26:55; 9:36:57-9:37:20].

The superior court completely failed to weigh the objective evidence that Armstrong did not establish residency in Alaska until at least June 8, 2019. Rather, the superior court, in complete defiance of *Oberlatz*, relied almost exclusively upon Armstrong's subjective belief that her decision, made on May 19-20, 2019, that she would move to Alaska and cohabitate with Kellie established her residency in this state. Such reliance was erroneous and completely disregarded the mountain of objective evidence to the contrary.

CONCLUSION

For the reasons discussed above, the superior court erred. This court should reverse the erroneous decision and declare Vazquez the winner of the House District 16 election.

DATED this 11th day of January, 2023, at Anchorage, Alaska.

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 11th day of January, 2023, a true and correct copy of the foregoing document was served via Email to:

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