Mara E. Michaletz
Jennifer C. Alexander
Zoe A. Danner
Birch Horton Bittner & Cherot
510 L Street, Suite 700
Anchorage, Alaska 99501
mmichaletz@bhb.com
jalexander@bhb.com
zdanner@bhb.com
Telephone: 907.276.1550
Facsimile: 907.276.3680

Attorneys for Plaintiffs

FILED in the Trial Courts
State of Alaska Third District

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Clerk of the Trial Courts
By_____Deputy

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ROBERT CORBISIER, Executive Director of ALASKA STATE COMMISSION FOR HUMAN RIGHTS *ex rel.* B.L., Plaintiff, v. KEVIN MEYER, in his official capacity as Lieutenant Governor of the State of Alaska; GAIL FENUMIAI, in her official capacity as the Director of the Alaska Division of Elections, and the STATE OF ALASKA, DIVISION OF ELECTIONS, Defendants.	Case No. 3AN-22-06525 CI

COMPLAINT

Plaintiff Robert Corbisier, in his capacity as Executive Director of the Alaska State Commission for Human Rights *ex rel.* B.L., alleges as follows:

PARTIES AND JURISDICTION

1. The Alaska State Commission for Human Rights ("ASCHR") is empowered under AS 18.80 *et seq* (the Alaska Human Rights Act, "AHRA") to act in accordance with its purpose of eliminating and preventing discrimination on the basis of physical or mental disabilities pursuant to AS 18.80.200.

2. Robert Corbisier is the Executive Director of ASCHR with the authority to act on behalf of ASCHR including, but not limited to, investigating complaints and seeking relief pursuant to AS 18.80.105 to cure an unlawful discriminatory practice.

3. B.L. is a registered voter residing in Anchorage, Alaska whose visual impairment qualifies as "physical disability" and "physical impairment" under AS 18.80.300(14)-(15).

4. The State of Alaska, Division of Elections ("DOE" or the "Division") is the State of Alaska agency charged with the administration of federal elections pursuant to AS 15.10.105 and subject to the laws of AS 18.80 *et seq* under AS 18.80.255 and 18.80.300(18). Kevin Meyer, as the Lieutenant Governor of the State of Alaska, is charged with controlling and supervising the Division of Elections; its Executive Director, Gail Fenumiai, supervises the administration of the elections.

5. Jurisdiction is proper under AS 18.80.105 and 22.10.020, whereby the Superior Court is the court of original jurisdiction over temporary restraining orders and all causes of action arising under the provisions of AS 18.80.

FACTUAL ALLEGATIONS

6. The death of United States House Representative Don Young in March 2022 has necessitated a special primary election and special general election to

fill the vacancy of his office under AS 15.40.140. The special primary election scheduled for June 11, 2022 ("2022 Special Primary Election") is a ranked-choice election to determine the top four candidates appearing on the ballot for the special general election.

7. According to the DOE's "FAQs for Special Election Press Briefing," found at its website, "the Division of Elections can conduct elections by mail when they are not held at the same time as a general, primary, or municipal election. The decision on whether to hold a special primary election by mail falls to the Division Director" – Ms. Fenumiai.

8. The mailed ballots for the 2022 Special Primary Election, which require a voter to identify and fill in an oval next to their candidate of choice, do not provide an opportunity to visually impaired voters to vote privately, secretly, and independently.

9. The Division of Elections' "FAQs for Special Election Press Briefing" also provides notice to voters that "the Division still offers absentee-in-person voting at many locations for the two weeks before the election day for a by mail election. Voters could show identification and cast ballots with election officials."

10. The DOE website offers a list of 170 polling places with dates, times, and locations that voters may avail themselves of in-person absentee voting.

11. The DOE website also offers information on "Assistance for Voters with Disabilities" and "Accessibility Assistance Information," which advises voters with visual impairment that the Division "conducts surveys of statewide polling places to check for ADA compliance" and that it makes "every effort to ensure polling places are accessible to all Alaskans." It assures visually impaired voters that "[i]nside the polling place, the

Division of Elections provides magnifying viewers for the visually impaired and touch screen voting units equipped with magnified text and audio ballots."

12. In other elections, the DOE operates the visually impaired and touch screen units in in-person polling locations to ensure that Alaskans who are visually impaired are given a full and fair opportunity to cast their votes independently, secretly, and privately.

13. The DOE has informed ASCHR that it does not intend to place such units in statewide polling locations for in-person absentee voting for the 2022 Special Primary Election, but that these units will be available only in a handful of locations. The locations of the units are not published online.

14. Alternatively, the DOE offers the opportunity to receive and vote via an electronically-delivered absentee ballot, which voters may request via its website. The online absentee ballot is available to the voter after they contact the DOE, which then provides the voter a unique code to access the online ballot. The voter subsequently places their vote by electronically filling in an oval next to the candidate. To submit the ballot via mail, the voter is then instructed to print out: (1) a PDF of the completed ballot; (2) a voter certificate and identification form; and (3) an "origami secrecy sleeve and return envelope." The DOE instructs the voter to fold the ballot in thirds, create the "origami secrecy sleeve" by folding a separate piece of paper printed with delineated lines, complete a separate voter certificate and identification page with a voter and witness signature, wrap it around the ballot and origami sleeve, and create an envelope by cutting the designated envelope template along dotted lines, making four specific folds, and taping the envelope in specific places prior to mailing the envelope with the ballot,

sleeve, and voter certificate inside. The instructions for this process are included as Exhibit A to this Complaint.

15. This electronically-submitted absentee ballot may also be submitted to the DOE by facsimile, which requires the voter to waive their right to a secret ballot.

16. A visually impaired voter may identify, and vote for, a candidate using this electronic option privately only by using screen reading technology which reads the text aloud. However, this option is only available to those visually impaired voters who have access to a private computer with internet access, the required accessibility software, and a printer to which they have private access. Additionally, to ensure privacy, this option requires a visually impaired voter to access and fold their ballot in absence of any instructions regarding the same; any requirement of dependence on another individual to facilitate this process precludes the voter's privacy.

17. In administering the 2022 Special Primary Election by mail, DOE conferred a benefit on non-disabled voters that it withheld — and withholds — from the visually impaired: the ability to vote privately, secretly, and independently. As the DOE's 2022 Special Primary Election currently stands, in order to exercise their fundamental right to vote, visually impaired voters are forced to either, depending on circumstance, forego voting altogether, or request the assistance of someone else to vote.

18. B.L. filed a complaint with ASCHR on May 15, 2022, alleging that the ballot is not accessible to a visually impaired individual and that the DOE is engaging in discrimination on the basis of a disability based on its failure to provide accessible ballots or voting machines throughout the state, denying B.L and similarly-situated voters equal access to its services. Despite several meetings with ASCHR before and after the filing

of B.L.'s ASCHR complaint over the lack of reasonable accommodations for visually impaired voters over the course of the last several weeks, the DOE does not plan to place touch screen voting machines at more than five locations throughout the State. This fact is not publicized anywhere on the DOE's website.

19. The 2022 Special Primary Election is scheduled for June 11 and the Division plans to certify the results of the special primary election on June 25.

STATE AND FEDERAL VIOLATIONS

ALASKA HUMAN RIGHTS ACT

20. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully incorporated herein.

21. The Division is a political subdivision of the State of Alaska, subject to the AHRA. *See* AS 18.80.300(18).

22. Pursuant to the AHRA, it is unlawful for political subdivisions of the State "to refuse or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of physical or mental disability." AS 18.80.255.

23. "Physical or mental disability" is defined, in part, as "a physical or mental impairment that substantially limits one or more major life activities." AS 18.80.300(14). Visually impaired individuals such as B.L. are therefore protected by AHRA from being refused or deprived by the Division of local, state, or federal funds, services, goods, facilities, advantages, or privileges because of their visual impairment.

24. In deciding to conduct the 2022 Special Primary Election exclusively by mail, using ballots that sighted individuals may complete secretly, privately, and

independently, the DOE confers a service, advantage, and/or privilege on sighted individuals.

25. Visually impaired voters are denied this benefit because they are unable to complete the Division's mail-in special election ballots secretly, privately, and independently. They have additionally been denied the opportunity to place an absentee vote in person based on the extremely limited number of ADA-accessible units the DOE has decided to make available for this election, a fact which is not readily available to the voting public. Because visually impaired voters are denied a benefit conferred upon sighted voters by virtue of their disability, Defendants are in violation of AHRA.

26. In the absence of injunctive relief, visually impaired voters will be denied their ability to vote privately, secretly, and independently by mail-in ballot or in-person absentee voting.

AMERICANS WITH DISABILITIES ACT AND REHABILITATION ACT

27. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs as if fully incorporated herein.

28. The DOE is a public entity subject to Title II of the Americans with Disabilities Act ("ADA"). *See* 42 U.S.C. § 12131(1). Voting in federal elections is a service, program, or activity provided by Defendants.

29. Section 504 of the Rehabilitation Act of 1973 (the "Rehabilitation Act") prohibits the exclusion of a "qualified individual with a disability" from participating in "any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a). Upon information and belief, the DOE receives federal financial assistance which it utilizes to conduct federal elections, and is therefore subject to the Rehabilitation Act.

30. Visually impaired individuals are likewise protected by the ADA. *See* 42 U.S.C. § 12102; 28 C.F.R. § 35.108.

31. Title II of the ADA guarantees qualified individuals an equal opportunity to access the benefits of the services, programs, or activities of a public entity. 28 C.F.R. § 35.130(b)(1)(ii)-(iii).

32. Public entities must make reasonable modifications to their policies, practices, and procedures when necessary to avoid discrimination against individuals with disabilities. *Id.* § 35.130(b)(7)(i).

33. Complainant B.L. is qualified to receive voting services from Defendant and is entitled to the protections afforded under the ADA.

34. Defendants have failed to afford visually impaired voters services necessary to afford them the ability to participate in the mail-in voting process to the same extent as sighted voters. As a consequence, Defendants have excluded, and continue to exclude, Complainant and other visually impaired voters from participation in, and denied them the benefits of, or otherwise discriminated against them in, their mail-in 2022 Special Primary Election.

35. As a result of Defendants' actions and inactions, visually impaired voters have suffered and will continue to suffer irreparable harm. They have suffered and continue to suffer from discrimination and unequal access to Defendants' programs, services, or activities. And in the absence of injunctive relief, visually impaired voters will be denied their ability to vote privately, secretly, and independently by mail-in ballot.

HELP AMERICA VOTE ACT

36. The Help America Vote Act ("HAVA") created mandatory minimum standards for states to follow in key areas of election administration. These mandatory minimum standards require states, for all federal elections, to ensure that "at least one ... voting system equipped for individuals with disabilities [is available] at each polling place." 52 U.S.C. § 21081(3)(B).

37. Defendants have designated 170 polling places for the 2022 Special Primary Election at which voters may vote via absentee in-person voting. However, voting systems equipped for individuals with disabilities are not available at each of these polling places.

38. In the absence of readily-available, accessible voting machines, and in the absence of mail-in ballots that can be completed secretly, privately, and independently, visually impaired voters are deprived of their ability to participate in the 2022 Special Primary Election.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. An order declaring Defendants violated both AHRA and federal law by denying the benefit of its mail-in 2022 Special Primary Election to visually impaired Alaska voters;

2. An order enjoining Defendants from certifying the results of the 2022 Special Primary Election until such time as visually impaired Alaska voters are given a full and fair opportunity to participate in such election;

3. An order mandating Defendants to undertake remedial measures to facilitate participation of visually impaired Alaska voters in the 2022 Special Primary Election; and

4. The grant of such other and further relief as this Court deems just and equitable.

DATED this 7th day of June, 2022.

BIRCH HORTON BITTNER & CHEROT
Attorneys for Plaintiffs

By: /s/ Mara E. Michaletz
Mara E. Michaletz, ABA #0803007
Jennifer C. Alexander, ABA #9511057
Zoe A. Danner, ABA #1911094

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 7th day of June, 2022, a true and correct copy of the foregoing was served via electronic delivery on the following:

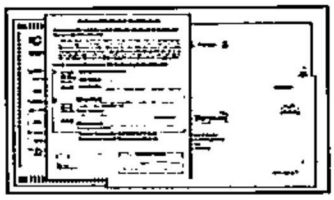
Mr. Andy Miller
Assistant Attorney General
State of Alaska
andy.miller@alaska.gov

BIRCH HORTON BITTNER & CHEROT

By: /s/ Martha K. Marshall

Online Voting Instructions

Attention Voters: Once you vote and return your absentee ballot you cannot vote again in any other manner for this election. If you 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).

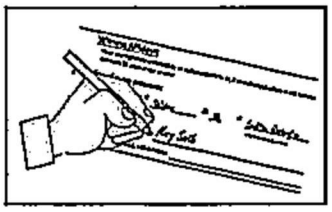


1. Print Downloaded Ballot Package Documents

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

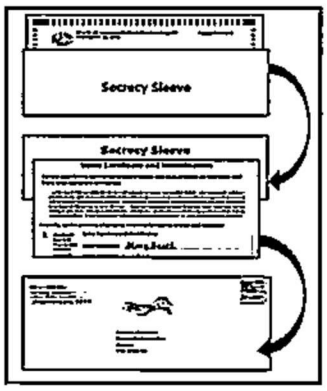
2. Sign and Provide ONE Identifier on the Voter Certificate Form

- Sign the Voter Certificate and Identification form in front of your witness.
- Write ONE of your identifiers on the envelope (Voter number, Alaska driver's or state ID number, date of birth, or last four of SSN).



3. Have Someone Witness Your Voter Certificate

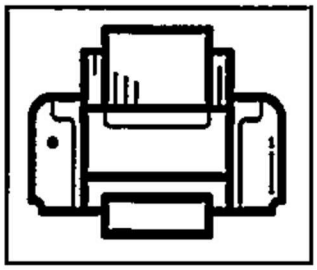
- **Have your signature witnessed by anyone 18 years of age or older. Make sure your witness dates their signature.**
- Or you may choose to have your signature witnessed by an official if reasonably accessible (Notary public, commissioned officer of the armed forces, district judge or magistrate, registration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



4A. Return Your Ballot By-Mail (do NOT mail if you return ballot by-fax)

Returning your ballot by-mail maintains the secrecy of your ballot.

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) For this by-mail Special Primary Election, postage is pre-paid. Your ballot must be **POSTMARKED** on or before Election Day, Saturday, June 11, 2022. It is recommended that you have the post office hand cancel your return ballot envelope with a legible postmark date.



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.): 855-977-3591
  Fax Number: 907-677-3591

- Your ballot must be RECEIVED on or before 8:00 p.m. Alaska Standard Time on Election Day, Saturday, June 11, 2022.
- 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.

EXHIBIT A
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