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

Alaska Democratic Party, Plaintiff, v. Nancy Dahlstrom in her official capacity as Lieutenant Governor of Alaska, Carol Beecher in her official capacity as Director of the Alaska Division of Elections, Alaska Division of Elections, Defendants.	)	Case No. 3AN-26-10167CI

OPPOSITION TO PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

I. INTRODUCTION

The Court should deny the Alaska Democratic Party's late-filed request for a preliminary injunction because it would have no practical effect and the Division of Elections has already done everything practical to ensure absentee in person voting is available in the Affected Communities on Monday. On Friday and Saturday, October 30 and 31, 2026 the Division contacted absentee voting officials, including in the 18 Affected Communities the Party identifies. Of these, 13 are equipped, prepared, and planning to open as scheduled for voting on Monday, November 2. These are Chistochina, Ekwok, Gambell, Huslia, Manokotak, Mountain Village, Nanwalek, Napaskiak, Newhalen, Pedro Bay, Pilot Station, Quinhagak, and Toksook Bay. The Division contacted the remaining five locations—Alakanuk, Chignik Bay, Goodnews

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Bay, Holy Cross, and Kongiganak—but has not been able to secure absentee voting official availability on Monday. Absentee in person voting is not required by statute or the Constitution and neither the Division nor the Court can force a location to open, least of all with an order issued Monday morning at the earliest.

This Court should deny the Party's motion for preliminary injunction. However, the Division is committed to providing opportunities for absentee in person voting and working with the Party to do so, if possible, at the five remaining locations at issue. The Party has thus far been unwilling to confer in good faith with the Division. If this Court orders the parties to confer in good faith, today Sunday, November 1, the Division will gladly comply with that order.

II. BACKGROUND

Registered Alaska voters have four basic options for voting: absentee, early, special needs, and on election day.[1] No excuse is required to vote absentee.[2] All registered Alaskan voters can vote absentee from any location by applying in advance for a ballot.[3] Voters can submit their application online, by email, by fax or by mail.[4] Voters can choose between receiving their ballot by mail or by electronic delivery.[5] The

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1 *See* AS 15.20.064 (early voting); AS 15.20.072 (special needs voting); AS 15.20.081 (absentee voting). Statutes governing in-person voting are found at Title 15, Chapter 15 of the Alaska Statutes.

2 AS 15.20.081.

3 *Id.*

4 *Id.*

5 AS 15.20.081; AS 15.20.066.

voter must print his or her own ballot if the voter chooses to receive it by electronic delivery and return it by mail or by fax.[6]

In addition, some Alaskans may be able to vote "absentee in person" without applying for a ballot in advance. Voters can do this with the assistance of absentee voting officials designated by the Division Director or election supervisor.[7] These voters prove their identification to the absentee voting official, receive a ballot from the official, vote the ballot in secret, sign the ballot envelope attestation in the official's presence, and then the official also signs as witness and accepts the ballot for return to the Division of Elections.[8] Whether to designate absentee voting officials is discretionary.[9] Absentee voting officials are nearly volunteers. Absentee voting officials are paid a flat $100 to serve, and typically make absentee voting available while serving in other civic roles in the community, such as a tribal administrator or city clerk.[10]

Absentee in person voting differs from early voting, which is akin to election-day voting but offered before election day. When voting early, a voter's eligibility to cast a ballot is verified at the time of voting by Division employees, and the voter's cast ballot is immediately accepted and co-mingled with other early votes.[11] Early voting is only

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6 *Id.*

7 AS 15.20.045.

8 AS 15.20.061.

9 AS 15.20.045(a).

10 *See* 6 AAC 25.035; https://www.elections.alaska.gov/avo.

11 AS 15.20.064.

available in urban areas and some hub communities.[12] The differences between early and absentee in-person voting can be summarized as follows:

	Early Voting	Absentee in-person
Requirement	Mandatory under AS 15.20.064 ("shall").	Discretionary under AS 15.20.045(a) and (c) ("may designate")
Ballots available	All 40 house districts, meaning early vote locations are also "absentee voting stations" under AS 15.20.045(b)	Just one house district, plus neighboring districts at some locations. AS 15.20.045(a) ("appropriate ballots")
Days and hours available	Beginning 15 days before election day, including election day and limited hours the weekend before election day, as set in 6 AAC 25.500.	Not set by regulation and vary. Some are open on election day and some are not. Virtually none are open on the weekends. The Division website clearly indicates "Information is subject to change."
Notice	Locations identified by June 1, AS 15.20.064(d), and 45 days before the election, AS 15.20.050.	On the Division website, subject to change. AS 15.20.050 ("any means of communication permitted to be used in giving notice of the date and time of the general election"), AS 15.15.070 ("a manner reasonably calculated to give actual knowledge of the election to the voters")
Materials provided	To regional supervisors 15 days before election day. AS 15.20.040.	At least 15 days before election day. AS 15.20.045(a)
Pay	$20.50 an hour. 6 AAC 25.035(i)	$100 flat rate. 6 AAC 25.035(h)
Usual setting	Urban, at Division regional offices and other facilities	Rural, often at tribal offices

[12] https://www.elections.alaska.gov/avo.

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Voting experience	Like voting in person	Like voting absentee by mail

The Division strives to make absentee in person voting available in as many communities as possible throughout the state. This year, the Division designated a record number of absentee in person locations, including 109 in Region IV.[13] When a person in a community agrees to act as an absentee voting official, they tell the Division at what hours and location they will be available for voting, and the Division posts notice of that on its website. The website prominently states: "**Information is subject to change**" and notes the date and time of the most recent update.[14] When the Division receives notice that a location is not available after all, either because the physical location or official is not available, the Division updates the website. Also, when the Division is able to find a replacement absentee voting official, the Division updates the website.

The Party's motion concerns the availability of 18 absentee voting officials in "Affected Communities." The Party "requests relief confined to the eighteen absentee-in-person sites identified in the October 23 correspondence and limited to the remaining voting period."[15] None of these locations were scheduled to be open this weekend and

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13 Verified Complaint at 7 ¶ 25.

14 https://www.elections.alaska.gov/avo.

15 Motion for Preliminary Injunction at 17.

none, except Nanwalek, were scheduled to be open on election day, Tuesday, November 3.[16] That leaves Monday as the only day at issue.

On Friday, October 30 and over the weekend, the Division reached out to the absentee voting official in each Affected Community and the following are the only communities that could **not** confirm that an absentee voting official would be available on Monday: Alakanuk, Chignik Bay, Goodnews Bay, Holy Cross, and Kongiganak.[17] This is current as of Saturday, October 31 at 3:30 pm. Officials in all other Affected Communities confirmed they would be available as scheduled on Monday. All five communities are still staffed and prepared to have in-person voting available on Tuesday, November 3.[18]

Counsel for the parties corresponded in the afternoon and evening on Thursday, October 29.[19] Counsel for the Party did not provide a copy of the complaint or any other filings and did not respond to the Division's offer, through counsel, to meet and discuss at any time on Friday. Instead, the Division received courtesy copies of the complaint and motions late Friday afternoon. Counsel for the Division filed a limited entry of appearance Friday evening and an opposition to the Party's motions for expedited

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16 See Opposition to Motion for Expedited Consideration at 3 and Exhibit C. The Division has confirmed that the Nanwalek absentee voting official will be available as scheduled on election day. *Id.* at 4.

17 Note that this differs from the Saturday morning report because the Division did find a replacement absentee voting official in Manokotak. *See* Motion for Expedited Consideration at 4.

18 https://www.elections.alaska.gov/election-polls/.

19 Opposition to Motion for Expedited Consideration, Ex. B.

consideration and a temporary restraining order before 9am on Saturday. The Party filed its proposed order granting a temporary restraining order soon after. Without having received the Division's filings, the Court granted expedited consideration midday Saturday, setting a 9am Sunday deadline for this opposition. The Party did not respond to the Division's opposition to expedited consideration and temporary restraining order or otherwise contact the Division for substantive discussions.

Meanwhile, the Division conferred with a different plaintiff and resolved a lawsuit filed Thursday, October 29 that raised "substantially similar (if not the same) issues."[20]

III. LEGAL STANDARDS

The Party recognizes that it is not seeking a temporary restraining order but rather a preliminary injunction in the form of "request for mandatory or reparative injunctive relief in the nature of mandamus."[21] A preliminary injunction is "considered 'an extraordinary remedy never awarded as of right.'"[22] Such injunctions are "harsh remedies" that "preserve the status quo" when necessary to prevent "the irreparable loss of rights before judgment."[23] "Mandatory" injunctions requiring a party to act (as

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[20] *See* Order Granting Expedited Consideration of Preliminary Injunction and Request for TRO and Scheduling Hearing at 1; *See Midnight Sun Independence Fund v. Dahlstrom et al.*, Case No. 3AN-26-10145CI.

[21] Motion for Preliminary Injunction at 22.

[22] *State v. Galvin*, 491 P.3d 325, 338 (Alaska 2021) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008)).

[23] *Martin v. Coastal Vills. Region Fund*, 156 P.3d 1121, 1126 & n.4 (Alaska 2007) (quoting *United States v. Guess*, 390 F.Supp.2d 979, 984 (S.D. Cal. 2005)).

opposed to "prohibitory" injunctions preventing action to change the status quo pending final judgment) are particularly disfavored: "a mandatory injunction will seldom be granted before final hearing, and should be granted only in extreme or exceptional cases and with great caution."[24]

Under Alaska law, a "[p]laintiff may obtain a preliminary injunction by meeting either the balance of hardships or the probable success on the merits standard."[25] A court may enter a preliminary injunction when the plaintiff makes the following three showings: (1) the plaintiff is faced with irreparable harm, (2) the opposing party is adequately protected, and (3) the plaintiff raises "serious and substantial questions going to the merits of the case."[26] But where the opposing party's interests cannot be adequately protected, the party seeking relief must make "a clear showing of probable success on the merits of the dispute before a court may grant the preliminary injunction."[27]

Both standards require the plaintiff to demonstrate that it will suffer irreparable harm without a preliminary injunction.[28] Without irreparable harm, there is no reason for a court to truncate its usual procedures and quickly assess the merits of a case on an

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24 *State v. Kluti Kaah Native Village of Copper Center*, 831 P.2d 1270, 1274 n.9 (Alaska 1992) (quoting 42 Am.Jur.2d Injunctions § 21 (1969)) (internal alterations omitted).

25 *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014).

26 *Id.*

27 *Galvin*, 491 P.3d at 333.

28 *Id.*; *Miller v. Atkinson*, 365 P.2d 550, 552 (Alaska 1961).

abbreviated record. Holding accelerated mini-trials on the merits of every case at a very early stage would lead to hasty, erroneous decisions.[29]

Since both the balance of hardships and probable success on the merits standards require that the plaintiff be subject to irreparable harm in the absence of an injunction, the crucial difference between these standards is the impact of the requested injunction on *the defendant's* interests.[30] Where those interests can be adequately protected, an injunction may issue under the balance of hardships standard without a showing that plaintiff's claim will likely succeed. But if the defendant's interests cannot be protected, a showing of probable success on the merits is required.[31]

Finally, even if the plaintiff makes the necessary showing for a preliminary injunction, courts must independently consider the public interest.[32] "This factor becomes especially important when a requested preliminary injunction threatens the public's interest in an orderly election."[33] "[A] court has the discretion to deny the

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29 *See A.J. Indus., Inc. v. Alaska Pub. Serv. Comm'n*, 470 P.2d 537, 540 (Alaska 1970) modified, 483 P.2d 198 (Alaska 1971) ("The necessity of avoiding litigation of the merits at this early stage stems from two factors. First a ruling on the merits in an action for preliminary relief would be premature, since it would usually be based on an incomplete record and made with an insufficient amount of time. Second, a ruling at this early stage would ultimately result in forcing the court to rule on the merits of the case twice—once at the preliminary stage and once in the final adjudication.").

30 *Alsworth*, 323 P.3d at 54-56.

31 *Id.*

32 *Galvin*, 491 P.3d at 338-39.

33 *Id.*

requested relief if granting it would imperil the public interest" in "a timely, successful election," even if the plaintiff has shown probable success on the merits.[34]

IV. ARGUMENT

A. The Party waited too long to sue.

As described further in the Division's Opposition to the Party's Motion for Expedited Consideration, the Party left this lawsuit too late for its requested relief to have any real-world applicability.[35] Absentee voting officials in the Affected Communities never agreed to be available over the weekend, and the Courts are also not open over the weekend. Even if this Court entered relief after a Monday morning hearing, there would be no time as a practical matter to implement it before it became moot with the opening of in person voting in the Affected Communities on Tuesday. This Court should find the Party's request for injunctive relief barred by laches.

Laches is a complete defense when a party delays unreasonably in seeking relief and the delay results in prejudice to the defendant.[36] "The essence of laches is not merely the lapse of time, but also a lack of diligence in seeking a remedy."[37] Federal courts have applied this doctrine to deny requests for preliminary injunction brought too

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34 *Id.*

35 The defendants incorporate those arguments, filed only yesterday, and will not repeat them here.

36 *Kollander v. Kollander*, 322 P.3d 897, 903 (Alaska 2014).

37 *Id.*

close to an election.[38] The U.S. Supreme Court has recognized that "a party requesting a preliminary injunction must generally show reasonable diligence. That is as true in election law cases as elsewhere."[39]

The Party's complaint admits that the Party believed that absentee in person voting was not available in all communities as planned by Friday, October 23 at the latest.[40] It also knew the Division's plan to address those issues by Monday, October 26 at the latest.[41] After October 26, absentee in person voting had only five more days on the calendar: Tuesday October 27 through Friday October 30 and Monday November 2. Yet the Party inexplicably waited out four of those five days before filing this lawsuit. Since none of the Affected Communities were scheduled to have absentee in person voting available over the weekend,[42] if the Party wished to seek relief from this Court in time to have a meaningful impact, it should have conferred in good faith with the Division immediately and filed promptly if unable to resolve the dispute. But the Party waited until late in the day on the Friday before the election to file, when it was too late for the Court to meaningfully hear the issue or for injunctive relief to have a meaningful impact.

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38 *Crookston v. Johnson*, 841 F.3d 396, 399–400 (6th Cir. 2016).

39 *Benisek v. Lamone*, 585 U.S. 155, 159 (2018) (internal citation omitted).

40 Verified Complaint at 9 ¶ 30.

41 *Id.* at 11 ¶ 36.

42 *See* Opposition to Motion for Expedited Consideration, Exhibit C.

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State supreme courts across the nation have recognized that laches "has particular import in the election context."[43] As one court noted "[t]he real prejudice caused by delay in election cases is to the quality of decision making in matters of great public importance."[44] Unreasonable delay prejudices the administration of justice "by compelling the court to steamroll through . . . delicate legal issues in order to meet" election deadlines.[45] The Party took at least four days to file this lawsuit, but now the Division is compelled to file this Opposition less than 48 hours after receiving a courtesy copy of the complaint.[46] And the Court is scheduled to hear this matter 24 hours after receiving this Opposition. That will necessarily affect the Court's decision-making. It did not have to be this way: The Division was able to completely resolve a functionally identical lawsuit *filed one day sooner*, by conferring with a different plaintiff that accepted its offer to meet and confer.

Because the Party waited too long to file, this Court should deny the motion for preliminary injunction as barred by the doctrine of laches.

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43 *Elections v. Ambridge*, 330 A.3d 700, 725 (Md. 2025) (quoting *Trump v. Biden*, 951 N.W.2d 568, 572 (2020)).

44 *Sotomayor v. Burns*, 13 P.3d 1198, 1200 (Ariz. 2000).

45 *Lubin v. Thomas*, 144 P.3d 510, 512 (Ariz. 2006) (internal quotation omitted).

46 The defendants still have not been served and do not waive service. This Opposition is filed under a limited entry of appearance only.

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B. The Division has already taken all reasonably practical steps to ensure absentee voting officials are available in the Affected Communities on Monday.

The Party seeks an order requiring the Division to (1) "take all steps necessary to open each Affected Site and keep it open for its advertised days," including finding replacement officials if necessary, and (2) keep its website up-to-date.[47] This request is moot because the Division has already taken the steps it can take, short of extreme and practically impossible measures like flying its own employees into those locations. And even if this Court were to order the Division to fly out employees and supplies after the 9am hearing on Monday, that relief would be moot as a practical matter because it would be too late for Division employees or supplies to reach those remote locations before the end of the day, even if the Division were to send them. And taking Division employees away from their duties to travel for most of the day on Monday would have severe negative impacts on election administration and the public interest, as discussed further below.

In the last two days, the Division has been contacting absentee voting officials to make sure they have everything they need to open as planned on Monday.[48] The

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47 Proposed Temporary Restraining Order at 4.

48 Only one of the Affected Communities, Nanwalek, was advertised to be open for absentee in person voting on election day (when it is still planned to open—Nanwalek will not have a polling place on election day). Extending the hours of any other absentee in person location to include election day may not be possible because absentee voting officials are often also poll workers. But extending absentee in person voting to election day in those communities would also be meaningless—no voter is going to vote absentee in person when they could just vote in person at the polling place on the same day.

Division has also been recruiting replacement officials when necessary. This has been almost entirely successful: thirteen of the eighteen Affected Communities are set to open Monday. For the remaining five, the Division has taken the immediate steps it can, by contacting each of them. Providing absentee in person voting is discretionary for the Division,[49] and not obligatory for the officials. While these officials sign contracts and are paid a small sum, the Division cannot guarantee their performance. An order directing the Division to take all steps possible to open these locations would not significantly change what the Division has done so far. The Party has offered no evidence that other people in those communities are willing to serve as absentee voting officials or offered any concrete additional steps they believe the Division could take that it has not already taken.

An order directing the Division to take additional steps for the five remaining locations on Monday would be particularly ineffective. These locations lack willing officials. Identifying, contacting, and training replacement officials takes time. Most locations are advertised to close at 4 or 5pm, leaving too few hours on Monday to implement an order in time for absentee in person voting to occur. The Party's request for relief has been effectively mooted by the Division's actions and the Party's decision to leave the Court one day—the last day of absentee in person voting—to address its request for relief.

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[49] Verified Complaint at 6 ¶ 19 ("The Director *may* designate absentee voting officials . . . ." (emphasis added)).

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C. The Party and its members do not face irreparable harm.

If the Court looks past the Party's inexcusable delay and the impossibility of granting relief on Monday, and nevertheless applies the preliminary injunction standard, it should conclude that neither the Party nor its members face irreparable harm. The voters in the five communities at issue still have multiple ways to exercise their right to vote. They may all vote in person at a polling place on Tuesday, just one day after the Court hears this case. They may also request an absentee ballot by electronic transmission by 5pm on Monday. There is no reason to believe—nor has the Party suggested—that any significant numbers of voters *would* be able to vote absentee in person on Monday but *not* in person at a polling place on Tuesday. Indeed, the Party provides no evidence from any individual voters at all.[50] And, as noted in the Opposition to the Motion for Expedited Consideration, in several of the Affected Communities where absentee in-person voting has been available, no voters or only a small handful of voters have availed themselves of it.[51] It is entirely possible that, even if absentee-in-person voting were available in those five communities on Monday, no voters would actually use that option to vote. The Party has not shown it will be irreparably harmed in the absence of the relief it requests.

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[50] For example, the complaint alleges that "[v]oters in one or more Affected Communities" travelling "in some cases by boat or by plane" were unable to vote absentee in-person. Verified Complaint at 10-11 ¶ 34. But the source for this information is a Senator who "told reporters that his information came from groups with people on the ground." *Id*. That is hardly evidence, even in a verified complaint, and anyways indicates nothing about any voter's intent on Monday or Tuesday.

[51] *See* Opposition to Motion for Expedited Consideration at 3-4.

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D. The Division cannot be protected from the harm caused by diverting its resources to just a few communities the day before the election.

Next, the Court considers the hardship to the defendant if the injunction is granted, but the defendant later wins the case. The Party asks the Division to divert resources towards ensuring absentee voting officials are available in five communities on the day before the election, up to and including sending its own employees to the communities. On the day before the general election, Division employees are fully occupied with answering phone calls and emails from voters about the location and availability of in-person voting, answering phone calls and emails from in-person voting officials who are preparing to open polls the next day, collecting and sorting absentee ballots arriving at Division offices, and other duties essential to statewide election administration. The Party faults the Division for past problems with in-person voting in rural locations, without recognizing that the day before the election, Division staff are working hard to ensure that all polling places open as scheduled, particularly in rural Alaska. Forcing the Division to divert resources to absentee in person voting in five communities on Monday could have downstream effects on the availability of in person voting in different communities on Tuesday.

Prioritizing absentee in person voting in five communities above this region-wide and state-wide work would irreparably harm the Division. The Division cannot be made whole for the lost time of its staff on Monday, or for any resulting negative effects on administration of the statewide election. And taking employees away from their other duties on Monday is irreparably detrimental to the public interest. It could mean that

potential voters aren't able to get their questions answered timely, or that other in-person polling places aren't able to get instruction that they need for an orderly opening the following day. It may mean that Division staff don't have time to find replacement *poll workers* if someone calls out sick or with a family emergency on Monday. Prioritizing the last day of absentee in person voting in these five communities over the Division's statewide work is particularly detrimental considering that those five communities are expected to have in-person voting the following day. The Party's motion for preliminary injunction comes too late to make a difference to voters in the Affected Communities, but just in time to disrupt the important work of the Division on the eve of the general election.[52]

Finally, the Party's arguments perversely incentivize the Division to designate fewer absentee voting officials and provide less information about their hours to avoid potentially disruptive lawsuits like this one. Designating absentee voting officials is entirely discretionary, and if designating an absentee voting official comes with the threat that the Division will have to guarantee the full performance of every absentee voting official it designates, the Division will have a significant disincentive to designate any. Making absentee in person voting as widely available as possible is in

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[52] The Party's various demands for the Division and its Director to prepare and present evidence on Monday would only further harm the Division and the public interest in an orderly election. The Court has not ordered the Division to produce anything or set an evidentiary hearing. And the issue before the Court is the relief described in the Party's proposed order granting a temporary restraining order. The Division will not be prepared to respond to the Party's demands for evidence barring further order from the Court.

the interests of the Division and the public, and the Party's short-sighted effort to make absentee in person voting available for one day in five communities is detrimental to the broader, long-term availability of absentee in person voting across the state.

E. The Party is not likely to succeed on the merits of its claims.

In addition to being too late to have any meaningful impact in the Affected Communities, the Party's claims are not likely to succeed on the merits. For that reason, the motion for a preliminary injunction should also be denied. The Party's statutory argument fails because the Director has the discretion designate absentee voting officials, and is only required to provide them with materials once designated. The statute does not require the Director to police or guarantee their operation.[53] As to the Party's Article V, Section 1 claim, although there is a constitutional right to vote absentee, there is simply no constitutional right to vote absentee *in person*, and the (alleged) inability to do so does not unconstitutionally burden Alaskans' right to vote.

i. The Director has not violated any statutory duty.

The Party's argument invites an outcome that neither the Party, Division, nor voters want. According to the Party, if the Division makes efforts to expand access to absentee in person voting in rural Alaska pursuant to AS 15.20.045, anything short of perfect execution constitutes a constitutional violation. That cannot be.

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[53] AS 15.20.045(a) ("The director or election supervisor may designate persons to act as absentee voting officials …in areas where election supervisors do not have offices.") *See also Dansereau v. Ulmer*, 903 P.2d 555, 572 (Alaska 1995) (Division's decision to close absentee voting station and designate absentee voting officials instead was discretionary).

Under Alaska law, the Director "may" in her discretion designate absentee voting officials and "may" designate the locations at which those officials operate.[54] The only mandatory requirement is that, once the Director has designated an absentee voting official, she "supply each absentee voting official with appropriate ballots" fifteen days before the election.[55] That is all. Additionally, the Division indicates on its website that the availability of absentee voting officials is "subject to change."[56] The Division is also authorized to provide voters information through "any means of communication permitted to be used in giving notice of the date and time of the general election,"[57] and in a manner "reasonably calculated to give actual knowledge of the election to the voters."[58]

The Party conflates the obligation to supply the official with ballots to an obligation to supply the *official* to voters.[59] Nothing in AS 15.20.045 requires the Director to do anything after designating an absentee voting official other than to supply that official with appropriate ballots. That the Director "shall provide general administrative supervision over the conduct of absentee voting" does not, as the Party claims, "make the Director responsible" for forcing every absentee voting official to be

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54 AS 15.20.045(a).

55 *Id.*

56 *See* https://www.elections.alaska.gov/avo/

57 AS 15.20.050.

58 AS 15.15.070.

59 Plaintiff's Motion for Preliminary Injunction at 20, 21.

present and available during the exact days and times agreed upon.[60] That would be impossible, and an unreasonable interpretation of the statute. Taking the Party's argument to the extreme, the Director would violate her statutory duty every time an absentee voting official calls out sick or cannot operate in the designated location because of weather, plumbing problems, or any other issue that may arise.

Moreover, the Party ignores law establishing that the Director can open and close absentee voting stations in her discretion, even when done at the "last minute."[61] In *Dansereau v. Ulmer*, the Alaska Supreme Court considered an election contest for malconduct based, in part, on allegations that the Division's "last minute" opening of an absentee in person voting station in Prudhoe Bay resulted in an "unreasonable" two to three hour-long wait.[62] There, the Division decided to close the absentee voting station before the August primary, but reversed course the day before the election and reopened it on election day.[63] In holding that the there was no election malconduct, the Court relied upon the fact that the "Director of Elections *was not required* to reopen the absentee voting station" and that there were no allegations that "any voter was unable to obtain, complete, or return absentee ballots by mail before the election."[64]

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60 *Id.*

61 *Dansereau*, 903 P.2d at 572.

62 *Id.*

63 *Id.*

64 *Id.*

Although this case concerns absentee voting *officials* not *stations*, the same principle applies. Alaska Statute 15.20.045 governs both absentee voting officials and absentee voting stations. Section (b) regarding absentee voting stations is actually *more* directive than section (a) regarding officials: "The director may designate …locations at which absentee voting stations will be operated on or after the 15th day before an election up to and including the date of the election." In contrast, as noted above, section (a) regarding designation of absentee voting officials does not have any mandatory language regarding their operation, saying only: "At least 15 days before the election the director shall supply each absentee voting official with appropriate ballots." However, the Alaska Supreme Court in *Dansereau* did not consider even (b) mandatory for all fifteen days before the election, and considered the length of its operation discretionary. The Court found no election malconduct even though the station operated for only one day, the day of the election.[65]

The statute gives the Division discretion to designate absentee voting officials, and does not require the Division to guarantee their performance after designation.[66]

ii. There is no constitutional right to vote absentee in person.

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[65] *Id.* ("In the context of an absentee voting station and under the facts presented by both parties, the good-faith operation of the Prudhoe Bay station is not malconduct.").

[66] The Party's Verified Complaint also asserts that lack of absentee in person voting in five of the Affected Communities constitutes a violation of the *Toyukak* settlement agreement, although the Party does not raise it in the motion for preliminary injunction. But plaintiffs' counsel does not represent the *Toyukak* class and cannot assert that claim, and that is a federal case over which this Court has no jurisdiction. But, regardless, the five communities identified by the Party are all confirmed to have an absentee voting official available on Monday.

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The Alaska Constitution guarantees the right of every voter to vote absentee.[67] It does not guarantee the right to vote absentee in person. If it did, the Party could and would have brought this lawsuit on behalf of communities in which the Division has not designated an absentee voting official at all. While the Division makes every effort to make voting easily accessible to every eligible Alaskan, the Division does not violate that right by not making every possible method of voting available to every single voter.[68]

Alaskans do have a constitutional right to "cast their ballots and thus participate in the selection of those who control their government [which] is one of the fundamental prerogatives of citizenship."[69] To evaluate if the right to vote has been impermissibly burdened the Alaska Supreme Court applies a four-part balancing test: First, is the asserted right constitutionally protected?[70] If so, what is the burden to the right?[71] Then the Court weighs the State's interests in the burden imposed by its rule.[72] Lastly, it

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67 Alaska Const. Art. 5, § 3 ("Methods of voting, including absentee voting, shall be prescribed by law.").

68 Federal courts also recognize this principle. "In short . . . that the fundamental right to vote means the ability to cast a ballot, but not the right to do so in a voter's preferred manner, such as by mail." *Tully v. Okeson*, 977 F.3d 608, 613 (7th Cir. 2020) (summarizing the Supreme Court's jurisprudence regarding preferred manner of voting).

69 *State v. Arctic Vill. Council*, 495 P.3d 313, 321 (Alaska 2021).

70 *Id.* (citing *O'Callaghan v. State*, 914 P.2d 1250, 1254 (1996) (quoting *Burdick v. Takushi*, 504 U.S. 428, 434, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992)).

71 *Id.*

72 *Id.*

judges the fit between the burden imposed and the State's interests.[73] "Substantial burdens require compelling State interests narrowly tailored to minimally infringe on the right; modest or minimal burdens require only that the law is reasonable, non-discriminatory, and advances 'important regulatory interests'."[74]

The Party fails at the first step. It asserts no violation of a constitutionally protected right, despite broadly framing it as one. The right the Party actually asserts is much narrower: a voter's right to vote absentee in person, at the location and during the days and hours the absentee voting official told the Division they would be present and that the Division noticed on its website "subject to change." But Alaska does not recognize a constitutional right to absentee in person voting, much less at a specific place, day, and time. That the Division *may*—but is not required—to designate an absentee voting official under AS 15.20.045 supports this position. Because the right at issue is not constitutionally protected, this Court can and should end its inquiry here.

Even continuing the test, though, the Party is still unlikely to succeed. Voters in impacted communities have access to multiple other methods of voting. First, voters could request an absentee by-mail ballot through October 24, six days after absentee in person voting began.[75] In those locations that Party alleges did not timely open, voters who intended to vote absentee in person but had difficulty doing so had a six-day

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73 *Id.*

74 *Id.*

75 AS 15.20.081(b); Election Calendar - Division of Elections (identifying October 24 as the deadline to receive absentee by-mail applications).

window to request a by-mail absentee ballot. And voters still have until 5pm tomorrow to request an absentee ballot by electronic transmission.[76] Lastly, in all but two of the eighteen communities the Party has identified, voters have the opportunity to vote in person at their local polling place on Election Day.[77] In short, any burden on the right to vote of not having an absentee voting official available in the communities the Party has identified is minimal.

The Division's justifications are significant: with the logistically difficult job of administering elections across Alaska, it does its best to balance maximizing voting opportunities against limited resources and leveraging willing community members to assist. And the burden to the Division of perfectly enforcing every community member's performance completely misaligns that balance. If the Division was required to police every absentee voting official's attendance and performance, that would siphon time and resources from the Division's other important administration tasks across the state. Practically speaking, the Division's ability to ensure perfect performance by absentee voting officials is impossible.

To the extent the Party relies on *Arctic Village* to support its contention that the Division has impermissibly burdened nonspecific voters' right to vote, that case is

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[76] AS 15.20.081(b); Election Calendar - Division of Elections (identifying November 2 as the deadline to receive electronic transmission absentee ballot applications).

[77] Those locations are Newhalen and Nanwalek, both of which confirmed the availability an absentee voting official on Monday (and in Nanwalek also on Tuesday). Polling Place Locations - Division of Elections

entirely distinguishable.[78] There, the court found that enforcing the witness signature requirement on absentee ballots during the Covid-19 pandemic would place a substantial burden on the right to vote absentee.[79] But absentee voting is a constitutional right, and the evidence presented by the plaintiffs established that actual (identified and named) individuals—Clark and Jones—had to choose between their safety during a pandemic and exercising their right to vote.[80] That was because there is no means to vote absentee without in person contact: to vote an absentee ballot by mail, a voter must have a witness sign the ballot; and to vote absentee in person, a voter must interact with an absentee voting official. So the Court concluded that voters like Clark and Jones were left with no means to vote absentee, as required by the Alaska Constitution.

That is not the case here. The speculative voters the Party suggests—but does not establish, name, or verify—that might be burdened by the lack of an absentee voting official in their community have other means of voting absentee available to them, including absentee voting by mail.[81] "[T]he fit between the challenged legislation and the [S]tate's interests," then, is more than justified. This Court should reject the Party's argument for a new and novel constitutional voting right, especially one that only

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78 *Arctic Vill. Council*, 495 P.3d at 322.

79 *Id.*

80 *Id.*

81 Nowhere in the Party's complaint or motion-work does the Party identify an *actual* voter who has been unable to vote due to lack of an absentee voting official.

springs into being when the Director exercises her discretion to designate an absentee voting official.

V. CONCLUSION

For these reasons, the Court should deny the plaintiffs' motion for temporary restraining order and preliminary injunction. If this Court orders the parties to confer in good faith today, Sunday, November 1, the Division will willingly participate.

DATED November 1, 2026.

RACHEL WITTY
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CERTIFICATE OF SERVICE

I certify that on November 1, 2026, true and correct copies of the **Opposition to Plaintiff's Motion for a Preliminary Injunction** were served on the following via the TrueFiling system:

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