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

ALASKANS FOR MARY, Plaintiff, vs. NANCY DAHLSTROM, in her official capacity as Lieutenant Governor for the State of Alaska and CAROL BEECHER, in her official capacity as Director of the Alaska Division of Elections and the ALASKA DIVISION OF ELECTIONS, Defendants.	Case No. 3AN-26-10304CI

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DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT

The plaintiff, Alaskans for Mary ("the campaign"), demands that the Division of Elections publicize private information about absentee voters' ballots before that information is confirmed and before the voters themselves are notified. But the Public Records Act does not require the Division to retain or produce this provisional, preliminary information, which does not even exist in the requested form. And the information implicates voters' constitutional right to privacy because many people would not want the world to know that they may have made a mistake in absentee voting.

Although the campaign wants to do "quality control" of the ballot review process, it already has view-only access to all the information it needs while observing

the absentee review board. The campaign does not explain why it needs to take voters' information outside of that confidential environment or how its outside investigation could possibly inform the review process. The Division has protected the privacy of absentee voters for years, and the Court should not order it to change its practice (and divert its limited resources) midway through this crucial phase of the general election.

I. Background

A. The Public Records Act

Alaska Statute 40.25.110 *et seq.*, the Public Records Act (PRA), defines "public records" as:

> books, papers, files, accounts, writings, including drafts and memorializations of conversations, and other items, regardless of format or physical characteristics, that are developed or received by a public agency, or by a private contractor for a public agency, and that are preserved for their informational value or as evidence of the organization or operation of the public agency.[1]

Public records "are open to inspection by the public under reasonable rules during regular office hours."[2] Regulations adopted under the PRA further provide that "a request to a public agency for a public record must be in writing,"[3] although agencies have discretion to accept oral requests if they wish.[4] "A requester's only remedy if the oral request is denied is to make a written request in accordance with" the regulations.[5]

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1 AS 40.25.220(3).

2 AS 40.25.110.

3 2 AAC 96.310(a).

4 2 AAC 96.310(c).

5 *Id.*

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The PRA regulations provide public agencies with ten working days to respond to a public records request either by providing the records or by advising the requester if the records may not be disclosed and providing the authority supporting nondisclosure.[6] Under 2 AAC 96.325(d), an agency may extend the initial ten-working-day response period by up to an additional ten working days when certain circumstances are present, including when "the basic response period comes during a peak workload period"[7] or when "there is a need to consult with legal counsel to ensure that protected interests of private or government persons or entities are not infringed."[8]

The PRA regulations also provide that an agency need not "compile or summarize its public records" or "manipulate its data to create new records in response to a request for public records."[9]

B. Absentee voting

Alaska voters have a right to vote absentee and may do so for "any reason."[10] To vote absentee by mail, a voter must apply for an absentee ballot from the Division in advance.[11] The voter is then mailed a ballot, a secrecy sleeve, a return envelope, and

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6 2 AAC 96.325(a).

7 2 AAC 96.325(d)(4).

8 2 AAC 96.325(d)(5).

9 2 AAC 96.210(b), (c).

10 Alaska Const. Art. 5, § 3; AS 15.20.081(a).

11 AS 15.20.081(a).

an instruction sheet.[12] The voter marks the ballot, places it in the secrecy sleeve, and completes the certificate on the return envelope in the presence of a witness.

A voter must complete three verification requirements on the absentee ballot envelope. First, the voter must sign the certificate.[13] The voter's signature does not need to match any other signatures the Division has on file.[14] Second, the voter must "provide proof of identification,"[15] by writing down one of the following identifiers: their voter identification number, the last four digits of their social security number, their date of birth, or their Alaska driver's license number.[16] Third, the voter must have the voter's signature witnessed by an official or anyone over 18 years old.[17]

When the voter signs the certificate on the absentee ballot envelope, they are certifying under penalty of perjury that the statements on the ballot envelope are true. Specifically, the voter must certify "that the voter is a qualified voter in all respects," and that "the affiant properly executed the marking of the ballot and gave the voter's identity," i.e. that the voter—and no one else—voted the ballot.[18] Alaska Statute

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12 AS 15.20.030.

13 AS 15.20.081(d); AS 15.20.203(b).

14 6 AAC 25.550 (providing a voter's signature may be "any . . . mark intended as a signature").

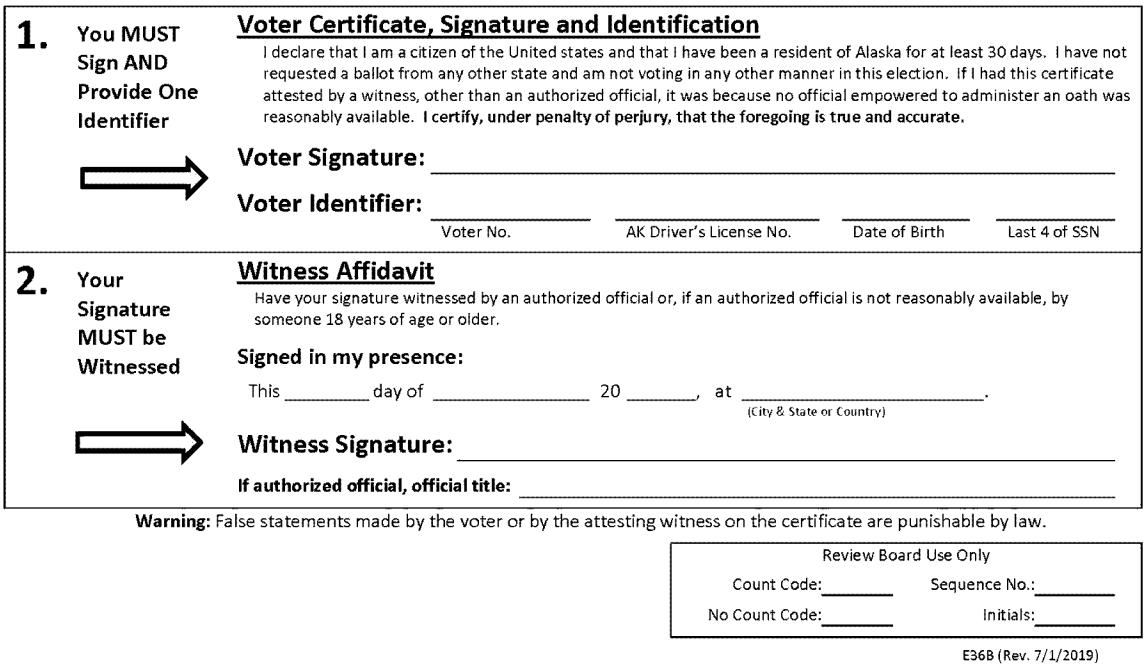
15 AS 15.20.081(f); AS 15.20.030 ("The voter's certificate shall include . . . a certification that the affiant properly executed the marking of the ballot and gave the voter's identity . . . .").

16 6 AAC 25.510(b).

17 AS 15.20.081(d); AS 15.20.066(b).

18 AS 15.20.030.

15.20.203(b) provides that an "absentee ballot may not be counted if . . . the voter has failed to properly execute the certificate" or have it witnessed. Below is an image of the certificate as it appears on the absentee ballot envelope:



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

Voter Certificate, Signature and Identification

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

Voter Signature: _____

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

2. **Your Signature MUST be Witnessed**

Witness Affidavit

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

Signed in my presence:

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

Witness Signature: _____

If authorized official, official title: _____

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

Review Board Use Only

Count Code:_____ Sequence No.:_____

No Count Code:_____ Initials:_____

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Absentee ballots must also be marked—meaning, voted—and returned or postmarked on or before Election Day.[19] If the postmark on the envelope is missing or illegible, the Division looks at the date of the witness signature on the envelope, and accepts the ballot as timely as long as it was witnessed on or before Election Day.[20] Mailed ballots must be received by the Division within ten days after an election or 15 days after a general or special election if mailed from overseas.[21]

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19 AS 15.20.081(e).

20 6 AAC 25.560.

21 AS 15.20.081(e), (h).

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Absentee ballots from voters who do not correctly complete the verification requirements on the envelope or whose ballots arrive too late do not count.

C. Absentee ballot review

When the Division receives an absentee ballot, staff log it in the voter registration database (VREMS), review the certificate on the envelope, and make an "initial determination to accept or reject it," without opening the envelope.[22] For example, staff may give a ballot a preliminary count code of "A" if the ballot is likely to be accepted and votes in all races counted; "Y" if the ballot is likely to be rejected because a witness signature is missing; or "2" if the ballot is likely to be rejected because the identifying number the voter provided does not match the identifiers in the voter's record.[23]

Then, at least seven days before Election Day, the absentee ballot review boards begin their review of absentee ballots that the Division has received.[24] These review boards are bipartisan and meet in each of the Division's five regional offices.[25] The review boards work in teams of two, examining each absentee ballot envelope (without opening it) to determine if the voter is qualified (for example, is registered to

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22 Alaska's Election Process at 4, https://www.elections.alaska.gov/doc/info/Alaska's%20Election%20Process%201.25.2022.pdf.

23 Affidavit of Michaela Thompson, Exhibit A, Absentee Review Board Manual at 5.

24 *See* AS 15.20.190 (describing the make-up and duties of the Absentee Review Board).

25 Thompson Aff., Ex. A at 7.

vote in the correct district) and complied with the certificate requirements on the envelope (for example, signed the envelope and provided an identifier).[26] The review process is detailed in the Absentee Review Board Manual which is being provided to the Court.[27] Whenever an absentee review board meets, candidates may have representatives present to observe and challenge the board's determination to accept or reject a ballot.[28]

The Division produces five reports relevant to the absentee review process:

1. **Absentee Register**. This report lists all the voters who have applied for an absentee ballot and the dates their ballots were received.[29] It includes the voter's name, party affiliation, mailing address, and voter registration status.[30] The Division sends the Absentee Register twice a week to anyone who requests it.[31] It does not include accept or reject codes.[32]
2. **Absentee Review Board Report Details** (referred to here and in the Division's affidavit as the "details report"). The absentee review board uses

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26 *Id.* at 8; AS 15.20.203(a).

27 Thompson Aff., Ex. A.

28 AS 15.20.203(c).

29 AS 15.20.180; 6 AAC 25.040(b) (explaining that when an absentee ballot is received "the name of the voter [is] recorded in the absentee register for that district's ballots)

30 Thompson Aff., Ex. C, Public Absentee Voter Register Report (Nov. 5, 2026).

31 Thompson Aff. at ¶ 19; 6 AAC 25.040(b) ("The [absentee] register may be reviewed by interested persons at any time during the election process at the regional elections offices").

32 Thompson Aff., Ex. C.

this details report as a working document to review ballots. It includes voters' names, confidential information such as social security numbers and confidential residence addresses, as well as accept or reject codes (i.e., codes indicating that a voter's ballot may be accepted or rejected, and why).[33]

3. **Absentee Review Board Report Details, observer version.** At the start of each absentee review board meeting, the Division provides observers with a printed copy of the observer version of the details report.[34] This version excludes some confidential information like voters' social security numbers but still includes confidential residence addresses as well as private voter information like reject codes.[35]

4. **Absentee Ballot Audit Report.** At the end of each absentee review board meeting, the board produces an audit report that compares the number of

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[33] Thompson Aff. at ¶ 7, Ex. A at 9; Alaska's Election Process at 5 https://www.elections.alaska.gov/doc/info/Alaska's%20Election%20Process%201.25.2022.pdf.

[34] Thompson Aff. at ¶ 7, Ex. A at 12.; Alaska's Election Process at 5 https://www.elections.alaska.gov/doc/info/Alaska's%20Election%20Process%201.25.2022.pdf. The Election Observer Handbook provided by the campaign mistakenly refers to the public details report as the "Absentee Register." Plaintiff's Exhibit 1; Thompson Aff. ¶ 21.

[35] Thomson Aff. at ¶ 7. Voters may elect to keep their residence addresses confidential under AS 15.07.195(b).

ballots reviewed to the total number of accept or reject codes, to ensure accuracy.[36]

5. **Combined Report.** Every day ballots are reviewed, the Division publishes a report on its website that lists the number of absentee ballots currently marked as accepted, partially accepted, and rejected in each house district.[37]

During an absentee review board meeting, observers may challenge a ballot using a ballot challenge form if they have "good reason to suspect" that the voter is not qualified (for example, is under 18), is disqualified (for example, has committed a disqualifying felony), or has already voted, or if the voter has not satisfied the requirements on the ballot envelope.[38] In deciding whether to challenge the voter's qualifications or the board's initial accept or reject decision, observers may use the observer version of the details report, their view of the ballot envelopes under review, and the identifiers read aloud by the review board members.[39] The Division Director rules on each challenged ballot, which is segregated for the remainder of the counting

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[36] Thomson Aff., Ex. A at 8–9; Alaska's Election Process at 5 https://www.elections.alaska.gov/doc/info/Alaska's%20Election%20Process%201.25.2022.pdf.

[37] Combined Ballot Count Report, Nov. 8, 2026, 11:09:37 AM, https://www.elections.alaska.gov/wp-content/uploads/2026/11/11.8.2026_ComboReportRAll.html.

[38] AS 15.20.203(c).

[39] Thompson Aff., Ex. A at 13.

process and any recount or litigation.[40] All challenged absentee ballots are reviewed and reconsidered during any recount or litigation.[41]

At the end of each absentee review board meeting, the Division collects the day's details reports from the board and the observers and discards them.[42] The Division does not retain these details reports for any reason.[43] The Division could not recreate a details report from a particular prior day because the information is updated in VREMS during the review process, and VREMS is the source for subsequent reports.[44] Each day's details reports are superseded by the subsequent details reports and by the final details report that is created at the end of the absentee review board process on November 18.[45]

After the absentee review board process concludes, the State Review Board begins its review of all ballots, including absentee ballots.[46] The State Review Board can decide whether to accept or reject an absentee ballot; it is the final word on

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40 Alaska's Election Process at 5 https://www.elections.alaska.gov/doc/info/Alaska's%20Election%20Process%201.25.2022.pdf.

41 *Id.*

42 Thompson Aff. at ¶ 12.

43 *Id.*

44 *Id.* at ¶ 13.

45 *Id.* at ¶ 13–16; AS 15.20.201(c); *see* AS 15.20.203 (describing the process of reviewing absentee ballots).

46 Alaska's Election Process at 8 https://www.elections.alaska.gov/doc/info/Alaska's%20Election%20Process%201.25.2022.pdf; AS 15.20.220.

whether any given ballot will be accepted or rejected.[47] No absentee ballot is accepted or rejected until the completion of the State Review Board.[48] The Division certifies the results of the election after the State Review Board finishes its review, about three weeks after the election.[49]

State law does not provide for the Division to contemporaneously notify voters whose absentee ballots will be rejected. Nor does state law provide voters an opportunity to "cure" their absentee ballots, meaning to fix mistakes that lead to ballot rejection (such as forgetting to sign the absentee ballot envelope).[50] Instead, the Division privately notifies voters if their ballots were rejected well after the results of the election are certified.[51] The Division mails a notice to every absentee voter whose ballot was rejected.[52] This notice explains which requirement the voter did not meet, such as the voter signature requirement, the identifier requirement, or the witness signature requirement.[53] The Division must mail this notice within ten days after

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47 The decision of the State Review Board may, however, be overruled in a recount or through judicial review.

48 Thompson Aff. at ¶ 16.

49 AS 15.15.450.

50 Order Denying Plaintiffs' Motion for Summary Judgment and Granting Defendants' Cross-Motion for Summary Judgment, *Arctic Village Council v. Beecher*, 3AN-22-07766 CI (Jan. 24, 2025), https://www.elections.alaska.gov/wp-content/uploads/2025/02/Arctic-Village-Council-et-al-v.-Gail-Fenumai-2025-Ruling.pdf.

51 AS 15.20.203(i)-(j).

52 AS 15.20.203(h).

53 AS 15.20.203(h).

certification for a primary election and 60 days after certification for a general or special election.[54] The Division must also provide this information "through a free access system" available to the voters on its website.[55] The Division must provide this information to voters through its website "not less than"—meaning not until—ten days after certification of a primary election and 30 after certification of a general or special election.[56]

D. This lawsuit

On October 27, 2026, the campaign sent the Division a request for records under the Alaska Public Records Act. The campaign sought "a copy of the Absentee Register showing the accept or reject code for each absentee ballot returned for the 2026 General Election, or any other documents sufficient to show the identities of voters whose absentee ballots for the 2026 General Election have been rejected as well as the reasons for each rejection." The campaign specified that it did not seek information made confidential by AS 15.07.195(a), such as social security numbers. Under the PRA regulations, no response to this request was due until Tuesday, November 10.[57]

On Thursday, November 5—well before the regulatory deadline—the Division received the campaign's demand for a response by that afternoon, threatening

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54 AS 15.20.203(i).

55 AS 15.20.203(j).

56 *Id.*

57 2 AAC 96.325(a).

expedited litigation. Conferring with the campaign's counsel gave the Division's counsel the impression that what the campaign actually wanted was not the Absentee Register (which it or its affiliates already receives, and which does not contain ballot accept or reject codes), but rather the Absentee Review Board Report Details that its observers use during the review process but are not allowed to keep—i.e. the list of voters who cast absentee ballots with preliminary accept or reject codes.[58] The Division declined to permit this, noting that the details reports contain confidential information and are not public records.

The campaign filed this lawsuit along with a motion for temporary restraining order and preliminary injunction on Friday, November 6. The Court held a hearing that afternoon and ordered the parties to confer on Saturday, November 7. The parties conferred but did not reach a resolution. The Division offered to provide the campaign daily reports of the total number of absentee ballots provisionally accepted and rejected, with the total numbers of each type of accept and reject codes, for each house district. The campaign rejected this offer and insisted that it needed the identities of voters whose ballots were provisionally accepted or rejected, so that the campaign could contact them.

II. Legal Standard

The parties agree that this case presents only legal questions suitable for expedited summary judgment. [Mot. at 7] The Court needs to decide whether the

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[58] Thompson Aff. at ¶ 20.

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information requested by the campaign is available in an existing "record" that meets the definition of a "public record" under AS 40.25.220(3) or, if not, whether the Public Records Act requires the Division to create the requested record.

III. Argument

The campaign's PRA request seeks an Absentee Register listing final decisions about voters' ballots, which is a record that does not exist. The campaign's motion for summary judgment seems to assert that the Division must produce daily copies of the Absentee Review Board Report Details under the PRA or, in the alternative, that the Division must specially create for the campaign a daily printout from VREMS that shows the names and mailing addresses of absentee voters whose ballots were assigned a rejection code during that day, with the relevant code included. [Mot. at 2]

Because the information the campaign requested does not currently exist in the form requested and because the campaign's alternative framing of its request asks either for a document that is not a public record under AS 40.25.220(3) or for a document that the Division would have to create solely for the purpose of providing it to the campaign, the campaign has not alleged any violation of the PRA. The Court should therefore grant summary judgment to the Division.

A. The documents the campaign requested do not exist.

The campaign requested: "A copy of the Absentee Register showing the accept or reject code for each absentee ballot returned for the 2026 General Election, or any other documents sufficient to show the identities of voters whose absentee ballots for the 2026 General Election have been rejected as well as the reasons for each

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rejection." [Mot. at 6] As noted above, the "Absentee Register" is a document that the campaign already has access to (and that does not include any accept or reject codes),[59] so the campaign must want something else. What exactly it wants is unclear: the campaign's focus varied during the parties' conferrals, at first seemingly targeting the details reports used by the boards and observers during the absentee ballot review process, and later seemingly targeting a daily report listing which voters' absentee ballots were marked as rejected. Yet the campaign declined to alter the language of its PRA request in any way, and it has moved for summary judgment on its claim that it is entitled to the specific record it described. [Mot. at 2] On its face, this is a request for records showing the Division's *final determinations* on absentee ballots voted in the 2026 General Election.

The requested records do not exist.[60] Absentee ballots are still being received and processed; absentee ballot review boards are still reviewing ballots; and whether any specific voter's absentee ballot is accepted or rejected will not be determined until after the State Review Board completes its work and the election is certified.[61] As the campaign recognizes, "The state review board makes the final determination on whether to accept or reject absentee ballots . . ." [Mot. at 5] Even then, the determination on a voter's ballot could be revisited during a recount or election contest. So no voter's absentee ballot has yet "been rejected." This means that the

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59 Thompson Aff. at ¶ 20.

60 Thompson Aff. at ¶ 16.

61 *Id.* at ¶ 15, 16.

information the campaign requests does not yet exist, much less exist in a record that would be subject to production under the Public Records Act. If the campaign wanted records of "voters whose absentee ballots have been preliminarily coded for rejection," it should have said so. [Mot. at 11] The Court should grant summary judgment to the Division because it cannot have violated the PRA by failing to produce nonexistent records.

B. The Absentee Review Board Report Detail is not a public record under the Public Records Act.

The campaign's briefing suggests that what they actually want is something different from what they requested. [Mot. at 2] Each day during the absentee ballot review, the Division generates a list of absentee ballots that will be reviewed during the upcoming review session. This is called the "Absentee Review Board Report Detail" (here, the "details report" for short). These daily details reports contain voters' names, residential addresses, and preliminary ballot count codes.[62] These documents are not public records under AS 40.25.220(3) because (1) they contain confidential information and (2) they are ephemeral working documents that are not meant for preservation.

First, the details reports contain confidential voter information. The campaign incorrectly claims that "Alaska law . . . treats the status of a voter's ballot and the reasons for its rejection as public information by allowing observers appointed by candidates and parties to attend absentee ballot review board meetings." [Mot. at 11

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62 Thompson Aff. at ¶ 7.

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citing AS 15.10.170(a)] On the contrary, the law only provides unrestricted public access to the Absentee Register—which does not include ballot accept or reject codes—and does not provide observers unrestricted access to voters' identities and the reasons why their ballots are accepted or rejected.[63]

The Division takes steps to ensure that although observers have access to information about the status of voters' absentee ballots, they treat it as confidential. Observers of the absentee ballot review process are not just members of the general public; instead they must be appointed by the parties, candidates, or groups organized for or against an initiative, and they must show proof of appointment to be allowed to observe the review process.[64] Observers sign a confidentiality agreement acknowledging that materials used in the review of absentee ballots "contain information in which voters have a privacy interest," and that such information "including the name of a voter whose ballot has been rejected, and the reason for the rejection, should not be revealed."[65]

Second, the Division does not retain each day's details report once the ballots have been reviewed and VREMS updated. The decisions of the board are marked on the absentee ballot envelopes and recorded in VREMS and the day's outdated details

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63 6 AAC 25.040(b) ("The [absentee] register may be reviewed by interested persons at any time during the election process at the regional elections offices.").

64 *See* AS 15.10.170(a).

65 Thompson Aff., Ex. B.

report is discarded.[66] The Division does not preserve these details reports because by the end of the session, they are out of date. The entire purpose of the absentee ballot review board's work is to check the codes assigned to each ballot to ensure that they are correct, so the information in VREMS gets updated as each ballot is reviewed. As the absentee review board works the list becomes an inaccurate relic that the Division does not preserve.

The definition of a public record has two parts. The first describes the kinds of documents and the creators who fall within the scope of the definition: "books, papers, files, accounts, writings, including drafts and memorializations of conversations, and other items, regardless of format or physical characteristics, that are developed or received by a public agency, or by a private contractor for a public agency."[67] The second part limits the overall scope of the definition: "*and* that are preserved for their informational value or as evidence of the organization or operation of the public agency."[68] That is, only documents "*that are preserved*" in the normal course of a public agency's operations are public records. The Alaska Supreme Court has interpreted this to include records that "are appropriate for preservation," not just records that are actually preserved.[69] But the campaign has not explained why the Division should be preserving these outdated, daily working lists that it no longer

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66 Thompson Aff. at ¶ 12.

67 AS 40.25.220(3).

68 *Id*. (emphasis added).

69 *McLeod v. Parnell*, 286 P.3d 509, 514 (Alaska 2012).

needs. The Alaska Supreme Court recognizes that "each state agency has the best understanding of the preservation value of its own documents."[70] The Division does not keep the daily details reports and, to the knowledge of current Division employees, no one has previously suggested that they should be preserved or asked to remove them from the counting locations.[71]

Because the Division does not retain each day's Absentee Ballot Review Report Detail, it is not a public record subject to inspection under the PRA, and the Court should hold that the Division has not violated the PRA by refusing to produce the daily reports.

C. The Division is not required to create a daily list of voter names and rejection codes or any other new record for the campaign.

The campaign has also suggested that it would accept an end-of-day list showing the names of voters whose absentee ballots were reviewed that day and assigned a rejection code, including mailing addresses for those voters and the assigned codes. But the Division does not create such a list as part of the absentee ballot counting review process. The PRA does not require the Division to create this nonexistent document, and the Court should not require the Division to perform this service for a political campaign.

At the November 6 initial hearing, the campaign stressed its desire to access "granular data" in real time to convey back to its campaign headquarters for the

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70 *Id.*

71 Thompson Aff. at ¶ 17.

purpose of developing and coordinating its strategy. Nothing in the PRA requires the Division to expend its limited resources during the ballot counting process creating new records or inventing real-time reporting mechanisms to assist with a political campaign's strategy.

The PRA does not require the Division to make new records at the campaign's request. Under the PRA regulations, the Division need not "compile or summarize its public records" or "manipulate its data to create new records in response to a request for public records."[72] Yet that is exactly what the campaign demands by seeking a daily report from VREMS that compiles the accept or reject codes for every voter whose absentee ballot was reviewed that day. The Division cannot be required to manipulate its voter data to create a new record for the campaign.

Producing a list from VREMS with the data specifically requested by the campaign would constitute an "electronic service or product," which AS 40.25.220(1)(A) defines to include "electronic manipulation of the data contained in public records in order to tailor the data to the person's request or to develop a product that meets the person's request." Alaska Statute 40.25.115(a) provides that "a public agency *may* provide electronic services and products involving public records to

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72 2 AAC 96.210(b), (c).

members of the public."[73] But it also cautions that "[t]he activities authorized under this section *may not take priority over the primary responsibilities of a public agency*."[74] Thus, the Division is *not required* by law to run searches of its voter database to produce the lists the campaign wants; and it most certainly is not required to do so while it is otherwise engaged full time in trying to process and count ballots as quickly as it can. Indeed, given the limitations of VREMS, the Division is not even capable of producing the requested report.[75]

2 AAC 96.330 is not to the contrary. This regulation directs an agency not to disclose a record if non-public information cannot be segregated[76] or to delete the non-public information or "write a program to extract the disclosable information."[77] But the Division does not have the time to redact confidential information from the details reports nor does the agency have the internal capability to "write a program to extract the . . . information" the campaign demands.[78] And, as explained further below, the

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73 AS 40.25.115(a) (emphasis added). Unlike AS 40.25.110, which directs that the custodian of records "*shall*" produce copies of records, .115(a) uses "may" which indicates discretion. *See, e.g.*, *Anderson v. Dep't of Administration, DMV*, 440 P.3d 217, 223 (Alaska 2019) ("[T]he term 'may' generally denotes permissive or discretionary authority.").

74 AS 40.25.115(a) (emphasis added).

75 Thompson Aff. at ¶ 10.

76 2 AAC 96.330(a).

77 2 AAC 96.330(b).

78 Thompson Aff. at ¶ 9.

information requested by the campaign includes "nondisclosable information" under Alaska law, like confidential residential addresses and accept or reject codes.

Because the law plainly does not *require* the Division to create these documents for the campaign, doing so voluntarily would likely violate the Executive Branch Ethics Act, which directs that a "public officer *may not* … use or authorize the use of state … equipment, services, or another government asset or resource for partisan political purposes."[79] Although the campaign has not explained exactly what it plans to do with the requested information, its purposes are certainly partisan.[80] This Court should not, without clear legal authority, direct the Division to divert its resources towards assisting a political campaign in the midst of an election. If the Division must create new records for the Peltola campaign, other campaigns (for instance, the Sullivan campaign that has moved to intervene in this lawsuit) would likely also want tailored reports, draining the Division's resources during a critical, extremely busy period.

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D. Even if the Division has responsive records or had to create them, they would still be protected under the Public Records Act.

The campaign suggests that voters' information is only protected by AS 15.07.195(a), which covers identifying numbers, places of birth, and signatures. But the campaign ignores the other protections incorporated in the PRA, including

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79 *See* AS 39.52.120(b)(6).

80 *See* Campaign's Memo. In Support of Mot. for TRO and PI at 7 (noting campaign's goal of "ensur[ing] that *Mary Peltola's* supporters are not unlawfully disenfranchised.").

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constitutional rights to privacy and the protection for records when the balance of the interests does not favor disclosure. Alaska Statute 40.25.120(a)(4) exempts from disclosure "records required to be kept confidential . . . by state law." The Alaska Supreme Court has recognized that this exemption includes not just "express exceptions contained in state law" but also "common law exceptions."[81] One such exception is for records that may be withheld when "the interest of the citizen in knowing what the servants of government are doing" is outweighed by "the interest of the public in having the business of government carried on efficiently and without undue interference."[82] Any record identifying voters whose absentee ballots may be rejected is protected by the constitutional rights to privacy and secret voting and by the balance of the interests.

1. Identifying voters whose ballots will be rejected would violate their privacy rights and compromise ballot secrecy.

Voters have a privacy interest in the fact that their ballots were rejected and the reasons for the rejection. The Alaska Constitution guarantees that "[s]ecrecy of voting shall be preserved."[83] It also enshrines a right to privacy that protects "sensitive personal information which if disclosed, could cause embarrassment, anxiety, humiliation, harassment, or economic and physical reprisals."[84] For instance, a

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81 *Griswold v. Homer City Council*, 428 P.3d 180, 186 (Alaska 2018).

82 *Id.*

83 AK Const. Art. 5, Sec. 2.

84 *Doe v. Dep't of Pub. Safety*, 444 P.3d 116, 127 (Alaska 2019) (citation modified).

"medical marijuana user has an interest in keeping his usage of marijuana and his medical condition private," and "a police officer has a legitimate expectation of privacy in his personnel file."[85]

Absentee ballot rejection status is similarly sensitive personal information.[86] A voter who has made a mistake in the process of absentee voting (for instance, forgetting to sign the envelope or forgetting to put the ballot inside) might legitimately fear "embarrassment, anxiety, humiliation, [or] harassment" if that mistake were made public. This fear is especially legitimate here, where the campaign stated it *will* contact voters, even though it acknowledges the Division's concern that they may "become upset" by a campaign using their private information for partisan purposes. [Mot. at 12] Although which voters voted absentee is public (and non-sensitive) information, the public does not need to know which absentee voters did not successfully complete the process. The Division thus informs only the affected voters of their mistakes, not the public.

Not only might voters feel embarrassed if their mistakes were made public, but modern political campaigns routinely integrate and analyze multiple data sources to draw inferences about individual voters. Campaigns maintain extensive voter databases that combine public voter-registration records with commercially acquired

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85 *Id.*

86 *See e.g.*, *DeNardo v. ABC Inc. RVs Motorhomes*, 51 P.3d 919, 928 (Alaska 2002) (defining "sensitive personal information" as information "which, if disclosed even to a friend, could cause embarrassment or anxiety.").

consumer data, demographic information, contact information, online identifiers, voting history, and predictive modeling to create detailed profiles of individual voters.[87] Campaigns may use these databases not only to identify who has voted, requested an absentee ballot, or returned an absentee ballot, but also to predict voters' likely political preferences, responsiveness to specific messages, and behavior.[88]

This sophisticated data mining can create a privacy risk that election administration researchers have referred to as "vote revelation," whereby otherwise anonymous ballot information can be linked to identifiable voters through the combination of voter-file data and granular election administration records.[89] The research explains that when election data are disclosed in increasingly small reporting units—particularly those defined by characteristics such as precinct, ballot style, voting method, or other administrative identifiers—the risk increases that observers can infer how specific individuals voted.[90] This means that requiring the Division to fulfill the campaign's request could facilitate linkage of otherwise anonymous voting information and undermine the confidentiality that the secret ballot is intended to protect.[91]

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87 *See* Elizabeth Culliford, *How Political Campaigns Use Your Data: What Campaigns Know About U.S. Voters and How They Use It to Shape Their Strategies*, Reuters (Oct. 12, 2020).

88 *Id.*

89 *See* Shiro Kuriwaki, Jeffrey B. Lewis & Michael Morse, *Privacy Violations in Election Results*, 11 *Sci. Advances* eadt1512 (2025).

90 *Id.*

91 *Id.*

2. The certain harm to the interests of the Division and voters far outweigh the campaign's uncertain interest in the identities of voters whose absentee ballots will be rejected.

While the campaign has offered shifting explanations for its interest in the names of voters and their absentee ballots' accept or reject codes, the interests of the Division and voters will be immediately and irreparably harmed by disclosing this information.

In its motion for summary judgment, the campaign asserts that "[b]y accessing records documenting voter names and ballot rejection codes for their own quality-control investigation before final election certification, campaigns like Plaintiff can ensure that close races are decided accurately and fairly." [Mot. at 11] But the campaign does not explain what kind of "quality-control investigation" it envisions and why it requires taking voter information out of the review rooms. As the Court can see in reviewing the instructions in the Election Observers' Handbook, the only inputs relevant to whether a given absentee ballot should be accepted or rejected are the information in the Division's records (like voter registration data) and the marks on the absentee ballot envelopes (like signatures and identifying information). No outside research by the campaign could change those inputs. And the campaign cannot check whether the review boards are properly categorizing ballots without comparing each decision to the ballot envelope and the information on it, which is the point of the absentee ballot review process. The campaign's observers can watch the review board while it works to ensure that it doesn't make any mistakes. And in any event, it is not

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the role of campaigns to "ensure that close races are decided accurately and fairly"—that is the Division's job.

If what the campaign envisions is contacting some of the voters whose absentee ballots may be facing possible rejection, that would accomplish nothing beyond invading those voters' privacy. Voters cannot do anything at this point to fix a problem with their absentee ballots. Alaska law does not provide a process by which voters can fix mistakes such as missing signatures or missing identifying information. All the facts relevant to whether any given absentee ballot will be accepted or rejected are already contained in the review board process and viewable by the campaign's observers. The campaign does not explain what taking information out of the review room could change.

Against the unexplained benefit to the campaign stands the real and immediate harm to the voters. By law, voters receive notice that their absentee ballot was rejected, with the reason why, *after* certification of the results and up to ten days after a primary election and 60 days after a general election.[92] The intent of this statutory scheme is to provide voters the information they need to avoid making the same mistake when they vote again. That is why notice must be provided so soon after a primary and before the next general election. Because voters cannot fix their mistakes before certification, they are not notified until afterwards. This statutory scheme would be undermined if political campaigns learned voters' ballot status before the voters

[92] AS 15.20.203(h), (i).

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themselves and could use that information for partisan purposes. Indeed, if political campaigns are entitled to this information under the PRA, then so is anyone else—even if their purpose is to harass or humiliate voters. Once this information is released to the campaign, it will be available to every other campaign and requester in every other election until the law changes.

The interests of the Division also outweigh disclosure. If voters learn before Election Day from campaigns or others that their absentee ballots may not count (as would be possible if the PRA requires disclosure of this information, given that the absentee review process begins before Election Day), voters may contact the Division or attempt to cast another absentee ballot or vote in person to try to fix their mistake. This would complicate and delay the administration of the election. Even if voters were only informed after Election Day, but before certification, that would still add complication and delay. Voters would likely still contact the Division and the campaign's "quality control" measures would likely delay absentee ballot review.

Any order directing the Division to alter its reports would also burden the Division during the final weeks of ballot counting. The Absentee Review Board Report Details includes voter residential addresses, some of which are confidential under AS 15.07.195(b).[93] The only way to identify which addresses are confidential

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[93] Alaska Statute 15.05.195(b)(1) through (3) permit the disclosure of otherwise confidential residential addresses only to watchers, observers, and the subjects of recalls, but not to campaigns, and not for any purpose, including the partisan purpose contemplated by the campaign here.

and redact them would be to review each voter's record in VREMS.[94] This task would take hours of staff time away from counting ballots and publishing results on time.[95] The campaign now specifies that it "does not request residential information," but has demanded more than just the names of voters and their accept or reject codes. [Mot. at 12]

The Division cannot create new reports to the campaign's specifications. As explained above, doing so is not required by the PRA or its regulations, could violate the Ethics Act, and would also be impossible to accomplish before certification of this election. VREMS is not a modern database that allows the Division to run custom reports. Creating reports with specific fields requires a third-party vendor, months of work, and tens of thousands of dollars.[96] The Division cannot produce such a report while finalizing this election and without risk to the security of VREMS.[97]

Although transparency is important to maintain public confidence in elections, there is a meaningful distinction between observation (which campaigns may do) and elections administration (which campaigns may not do). Permitting campaigns to receive real-time reports from inside absentee ballot review board proceedings and take immediate action risks shifting the balance from transparency toward active influence over the administration of the election. Over time, this could transform

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94 Thompson Aff. at ¶ 8.

95 Thompson Aff. at ¶ 9.

96 *Id.* at ¶ 10.

97 *Id.*

observation rights into a mechanism for strategic intervention, increasing pressure on election officials and threatening the public perception that ballot review boards operate independently and free from partisan influence. The PRA and the Division's absentee ballot review procedures should therefore be applied in a manner that informs the public and interested parties without creating opportunities for real-time interference by campaigns.

IV. Conclusion

For these reasons, the Court should deny the campaign's motion for summary judgment and grant the Division's cross-motion for summary judgment.

DATED: November 9, 2026.

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

Alaskans for Mary, Plaintiff, v. Nancy Dahlstrom, in her official capacity as Lt. Governor for the State of Alaska, Carol Beecher, in her official capacity as Director of the Division of Elections, and the Alaska Division of Elections, Defendants.	)	Case No. 3AN-26-10304 CI

CERTIFICATE OF SERVICE

I certify that on November 9, 2026, true and correct copies of the **Motion for Summary Judgment, Affidavit of Michaela Thompson, Exhibits A-C,** and this **Certificate of Service** were served on the following via email through Truefiling system:

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