

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

THE ALASKA CENTER EDUCATION
FUND, ALASKA PUBLIC INTEREST
RESEARCH GROUP, and FLOYD
TOMKINS,

Plaintiffs,

v.

GAIL FENUMIAI, in her official capacity as
the Director of the Alaska Division of
Elections, KEVIN MEYER, in his official
capacity as the Lieutenant Governor of Alaska;
and THE STATE OF ALASKA, DIVISION
OF ELECTIONS,

Defendants.

Case No. 3AN-20- 0835 CI

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs the Alaska Center Education Fund (the "Education Fund"), the Alaska Public Interest Research Group ("AKPIRG"), and Floyd Tomkins file this Complaint for Declaratory and Injunctive Relief against Defendants Gail Fenumiai, in her official capacity as the Director of the Alaska Division of Elections; Kevin Meyer, in his official capacity as the Lieutenant Governor of Alaska; and the State of Alaska, Division of Elections, and allege as follows:

NATURE OF THE CASE

1. The right to vote "is fundamental to our concept of democratic government" and "is key to participatory democracy." *Miller v. Treadwell*, 245 P.3d 867.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Alaska Center Education Fund, et al. v. Fenumiai, et al.

Case No. 3AN-20- _____ CI

Page 1

LEGAL149766190.4

868-69 (Alaska 2010) (internal quotation marks and citations omitted). With reverence to this, the Alaska Supreme Court has held that it is “reluctant to permit a wholesale disenfranchisement of qualified electors.” *Id.* As a result, when reviewing and interpreting election statutes, “where any reasonable construction of a statute can be found which will avoid such a result, the courts should and will favor it.” *Id.* (internal quotation marks and citations omitted). The Alaska Supreme Court has repeatedly declared that “the voter shall not be disenfranchised because of mere mistake, but [the voter’s] intention shall prevail.” *Id.* (alteration in original) (quoting *Edgmon v. State, Office of the Lieutenant Governor, Division of Elections*, 152 P.3d 1154, 1157 (Alaska 2007)).

2. This year, more than ever before, many tens of thousands of Alaska voters will exercise their fundamental right to the vote by mail. On Monday October 5th, the Alaska Division of Elections delivered over 81,000 mail-in ballots to the U.S. Postal Service for delivery to Alaskan voters who requested the option to vote by mail.¹ For reference, that is more than double the 31,817 Alaska voters who voted absentee in the last presidential election. The Division of Elections has created a simple process for obtaining an absentee mail-in ballot and advertised on its web site that “[a]nyone may

¹ See *Alaska elections office sends 81,681 ballots to post office for delivery*, Anchorage Daily News (October 6, 2020), <https://www.adn.com/politics/2020/10/05/its-in-the-mail-state-sends-81681-ballots/>.

request a ballot my mail. You do not need a reason!” Tragically, however, those who have requested an absentee mail-in ballot and have chosen to vote by mail will be disenfranchised under AS 15.20.203(b)(1) if they: (1) forget to sign their absentee ballot envelope (the “Voter Signature Requirement”), (2) mistakenly omit the voter identifier information on the ballot envelope that is required under 6 AAC 25.510(b), (the “Identification Number Requirement”), or (3) forget to have a witness or notary attest to their signature under AS 15.20.203(b)(2) (the “Witness Requirement”).² This is not a hypothetical outcome or concern; the Division of Elections’ own statistics show that hundreds of voters make these honest, yet easily corrected, mistakes every year. Many more will make these same mistakes this year without adequate notice of their error and the ability to correct the mistake and have their vote counted. Absent relief, Defendants

² Plaintiffs note that there is currently a separate lawsuit pending in Alaska State Court that challenges and seeks to remove the Witness Requirement for mail-in ballots during the 2020 general election due to the impacts of COVID-19 and concerns about forcing voters to leave their homes or otherwise face potential exposure to obtain a witness signature. *See Arctic Village Council et al. v. Meyer et al.*, Case No. 3AN-20-07858CI. The *Arctic Village* case challenges the Witness Requirement as it is being applied in the 2020 General Election and is seeking a very important remedy in light of the current pandemic. The State Superior Court issued an injunction eliminating the Witness Requirement for the 2020 General Election and the Division of Elections has appealed. *See Case No. S-17902*. Plaintiffs in the instant case are challenging the State’s failure to provide notice and an opportunity to correct missing voter signatures, missing voter identification numbers, and missing witness signatures (to the extent required in 2020) on a voter’s mail-in ballot envelope for this current and all future elections. As such, the two lawsuits are factually and legally distinct.

will arbitrarily disenfranchise Alaska voters by imposing a severe (yet easily correctable) burden on the fundamental right to vote and also deprive them of a protected interest without due process of law.

3. Luckily, there is a straightforward solution to ensure that no voter is unconstitutionally disenfranchised based on such understandable, simple, and inadvertent mistakes: Defendants should be required to provide an opportunity for voters to correct any omissions or mistakes on their ballot envelope to ensure compliance with Alaska's Voter Signature, Identification Number, and Witness Requirements in time for their vote to be counted. This opportunity is offered by the Municipality of Anchorage during municipal elections, *see* AMC 28.70.030(D), and is likewise provided by many other states. Alaska can and must act now to similarly protect its citizens' right to vote and uphold the Alaska Constitution by also offering voters an opportunity to correct missing signatures or voter identification information on their mail-in ballot envelopes.

4. Hundreds of voters have been disenfranchised in Alaska each year since at least 2012 as a result of the Voter Signature and Witness Requirements.³ We now know

³ The Alaska Advisory Committee to the United States Commission on Civil Rights recently noted that, "it is not clear to what extent Alaska enforces a signature match requirement for voters submitting absentee ballots." Press Release, U.S. Comm'n on Civil Rights, *Alaska Advisory Committee to the U.S. Commission on Civil Rights Urges Safe and Secure Election Administration During the COVID-19 Pandemic* (Sept. 4, 2020), <https://www.usccr.gov/files/2020-09-22-AK-SAC-Statement-on-COVID-19-and-Voting-Rights.pdf>. Plaintiffs assume, based on representations by the Alaska

that the number of Alaska voters who will vote using absentee mail-in ballots for the November election has increased dramatically from past years this year. As a result, there can be little doubt that many *thousands* of additional Alaska voters will unnecessarily have their ballots rejected by the Division of Elections in the November General Election absent immediate relief from this Court.

5. Just yesterday, on Tuesday October 6th, the Division of Elections informed voters via Twitter, perhaps for the first time, that there will be no way for anyone to correct mistakes made on their mail-in ballots in the 2020 General Election. Telephone calls to the Division of Elections this week likewise resulted in voters being told that they would not be notified of errors prior to the vote totals being finalized, or have an opportunity to correct mistakes on their ballot envelope.

6. Absent relief from this Court, Alaska's Voter Signature, Identification Number, and Witness Requirements—which have always imposed an unconstitutional burden on the right to vote and deprived Alaska voters of procedural due process—will disenfranchise far more voters in the 2020 General Election than they ever have before.

Division of Elections to the United States Election Assistance Commission, that for statewide elections the Division neither checks to ensure nor requires that a ballot envelope signature match another signature that the State has on file for the voter. However, to the extent that signature matching is occurring in Alaska, Plaintiffs intend to seek leave to amend their Complaint to include similar allegations on those grounds.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Alaska Center Education Fund, et al. v. Fenumiai, et al.

Case No. 3AN-20-_____ CI

Page 5

LEGAL149766190.4

JURISDICTION AND VENUE

7. This Court has jurisdiction to award declaratory and injunctive relief under AS 22.10.020 (a, b, c & g).

8. Venue is proper in this Court under Alaska Rule of Civil Procedure 3 and AS 22.10.030 because one or more of the Defendants have offices in this District, and because one or more of Plaintiffs' claims arise in this District.

PARTIES

9. Plaintiff Alaska Center Education Fund (the "Education Fund") is a 501(c)(3) nonprofit organization under the Internal Revenue Code. It has over 90 employees and 500 volunteers working to further its vision of a thriving, just, and sustainable Alaska for future generations; and working to achieve its mission of making Alaska the best place to live by championing the health of the resources that sustain our diverse cultures and livelihoods, and the power of our people to participate in the decisions that impact our communities. It also has approximately 8,000 members, comprised of individuals living in 142 villages, towns, and cities. One priority issue for the Education Fund is to encourage civic engagement among all Alaskans, based on the belief that the more Alaskans who get involved in the decisions affecting our home, the better our future will be for everyone. Increasing the number of Alaskans whose votes are counted is therefore at the core of the Education Fund's strategy to promote a strong and healthy democracy. It accomplishes this mission in several ways, including but not

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Alaska Center Education Fund, et al. v. Fenumiai, et al.

Case No. 3AN-20-_____ CI

Page 6

LEGAL149766190.4

limited to helping register eligible Alaska voters, encouraging all Alaskans to participate in our democracy, providing civic engagement education, and advocating for policies that protect voter rights. That Alaska voters can and will be disenfranchised under the Voter Signature, Identification Number, or Witness Requirements without any opportunity to cure inadvertent errors hurts not only the Education Fund's mission of increasing civic engagement and participation in our democracy, but also the fundamental rights of the Education Fund's members, many of whom will be voting by mail for the first time in the upcoming election—and some of whom will be voting for the first time ever—and are therefore at markedly increased risk for making a mistake or omission like forgetting to sign their ballot envelope.

10. Plaintiff Alaska Public Interest Research Group ("AKPIRG") is a 501(c)(3) nonprofit organization under the Internal Revenue Code. It was founded in 1974 by a small group of Alaskans with the common goal of protecting consumers from certain big business practices and ensuring the government is working for public, rather than private interests. Over the last 45 years, AKPIRG has worked to address interests across the State of Alaska and expanded its focus to include a host of issues complementary to its founding goal of protecting consumers and the public interest, including preventing identity theft and fraud, promoting an ethical government, pursuing accountability in regulatory processes, protecting voting rights, and generally pursuing

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Alaska Center Education Fund, et al. v. Fenuniat, et al.

Case No. 3AN-20-_____ CI

Page 7

LEGAL149766190.4

policies that give ordinary Alaskans a voice that can be heard. AKPIRG now has over 8,000 members. AKPIRG believes that one of the best ways for Alaskans to participate in our democracy and have their voices heard is through the ballot box. However, AKPIRG's mission of fostering civic engagement among its members and supporters is undermined by the lack of a cure opportunity to ensure compliance with the Voter Signature, Identification Number, and Witness Requirements, which results in hundreds of Alaska voters being disenfranchised each year. AKPIRG brings suit now because this year, unlike ever before, thousands of Alaska voters are likely to be disenfranchised because of the surge in absentee voting in Alaska due to the COVID-19 pandemic. It is a near statistical certainty that among these tens of thousands of voters will be some of AKPIRG's over 8,000 members and constituents, unless this Court orders Defendants to provide voters with notice of such a mistake or omission on their ballot and a reasonable opportunity to cure it before absentee ballot totals must be finalized. Besides the burdens that the lack of a cure period imposes on AKPIRG's members and constituents, it also directly harms AKPIRG as an organization by undermining its mission of promoting voting rights and making sure that every Alaskan has a voice and the opportunity to engage with our government.

11. Plaintiff Floyd Tomkins is a registered Alaska voter who is 69 years old and resides in Sitka. Mr. Tomkins moved to Alaska in 1987 and has endeavored to vote

in every Alaska election since then, including primary elections. In the August 2020 primary election, he and his wife Connie Kreiss applied to vote by mail due to the COVID-19 pandemic. They both received mail ballots, filled out their choices, and signed their ballots in the presence of one another, so that they could each serve as each other's witness. They then submitted their ballots through the U.S. Postal Service. However, Mr. Tomkins later received a letter in the mail, dated September 9, long after the primary election results had been finalized, from the Alaska Division of Elections, Office of the Lieutenant Governor, informing him that "the review board was unable to count your ballot because your ballot voter certificate was not properly witnessed." If Mr. Tomkins had been informed about the alleged missing witness signature before the votes were finalized, he would have attempted to correct the omission if a process had been available to him, to ensure that his vote would count. Because he was not afforded *meaningful* notice and an opportunity to cure, he was disenfranchised.

12. Defendant Gail Fenumiai is the Director of the Alaska Division of Elections, and she is sued in her official capacity only. Under AS 15.15.010, Fenumiai is the chief elections official for the State and is responsible for the "general administrative supervision over the conduct of state elections, and may adopt regulations under AS 44.62 (Administrative Procedure Act) necessary for the administration of state elections." AS 15.15.010. She is responsible for the supervision of regional election offices and all

matters related to the employment and training of election personnel. AS 15.10.105(a).

13. Defendant Kevin Meyer is the Lieutenant Governor of Alaska, and he is sued in his official capacity only. He is responsible for the control and supervision of the Alaska Division of Elections, including the appointment of the Director of the Alaska Division of Elections. *Id.*

14. Defendant the State of Alaska, Division of Elections is an executive branch agency responsible for the administration of Alaska's elections and enforcement of Alaska's election laws.

FACTUAL ALLEGATIONS

A. Alaska's Voter Signature, Identification Number, and Witness Requirements.

15. The Voter Signature Requirement mandates that "an absentee ballot may not be counted if . . . the voter has failed to properly execute the certificate." AS 15.20.203(b)(1); 6 AAC 25.580(8) (Rejection of by-mail ballot).

16. Alaska's absentee ballot Voter Certificate further requires that Alaska Voters satisfy the Identification Number Requirement, which mandates that, to be counted, a voter must include under their signature either their voter number, Alaska Driver's License number, date of birth, or the last four digits of their Social Security Number. *See* 6 AAC 25.510(b); 6 AAC 25.580(7).

17. Similarly, the Witness Requirement provides that an absentee ballot must

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Alaska Center Education Fund, et al. v. Fenumiai, et al.

Case No. 3AN-20-_____ CI

Page 10

LEGAL149766190.4

be rejected if “an official or the witnesses authorized by law to attest the voter’s certificate fail to execute the certificate.” AS 15.20.203(b)(2); *see also* 6 AAC 25.570 (Witnessing absentee by-mail ballot); 6 AAC 25.580(9) (Rejection of by-mail ballot).

18. Compliance with the Voter Signature, Identification Number, and Witness Requirements are all required to in order for the Absentee Ballot Review Board to conclude that the certificate on the oath and affidavit envelope is properly executed. *See* 6 AAC 25.550 (“An absentee voter voting by mail must execute the certificate on the oath and affidavit envelope. To be properly executed, the certificate must include the voter’s signature and the signature of an official witness or signature of one individual 18 years of age or older attesting the ballot as required by AS 15.20.081(d).”). The Division of Elections recently stated that if these requirements are not met, the absentee ballot will be automatically rejected, the absentee ballot return envelope will never be opened, and the voter will be disenfranchised.

19. For any ballot rejected under the Voter Signature, Identification Number, or Witness Requirements, the Director must “prepare and mail to each absentee voter whose absentee ballot was rejected under this section a summary of the reason that the challenge to the absentee ballot was upheld and the absentee ballot was rejected.”⁴ AS

⁴ While the automatic rejection of a absentee ballots under AS 15.20.203(b)(1) or (b)(2) is distinguishable from a “challenge” to an absentee ballot made by a member of the public during the absentee ballot canvass under AS 15.20.203(c), upon information and

15.20.203(h). This notification must occur not later than “60 days after certification of the results of a general election” AS 15.20.203(i)(2).

20. Likewise, the Division of Elections must “make available through a free access system to each absentee voter a system to check to see whether the voter’s ballot was counted and, if not counted, the reason why the ballot was not counted” within “10 days after certification of the results for a primary election” and “30 days after the certification of results of a general election.” AS 15.20.203(j).

21. The notice required by AS 15.20.203(i) and (j) is virtually meaningless, however, because it is sent too late for any voter to correct their ballot and have their voted counted. By the time they receive the current notice, they have already been disenfranchised.

22. The Alaska Statutes neither prohibit nor explicitly provide for a cure period to correct any absentee ballot that is submitted without a voter signature or witness attestation.

B. The Alaska Election Calendar

23. There is ample time between election day and when the election must be certified during which a notice and cure opportunity could be provided to voters.

belief, Defendants interpret their notice obligation under AS 15.20.203(h) to include any ballots automatically rejected under the Voter Signature, Identification Number, and Witness Requirements, as well.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Alaska Center Education Fund, et al. v. Fenumiai, et al.

Case No. 3AN-20-_____ CI

Page 12

LEGAL149766190.4

24. AS 15.20.201(a) provides that “[n]o less than seven days preceding the day of election, the election supervisor, in the presence and with the assistance of the district absentee ballot counting board, shall review all voter certificates of absentee ballots received by that date.”

25. The district absentee ballot counting board then has until “the 15th day following the day of the election” to “certify the absentee ballot review.” AS 15.20.201(c).

26. Many absentee mail-in ballots will likely be received well in advance of the voting deadline since the Division of Elections is already mailing ballots to voters now.⁵ And there is no clear reason why those voters could not be notified as soon as their ballots are flagged for rejection under the Voter Signature, Identification Number, and Witness Requirements in time for them to avoid disenfranchisement. Identifying these mistakes on the ballot envelope is straight-forward and does not require the ballot to be opened.

C. The Voter Signature, Identification Number, and Witness Requirements are not justified by any state interest.

27. The Voter Signature, Identification Number, and Witness Requirements.

⁵ See *Alaska elections office sends 81,681 ballots to post office for delivery*, Anchorage Daily News (October 6, 2020), <https://www.adn.com/politics/2020/10/05/its-in-the-mail-state-sends-81681-ballots/>.

absent notice to the voter and an opportunity to cure, cannot be justified by any State interests.

28. The Alaska post-election calendar as prescribed by statute provides ample time in which the State may provide voters with adequate notice and an opportunity to cure.

29. Domestic absentee ballots postmarked by Election Day are counted if they are postmarked by election day and received by the 10th day after the election, which is November 13 for the 2020 General Election. AS 15.20.081(e).

30. As noted above, district absentee ballot counting boards can begin reviewing voter certificates on absentee ballot envelopes seven days *before* election day, AS 15.20.201(a), and are not required to certify the absentee ballot results until the 15th day after a general election, which will fall on November 18 for the 2020 General Election. AS 15.20.201(c).

31. As a result, there are as many as 22 days during which the district absentee ballot counting review board can review ballot envelopes and ensure their compliance with the Voter Signature, Identification Number, and Witness Requirements. And there is at least a 5-day window in which voters who cast the last few timely absentee ballots (that is, ballots postmarked by election day and received by the 10th day after the election) can be provided notice and an opportunity to cure.

32. The State has many convenient, low cost, and effective notice and cure options available—including emailing voters, calling voters, and even immediately mailing written notices where no other contact details are available—that would allow voters to verbally, electronically, or send by mail any missing information through various options. As previously noted, the Municipality of Anchorage and many other jurisdictions successfully implement notice and cure provisions.

D. The Voter Signature, Identification Number, and Witness Requirements have disenfranchised hundreds of eligible Alaska voters in past elections and will likely do so again in November.

33. Since the 2012 General Election, Alaska election officials have rejected more than 586 absentee ballots based on a missing signature, and more than 1,240 ballots based on a missing witness signature or notarization, according to the Election Administration and Voting Survey (“EAVS”).⁶

34. The stage is set for this problem to increase drastically in the 2020 General Election because there will be more inexperienced and first-time absentee mail-in voters than ever before. Studies show that inexperienced voters are far more likely to have their absentee ballots rejected based on error or omission.⁷

⁶ It is unclear based on EAVS data how many ballots have been rejected in prior years for failing to comply with the Identification Number Requirement, specifically.

⁷ See Anna Baringer, Michael C. Herron, and Daniel A. Smith, *Voting by Mail and Ballot Rejection: Lessons from Florida for Elections in the Age of the Coronavirus*, 19 Election

35. In the 2020 Primary, over 62,000 Alaskans requested absentee ballots, which the Anchorage Daily News reported as “setting a record for all elections, not just the primary.”⁸ For example, only 31,817 Alaskans voted absentee in the 2016 General Election. Notably, only 22% of Alaska’s registered voters participated in the 2020 primary; presidential elections typically have a 63% turnout.⁹ As stated above, over 81,000 mail-in ballots were sent to voters on Monday for the 2020 General Election.

36. Other states’ experiences in administering elections during the pandemic are also instructive as to the increase in absentee voting that has occurred in response to it. For example, in the Spring 2020 Election and Presidential Preference Primary in Wisconsin, which occurred this past April 7, around 71% of ballots were cast absentee.¹⁰ In Wisconsin’s previous Presidential Preference Primary, which took place on April 5,

Law Journal 289, 312 (Sept. 17, 2020), <https://www.liebertpub.com/doi/full/10.1089/elj.2020.0658> (“A surge of inexperienced [vote-by-mail] voters, particularly in what is expected to be a high-turnout election, may lead to an increase in the number of signature-related errors in November 2020.”).

⁸ James Brooks, *More than 1,200 Absentee Ballots Were Rejected in Alaska’s Primary. Civil Rights Groups are Asking for a Fix*, Anchorage Daily News (Sept. 2, 2020), <https://www.adn.com/politics/2020/09/02/more-than-1200-absentee-ballots-were-rejected-in-the-primary-civil-rights-groups-are-asking-for-a-fix/>.

⁹ *Id.*

¹⁰ Miles Parks, *In The End, The Voters Responded: Surprising Takeaways From Wisconsin’s Election*, NPR (Apr. 15, 2020), <https://www.npr.org/2020/04/15/834037566/in-the-end-the-votersresponded-surprising-takeaways-from-wisconsin-s-election>.

2016, the corresponding figure was only 10%.¹¹ In Nebraska, the May 12, 2020 primary saw nearly 400,000 absentee ballots cast, which easily surpassed the state's previous absentee turnout record of around 70,000 ballots.¹² This represents a dramatic increase in the percentage of votes cast absentee: 21% of ballots cast in 2016 Nebraska primary were absentee, as compared to 84% in the 2020 primary.¹³ In Kentucky's June 23 primary, around 73% of ballots cast were absentee, as compared to only 3% of ballots in Kentucky's 2016 primary.¹⁴ And in New York, there were roughly 115,000 absentee ballots cast in the state's 2016 primary; that number increased exponentially to roughly 1.7 million requested absentee ballots in the June 23, 2020 primary.¹⁵

37. Accordingly, absent relief from this Court, there can be little doubt that thousands of Alaska voters will be disenfranchised in the 2020 General Election—many more than ever before—due to the surge in popularity of absentee mail-in voting.

¹¹ *Id.*

¹² Grant Schulte, *Nebraska primary voters avoid polls, shatter mail-in record*, AP News (May 12, 2020), <https://apnews.com/75d78b971c7002fbff032e6421e72e11>.

¹³ Nathaniel Rakich, *There Have Been 38 Statewide Elections During The Pandemic. Here's How They Went*, FiveThirtyEight (Aug. 3, 2020), <https://fivethirtyeight.com/features/there-have-been-38-statewide-elections-during-the-pandemic-heres-how-they-went/>.

¹⁴ *Id.*

¹⁵ Lissandra Villa, *After a Chaotic Primary, New York Scrambles to Reset for the 2020 Election*, Time (Aug. 1, 2020), <https://time.com/5874571/new-york-state-general-election/>.

CLAIMS FOR RELIEF

COUNT I

**Undue Burden on the Right to Vote
Alaska Const., Art. V, § 1**

38. Plaintiffs reallege and incorporate by reference paragraphs 1 through 37, as though fully set forth herein.

39. Article V, Section I of the Alaska Constitution guarantees the right to vote to “[e]very citizen of the United States who is at least eighteen years of age” and “who meets registration residency requirements which may be prescribed by law.”

40. Where the constitutionally protected right to vote is challenged, Alaska courts “assess the character and magnitude of the asserted injury to the right[]” and weigh that against “the precise interests put forward by the State as justifications for the burden imposed by its rule.” *State, Div. of Elections v. Green Party of Alaska*, 118 P.3d 1054, 1061 (Alaska 2005) (quotation marks and citations omitted). Alaska courts then “judge the fit between the challenged legislation and the state’s interests in order to determine the extent to which those interests make it necessary to burden the plaintiff’s rights.” *Id.* (quotation marks and citations omitted). “This is a flexible test: as the burden on constitutionally protected rights becomes more severe, the government interest must be more compelling and the fit between the challenged legislation and the state’s interest must be closer.” *Id.*

41. Here, the Voter Signature, Identification Number, and Witness

Requirements impose a severe burden—outright disenfranchisement—on the right to vote for voters who forget to sign or get a witness to sign, or are unable to safely do so, particularly due to the global pandemic.

42. Rejecting absentee ballots based solely on a missing signature from either a voter or witness, or a missing identification number, without an opportunity to cure, does not serve any compelling state interest, particularly when (i) the State can otherwise verify a voter's eligibility to vote; (ii) State laws are already in place to detect and deter fraud; and (iii) there is ample time to provide notice and an opportunity to cure, and (iv) election results are not finalized during the requested cure period and will not be delayed. Thus, the burdens imposed by the Voter Signature, Identification Number, and Witness Requirements on the fundamental right to vote cannot be justified by any alleged benefits of the laws.

43. Many Alaska voters will suffer direct and irreparable injury if Defendants refuse to allow them an opportunity to cure the rejection of their mail ballot due a missing signature from either the voter or a witness or a missing identification number. Without relief from this Court, thousands of Alaska voters will be deprived of their right to vote in the 2020 General Election, as have been hundreds of voters in past recent elections.

COUNT II
Deprivation of Procedural Due Process
Alaska Const., Art. I, § 7

44. Plaintiffs reallege and incorporate by reference paragraphs 1 through 43, as though fully set forth herein.

45. Article V, Section I of the Alaska Constitution provides that “[n]o person shall be deprived of life, liberty, or property without due process of law.”

46. The Alaska Supreme Court has held that “the Alaska Constitution’s due process clause must be flexibly applied by balancing three factors: the private interest affected by the official action; the risk of an erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government’s interest, including the fiscal and administrative burdens that additional or substitute procedural requirements would entail.” *Laidlaw Transit, Inc. v. Anchorage Sch. Dist.*, 118 P.3d 1018, 1026 (Alaska 2005) (quotation marks and citation omitted).

47. This standard is identical to the federal standard set forth by the U.S. Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). See *Midgett v. Cook Inlet Pre-Trial Facility*, 53 P.3d 1105, 1111 (Alaska 2002) (adopting test articulated in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

48. Because Alaska law allows fundamental voting rights to be exercised by mail, there is a constitutionally protected liberty interest in mail voting that Defendants

may not deprive without adequate procedures. The nature of the private interest at stake in this case—the right to vote and to have that vote count—is the most critical liberty interest of all because it is preservative of all other basic civil and political rights.

49. Alaska's current Voter Signature, Identification Number, and Witness Requirements violate the Alaska Constitution's Due Process Clause by rejecting voters' mail-in absentee ballots (and depriving them of their right to vote) without providing adequate notice of easily correctable mistakes, an opportunity to cure, or any meaningful appeal. Alaska voters will continue to suffer unlawful disenfranchisement under the Voter Signature, Identification Number, and Witness Requirements absent relief by this Court.

50. Additional procedural safeguards for missing signatures and identification information—namely, providing adequate notice and an opportunity to cure ballots with such defects—would provide a meaningful safeguard to protect against that deprivation.

51. Providing that safeguard would impose no more than a minimal burden on the State, if any. Moreover, any cure process would promote the State's interest in ensuring that eligible voters are not wrongly disenfranchised and that all timely votes, whether in person or by mail, are counted. The State Division of Elections welcomes both voting methods and must provide adequate procedures to implement and protect votes cast by either.

52. Many Alaska voters will suffer direct and irreparable injury if Defendants refuse to provide an opportunity to cure the rejection of mail-in ballots that are missing a required signature or identification number. Without relief from this Court, these voters will be deprived of their right to vote in the 2020 General Election, and beyond.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

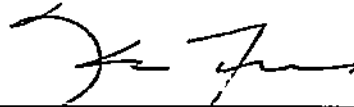
- a) Declaring that Defendants must provide voters with notice and a meaningful opportunity to cure missing voter signatures, voter identifiers, or witness signatures as part of the Alaska's Voter Signature, Identification Number, and Witness Signatures Requirements for mail-in absentee ballots, and declaring that failure to provide such notice and opportunity to cure violates Article I, Section 7 and Article V, Section 1 of the Alaska Constitution;
- b) preliminarily and permanently enjoining Defendants, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from implementing, enforcing, or giving any effect to the Voter Signature, Identification Number, or Witness Requirements without also providing some process by which voters will be notified and provided an opportunity to cure their mail-in absentee ballots prior to the deadline for certifying votes after a general election;
- c) awarding Plaintiffs their costs, expenses, and reasonable attorneys' fees;

and

- d) granting such other and further relief as the Court deems just and proper.

DATED: October 7, 2020.

PERKINS COIE LLP



Kevin R. Feldis, Alaska Bar No. 9711060

KFeldis@perkinscoie.com

Sarah L. Schirack, Alaska Bar No. 1505075

SSchirack@perkinscoie.com

PERKINS COIE LLP

1029 West Third Avenue, Suite 300

Anchorage, AK 99501-1981

Telephone: 907.279.8561

Facsimile: 907.276.3108

Alexi M. Velez, *Pro Hac Vice Pending*

AVelez@perkinscoie.com

PERKINS COIE LLP

700 Thirteenth Street, N.W., Suite 800

Washington, D.C. 20005-3960

Telephone: 202.654.6200

Facsimile: 202.654.6211

Alexi Velez, *Pro Hac Vice Pending*

AVelez@perkinscoie.com

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2020,
a true and correct copy of the foregoing document
was served via U.S. mail on the following:

Kevin Meyer
Lieutenant Governor
Office of the Governor
PO Box 110015
Juneau, AK 99811-0015

Division of Elections
PO Box 110017
Juneau, AK 99811-0017

Gail Fenumiai
Division Director
Office of the Governor
Election Office Juneau
PO Box 110017
Juneau, AK 99811-0017

Courtesy Copy:
Joann Grace
Alaska Department of Law
Civil Division
1031 W. 4th Ave., Ste. 200
Anchorage, AK 99501

Courtesy Copy:
Clyde "Ed" Sniffen
Deputy Attorney General
Alaska Department of Law
Civil Division
PO Box 110300
Juneau, AK 99811-0300

Samantha Beardox