

anc.law.ecf@alaska.gov

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

ARCTIC VILLAGE COUNCIL,)
LEAGUE OF WOMEN VOTERS OF)
ALASKA, ELIZABETH L. JONES, and)
BARBARA CLARK,)

Plaintiffs,)

v.)

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

Defendants.)

**FILED in the TRIAL COURTS
STATE OF ALASKA, THIRD DISTRICT**

SEP 10 2020

Clerk of the Trial Courts

By _____ Deputy

Case No.: 3AN-20-07858 CI

**#2 PARTIAL OPPOSITION TO PLAINTIFF'S MOTION
FOR EXPEDITED CONSIDERATION**

The defendants partially oppose the plaintiffs' motion for expedited consideration because although they recognize that the impending election necessitates an expedited schedule for election-related litigation, the plaintiffs have not explained why their extremely expedited proposed schedule is necessary to protect their interests.

The plaintiffs challenge a longstanding Alaska statute, AS 15.20.081(d), which requires that an absentee ballot be supported by an attestation by a notary, authorized official, or if neither is available, an individual over the age of 18. They argue that in the context of the COVID-19 pandemic, this statute now places an unconstitutional burden on the right to vote in violation of the Alaska Constitution, Art. I, section 1 and

Art. V, section 1. But contrary to the plaintiffs' contentions, the defendants cannot simply ignore state law and instruct Alaskan voters to do the same. The defendants lack the authority to decide not to enforce a valid state statute, and they disagree that the pandemic renders otherwise valid measures of election security constitutionally suspect.

The plaintiffs ask the Court to set their preferred super-expedited briefing schedule for their preliminary injunction motion, under which the defendants would need to file their opposition by next Tuesday, September 15, the plaintiffs would reply by noon on September 18, and the court would hear oral arguments the following week. The defendants instead request a deadline for their opposition of Monday, September 20, 2020, with the plaintiffs' reply due either Friday, September 24 or Monday, September 27. The Court could then schedule a hearing on the motion for either later in the week of September 27 or sometime the following week. The defendants' proposed schedule accommodates the need to hear this case on an expedited timeline while still allowing the State sufficient time to address and explain the legal and administrative issues confronting the State's elections officials as they oversee the upcoming election.

Critically, the plaintiffs' motion does not explain why their proposed schedule is necessary to protect their interests. And they fail to provide any reason why the State is not entitled to an additional five days to brief issues the plaintiffs themselves have had months to address. Instead, plaintiffs' counsel states only that "we believe the Plaintiffs' motion of preliminary injunction must be heard by the court prior to September 30th, ... because the Division of Elections started [sic] mailing absentee ballots for the

November 3rd general election on September 19, 2020, to Alaska residents in the military, living overseas, traveling out of state, or living, working or traveling in remote parts of the state, and will mail ballots on October 9, 2020 to all other residents.”

[Affidavit of Natalie Landreth at ¶ 3] But even if September 30 were a significant date—the plaintiffs do not explain that date’s significance—the defendants’ proposed schedule will also allow the court to hear this matter before September 30. Nor does the fact that ballots for military and overseas voters must be mailed out no later than September 19—45 days before the general election—support the plaintiffs’ requested deadlines, because the plaintiffs’ deadlines also do not allow for a decision from the Court before September 19; nor would expecting a decision before that date be realistic.

Neither the court nor the State should be held to a briefing schedule that is untethered to any actual need, and which fails to allow for full development of the record required for the court to meaningfully review this matter. The defendants need the time requested to gather the necessary factual information for this Court to make an informed decision on the requested preliminary injunction. The plaintiffs’ case rests entirely on their factual claim that it is impossible for voters who live alone to comply with the absentee ballot witness requirement or vote safely in person without risking contracting COVID-19, forcing them to choose between their health and their vote. The defendants are entitled to sufficient time to create a factual record refuting this claim and explain why the court should decline the plaintiffs’ invitation to lightly invalidate a lawfully enacted elections statute weeks before an election.

Because the plaintiffs have failed to articulate a meaningful reason for their haste

in challenging a longstanding state statute, the State asks this Court to deny their proposed schedule and instead enter the briefing schedule proposed by the State. A proposed order accompanies this opposition.

DATED September 10, 2020.

CLYDE "ED" SNIFFEN, JR.
ACTING ATTORNEY GENERAL

By:



Margaret Paton Walsh
Assistant Attorney General
Alaska Bar No. 0411074

Lael Harrison
Assistant Attorney General
Alaska Bar No. 0811093

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100