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Attorneys for Intervenors/Cross-Appellants

IN THE SUPREME COURT OF THE STATE OF ALASKA

KATHRYN DODGE,

Appellant/Cross-Appellee,

v.

LT. GOVERNOR KEVIN MEYER, in his  
official capacity as Lt. Governor for the  
State of Alaska, and JOSEPHINE  
BAHNKE, in her official capacity as  
Director of the Division of Elections,

Appellees,

v.

BARTON LEBON and the ALASKA  
REPUBLICAN PARTY,

Intervenors/Cross-Appellants.

Supreme Court No.: S-17301/17311

**INTERVENOR'S HEARING BRIEF**

Intervenors Barton LeBon and the Alaska Republican Party, by and through  
their attorneys, Holmes Weddle & Barcott, P.C., hereby submit their brief for the  
December 20, 2018 evidentiary hearing in the above-captioned recount appeal.

INTERVENOR'S HEARING BRIEF  
*Dodge v. Meyer, et. al.*

Page 1 of 19  
Supreme Ct No.: S-17301

## I. FACTUAL BACKGROUND

In the general election of November 6, 2018 (hereinafter, “election”), Appellant/Cross-Appellee Kathryn Dodge (“Dodge”) and Intervenor/Cross-Appellant Barton LeBon (“LeBon”) vied for the seat to represent District 1 in the State House of Representatives (“HD1”). Following the initial count and review, the State Review Board (“SRB”) conducted a review of every ballot from HD1<sup>1</sup> to verify the precinct reports with the election materials returned. During the SRB’s review, the ballots from each precinct were individually inspected and hand counted to confirm the vote tabulations, to ensure that each voted ballot was counted accurately, and to inspect each ballot to determine voter intent. The SRB’s review included the following: (1) inspection and hand count of each ballot; (2) hand count of all ballot stubs and ballot envelopes; (3) inspection and hand count of all signatures on each precinct’s voter register; (4) review of each voter’s voter history report; (5) review of each precinct’s AccuVote card generated on election night; and (6) inspection and hand count of all questioned ballots returned.

After a comprehensive multi-day review, the results of the election were certified by the Director of the Division of Elections (“Director”) on November 26, 2018. The official election summaries were printed and signed by all members of the

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<sup>1</sup> The SRB members were convened to review all ballots cast in the 2018 general election. For purposes of this Motion and the underlying Appeal, only the review of HD1 is discussed herein.

SRB pursuant to their oath. The official results certified a tie between candidates Dodge and LeBon for the seat in HD1 with a count of 2,661 votes cast each.

As the HD1 race was certified as a tie, pursuant to Alaska law, a recount was conducted on November 30, 2018 ("Recount"). At that time, the ballots cast for HD1 were recounted by SRB members under the supervision of the Division Director, with assistance from the regional directors for Anchorage and Fairbanks and Division staff. The SRB members reviewed and recounted the HD1 ballots, via the Division's central optical scanners, to verify the votes cast and counted for each candidate in each precinct. One precinct was selected at random for a verifying hand count following the scan count of each precinct.

During the course of the Recount, representatives for Dodge and LeBon observed and lodged their respective challenges to ballots. The Division Director issued a decision on each challenge, determining at Recount what ballots, parts of ballots, or marks for candidates on ballots were valid, and to which candidate each vote should be attributed. Representatives for both candidates challenged multiple ballots.

In the course of the Recount, the Division Director determined that three votes had been improperly rejected, resulting in two additional votes for LeBon and one additional vote for Dodge. As a result of such determinations, after the Recount, the final vote tabulation for HD1 was 2,663 to 2,662, with LeBon leading by a one-vote margin.

After the Recount, the Director certified the election results premised on the Recount totals, with LeBon as the prevailing candidate of the HD1 race by one vote.

With her application to the Alaska Supreme Court for an AS 15.20.510 recount appeal (“Appeal”), Dodge seeks: (1) judicial review of the November 30, 2018, Recount concerning ballots cast for the HD1 election; (2) to contest the certification of the results of the Recount by the Division Director; and (3) to modify the action of the Division Director in determining at Recount what ballots, parts of ballots, or marks for candidates on ballots are valid, and to which candidate a vote should be attributed.

Dodge alleges multiple errors at Recount, including: (1) one regular ballot rejected as an over-vote due to non-compliant voter markings on the face of the ballot; (2) two absentee ballots accepted despite alleged underlying residency issues for such voters; and (3) one absentee ballot rejected due to underlying residency issues for such voter. Accordingly, Dodge petitioned for judicial review regarding whether or not the Division Director properly determined what ballots, parts of ballots, or marks for candidates on ballots are valid, and to which candidate each vote should be attributed.

On December 7, 2018, Intervenors and Cross-Appellants moved to intervene, granted December 10, 2018, due to their interest in the subject matter of this Appeal (i.e., the outcome of the election), and serious need to participate to protect such interest. Thereafter, at the direction of the Supreme Court, LeBon and ARP filed a cross-appeal (“Cross-Appeal”) for the purpose of identifying additional ballot challenges for judicial review in this action. LeBon and ARP allege additional errors

at Recount for contemporaneous consideration with the errors identified by Dodge, including: (1) one regular ballot accepted despite non-compliant voter markings on the face of the ballot which should have constituted an over-vote; (2) two absentee ballots rejected due to underlying issues with the voter identification numbers, despite substantial compliance; and (3) two regular ballots rejected as blank due to non-compliant voter markings, despite voter intent being readily apparent from the face of the ballot. However, LeBon and ARP maintain that such errors do not disturb the election results and that the Division's Director acted properly in certifying the same. Accordingly, the Cross-Appeal requests that the actions at Recount be upheld, and the Division Director's certification of the election results pursuant to the Recount be affirmed.

The Supreme Court appointed Superior Court Judge Eric A. Aarseth as discovery master to hear evidence and consider the questions raised by the parties' respective statements of points on appeal. The Court has further directed Judge Aarseth to provide a report of his findings of fact and conclusions of law with respect to those questions. Accordingly, Judge Aarseth issued an order on December 10, 2018 setting (1) a schedule for the parties to submit briefing related to all of the legal issues and challenges on the ballots identified by the parties, and (2) an evidentiary hearing pursuant to the same on December 20, 2018.

## II. LEGAL AUTHORITY AND ANALYSIS

### a. Legal standards for recount appeal and standard of review.

Appellant Dodge filed an AS 15.20.510 recount appeal. Such appeal involves direct appellate jurisdiction, original to the Supreme Court.<sup>2</sup> The Court will “exercise its independent judgment when interpreting statutes which do not implicate an agency’s special expertise or determination of fundamental policies.”<sup>3</sup>

Whether specific votes or classes of votes were correctly counted or rejected are questions of law, which shall be reviewed *de novo*, “adopting the rule of law most persuasive in light of precedent, reason, and policy.”<sup>4</sup> Underlying factual findings and determinations are reviewed for clear error, which “exists when [the Court’s] review of the record leaves [it] with the definite and firm conviction that” a mistake was made.<sup>5</sup>

The scope of review pursuant to a recount appeal is set forth by statute.<sup>6</sup> The Court is empowered to review the Division Director’s decisions at recount, and the inquiry extends to whether specific votes or classes of votes were correctly counted or rejected.<sup>7</sup> The purpose is for the appellate court to review the decisions of the Director

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<sup>2</sup> *Cissna v. Stout*, 931 P.2d 363 (Alaska 1996); *Nageak v. Mallott*, 426 P.3d 930 (2018).

<sup>3</sup> *Id.*

<sup>4</sup> *Nageak*, 426 P.3d at 940 (citing *Comsult LLC v. Girdwood Mining Co.*, 397 P.3d 318, 320 (Alaska 2017); *Girdwood Mining Co. v. Comsult LLC*, 329 P.3d 194, 197 (Alaska 2014)).

<sup>5</sup> *Nageak*, 426 P.3d at 940 (citing *Ranes & Shine, LLC v. MacDonald Miller Alaska, Inc.*, 355 P.3d 503, 508 (Alaska 2015); *Gilbert M. v. State*, 139 P.3d 581, 586 (Alaska 2006)).

<sup>6</sup> AS 15.20.510.

<sup>7</sup> *Cissna*, 931 P.2d at 367-71; see also *Willis v. Thomas*, 600 P.2d 1079, 1081 (Alaska 1979).

at recount regarding the counting or rejection of votes, to ensure compliance with the procedures set forth in AS 15.20.480 and pertinent Alaska election law.<sup>8</sup> An appeal may be taken by a person “who has reason to believe an error has been made in the recount” and “[t]he court shall enter judgment either setting aside, modifying, or affirming the action of the director on recount.”<sup>9</sup> On appeal, the Court is instructed to look at “whether or not the director has properly determined what ballots, parts of ballots, or marks for candidates on ballots are valid, and to which candidate or division on the question or proposition the vote should be attributed.”<sup>10</sup> Issues the Court has considered on recount appeals include “the validity of punch cards and a variety of marks on ballots, the proper procedures for absentee voting and consequences for failure to follow those procedures, and registration requirements.”<sup>11</sup> However, the basis for the recount appeal is for the court to review the Director’s determinations

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<sup>8</sup> AS 15.20.480: In conducting the recount, the director shall review all ballots, [...] to determine which ballots, or part of ballots, were properly marked and which ballots are to be counted in the recount, and shall check the accuracy of the original count, the precinct certificate, and the review. The director shall count absentee ballots received before the completion of the recount. [...] The rules in AS 15.15.360 [which details the type of marks on ballots which are valid] governing the counting of ballots shall be followed in the recount when a ballot is challenged on the basis of a question regarding the voter’s intent to vote for the candidate [...]. The ballots and other election material must remain in the custody of the director during the recount, and the highest degree of care shall be exercised to protect the ballots against alteration or mutilation.

<sup>9</sup> AS 15.20.510.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*; see *Finkelstein v. Stout*, 774 P.2d 786 (Alaska 1989) (residency, registration, absentee ballots); *Fischer v. Stout*, 741 P.2d 217 (Alaska 1987) (punch card ballots, residency, registration, absentee votes); *Hickel v. Thomas*, 588 P.2d 273 (Alaska 1978) (marks in boxes, punch card ballots); *Willis*, 600 P.2d 1079 (registration, absentee votes); *Carr v. Thomas*, 586 P.2d 622 (Alaska 1978) (punch card ballots); *Edgmon v. State, Office of Lieutenant Governor, Div. of Elections*, 152 P.3d 1154 (Alaska 2007) (the court must assess voter intent from ballot markings).

regarding the validity of ballots and ballot marks, and which ballots should be counted and for whom.<sup>12</sup>

While the recount appeal involves a review of the Director's recount decisions under AS 15.20.480, the Court itself is not limited to determining the facial validity of the ballots.<sup>13</sup> Rather, the Court has the authority to “search underlying records and election materials to ensure that a vote was cast in compliance with the requirements of Alaska's election laws.”<sup>14</sup>

Those who seek to disrupt an election result bear a heavy burden. Alaska law weighs sharply in favor of upholding election results, as “every reasonable presumption will be indulged in favor of the validity of an election.”<sup>15</sup> Accordingly, where the record is unclear or the evidence is uncertain on any point, the appellant has failed to meet their burden, and the certified election result must stand.

Here, the ballot issues identified by Appellant/Cross-Apellee Dodge were properly considered and determined by the Division Director. Further, despite the errors identified in the Cross-Appeal, the Division Director properly certified the elections results pursuant to the Recount. The election results should be affirmed.

b. Public policy interest against disenfranchising voters.

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<sup>12</sup> *Willis*, 600 P.2d at 1082; AS 15.20.510.

<sup>13</sup> *Cissna*, 931 P.2d at 367; *Willis*, 600 P.2d at 1082.

<sup>14</sup> *Id.*

<sup>15</sup> *Turkington v. City of Kachemak*, 380 P.2d 593, 595 (Alaska 1963).



The overriding principle in a recount appeal “is that the voter shall, ordinarily, have his vote recognized and the candidate be given the office to which he is elected if the votes are cast and returned under such circumstances that it can be said it represents the voice of the majority of the voters participating.”<sup>16</sup> A qualified voter has a well-established constitutional right to cast their vote, and have their vote counted. “The right of the citizen to cast his ballot and thus participate in the selection of those who control his government is one of the fundamental prerogatives of citizenship and should not be impaired or destroyed by strained statutory constructions.”<sup>17</sup>

All provisions of the election law are mandatory, if enforcement is sought before election in a direct proceeding for that purpose; but after election all should be held directory only, in support of the result, unless of a character to affect an obstruction to the free and intelligent casting of the vote or to the ascertainment of the result, or unless the provisions affect an essential element of the election, or unless it is expressly declared by the statute that the particular act is essential to the validity of an election, or that its omission shall render it void.<sup>18</sup>

Accordingly, a violation of a voting requirement does not necessarily justify rejecting a ballot cast, as the Court has recognized that election statutes are “directory” when considered post-election,

unless of a character to affect an obstruction to the free and intelligent casting of the vote or to the ascertainment of the result, or unless the provisions affect an essential element of the election, or unless it is expressly declared by the statute that the particular act is essential to the validity of an election, or that its omission shall render it void.<sup>19</sup>

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<sup>16</sup> *Carr v. Thomas*, 586 P.2d at 626.

<sup>17</sup> *Id.*

<sup>18</sup> *Finkelstein*, 774 P.2d at 790 (quoting *Willis*, 600 P.2d at 1083 n.9).

<sup>19</sup> *Carr v. Thomas*, 586 P.2d at 626.

“Even where statutory terms have been construed as mandatory, it has been held that the right to vote is a superseding mandate.”<sup>20</sup> A voter’s interest in having their vote counted, despite an error or mistake in marking or casting the same, is strong, especially where the voter is not at fault for such error or mistake. Even “[a] voter who has voted illegally has an interest in having his or her vote counted.”<sup>21</sup> “Courts are reluctant to permit a wholesale disfranchisement of qualified electors through no fault of their own” and “[w]here any reasonable construction of the statute can be found which will avoid such a result, the courts should and will favor it.”<sup>22</sup> However, “where the vote violates provisions designed to insure the integrity of the electoral process, the public has a supervening interest—that of fundamentally sound elections—which is protected by not counting illegal votes, regardless of the source of their illegality.”<sup>23</sup>

The Court has applied a clear rule when it comes to discarding votes cast: “[i]f in the interests of the purity of the ballot the vote of one not morally at fault is to be declared invalid, the Legislature must say so in clear and unmistakable terms.”<sup>24</sup> Thus, the Legislature has set forth certain issues which automatically invalidate a ballot (e.g.,

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<sup>20</sup> *Id.*

<sup>21</sup> *Finkelstein*, 774 P.2d at 791–92.

<sup>22</sup> *Carr v. Thomas*, 586 P.2d at 626; *Miller v. Treadwell*, 245 P.3d at 869.

<sup>23</sup> *Finkelstein*, 774 P.2d at 791–92.

<sup>24</sup> *Carr v. Thomas*, 586 P.2d at 626–27.

an absentee ballot may not be counted if the ballot is not postmarked on or before the date of the election).<sup>25</sup>

Given Alaska precedent, the Division has developed review and recount policies and procedures which favor of counting votes cast, not discarding them, to ensure that each valid vote is counted. The Division acted properly in certifying the election for LeBon.

c. Voter identifiers and substantial compliance.

A person may vote at any election who (1) is a citizen of the United States; (2) is 18 years of age or older; (3) has been a resident of the state and of the house district in which the person seeks to vote for at least 30 days just before the election; and (4) has registered before the election as required under AS 15.07 and is not registered to vote in another jurisdiction.<sup>26</sup>

At any election a qualified voter may vote an absentee ballot for any reason.<sup>27</sup> A qualified voter may apply in person, by mail, or by facsimile, scanning, or other electronic transmission to the director for an absentee ballot, and the application must include the address to which the absentee ballot is to be returned, the applicant's full Alaska residence address, and the applicant's signature.<sup>28</sup> Absentee ballots must be returned in a special envelope which contains an oath that the voter is a qualified voter

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<sup>25</sup> AS 15.20.203(b)(4).

<sup>26</sup> AS 15.05.010.

<sup>27</sup> AS 15.20.010.

<sup>28</sup> AS 15.20.081(a).

in all respects.<sup>29</sup> An absentee ballot may not be counted if the voter has failed to properly execute the certificate.<sup>30</sup>

Two challenges lodged by LeBon and ARP concerned absentee ballots which were rejected due to underlying issues with the voter identification numbers. These absentee ballots were cast by a husband and wife who had their ballots mailed to the same address, P.O. Box 146, Browns Valley, CA 95918-0146.<sup>31</sup> The ballots were originally rejected by the Division due to the fact that the voter identification provided on the absentee envelopes were each incorrect. However, upon review of the ballots, it is evident that the identifier for Peter M. Richardson is actually the identifier for Linda J. Gervais-Richardson, and likewise, the identifier for Linda J. Gervais-Richardson is actually the identifier for Peter M. Richardson. Of particular import is the fact that these ballots were witnessed by the same individual, on the same date of October 24, 2018 at Brownsville, California.

While the face of each ballot alone appears to lack a valid identifier, consideration of the ballots in conjunction with one another indicates the proper person voted, but made an inadvertent mistake in completing the information on the envelope. The ballots should not have been rejected due to such inadvertent mistake, particularly as when viewed together it is clear that both individuals were properly registered and

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<sup>29</sup> AS 15.20.030; *Fischer v. Stout*, 741 P.2d at 222.

<sup>30</sup> AS 15.20.203(b)(1). It is important to note that the legislature elected to use the word may versus shall, indicating discretion on the part of the Division to assess for inadvertent mistake.

<sup>31</sup> STATE 000121 – 000126.

qualified voters, and resided in HD1.<sup>32</sup> As previously discussed, election statutes are to be considered directory post-election.<sup>33</sup> “The right of the citizen to cast his ballot and thus participate in the selection of those who control his government is one of the fundamental prerogatives of citizenship and should not be impaired or destroyed by strained statutory constriction.”<sup>34</sup> As here, these voters’ rights to have their votes counted despite this inadvertent mistake that is facially obvious is paramount, and the same should not have been rejected and the ballots counted.<sup>35</sup>

d. Ballot markings and voter intent.

Pursuant to AS 15.20.510, during the Recount, the Director’s statutory charge includes that of determining “which marks for candidates on ballots are valid, and to which candidate [...] the vote should be attributed.”

During the Recount, two ballots were rejected by the Director due to the fact that, rather than fill in the oval on the left-hand side of the ballot, the voter created and filled an oval on the right-hand side of the candidate’s name.<sup>36</sup> Voter intent was readily apparent as the voter only indicated one candidate in each race and filled the oval in full on the right-hand side.<sup>37</sup> The Court has found that voter intent is

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<sup>32</sup> There is no indication that the requirements to vote set forth in AS 15.05.010 were not met.

<sup>33</sup> *Carr*, 586 P.2d at 626.

<sup>34</sup> *Nageak*, 426 P.3d at 941 (citing *Id.* (quoting *Sanchez v. Bravo*, 251 S.W.2d 935, 938 (Tex. Civ. App. 1952))).

<sup>35</sup> See, e.g., *Finkelstein*, 774 P.2d at 791-92.

<sup>36</sup> STATE 000127 – 000132.

<sup>37</sup> *Id.* Voter intent is particularly evident where the voter voted the entire ballot in a uniform manner.

paramount, and the election law must be interpreted “to preserve a voter’s clear choice rather than disenfranchise that voter.”<sup>38</sup> While the Court has held that a voter must mark an oval in some fashion, and a blank oval will invalidate a vote, the instant case is distinguishable.<sup>39</sup> Here, it is clear that the voter intended to fill in an oval next to a candidate’s name and indeed did so indicating how his or her vote should be cast.

During the Recount, there were also two ballots raised that were over-voted, meaning that the voter marked a ballot pursuant to AS 15.13.60 in multiple locations next to multiple candidates and thus such vote must be rejected.<sup>40</sup> A person cannot vote for two candidates, thus, if there is a valid mark next to two candidates, voter intent cannot be discerned and the ballot must be rejected as a blank “no vote.” Indeed, the directions to a voter on how to vote are clear, and if any error is made, voters are directed to request a new ballot.<sup>41</sup> When marks touch the oval that is provided for multiple candidates, there is no way for this Court to discern, nor would it be proper to attempt to discern, who the vote was cast, and the ballot must be rejected as an invalid over-vote.

e. Voter residence.

As set forth above, a person may vote at any election who (1) is a citizen of the United States; (2) is 18 years of age or older; (3) has been a resident of the state and of

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<sup>38</sup> *Miller v. Treadwell*, 245 P.3d at 870.

<sup>39</sup> *Id.* 245 P.3d at 877-8.

<sup>40</sup> STATE 000003, STATE 000134.

<sup>41</sup> STATE 000005.

the house district in which the person seeks to vote for at least 30 days just before the election; and (4) has registered before the election as required under AS 15.07 and is not registered to vote in another jurisdiction.<sup>42</sup>

Voters in state and local elections must be residents of the election district in which they vote.<sup>43</sup> A person's residence is that fixed place of habitation to which the individual intends to return if absent.<sup>44</sup> It need not be a house or apartment, nor must it have mail service.<sup>45</sup> A residence need only be some specific locale within the district at which habitation can be specifically fixed.<sup>46</sup> Thus, a hotel, shelter for the homeless, or even a park bench will be sufficient.<sup>47</sup>

Pursuant to AS 15.05.020(8):

The address of a voter as it appears on the official voter registration record is presumptive evidence of the person's voting residence. This presumption is negated only if the voter notifies the director in writing of a change of voting residence.

Pursuant to *Cissna v. Stout*:

As a practical matter, certain persons who move to a new district, but do not reregister or notify the election officials in writing of a change in residency, may have their votes counted in the district of their prior residency simply because election officials do not know that their residency has changed. In the interest of administrative efficiency, AS 15.05.020[8] allows the election official, in the absence of any written notification of change in residency, to presume that a voter still is a legal

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<sup>42</sup> AS 15.05.010.

<sup>43</sup> Alaska Const. art. V, § 1; AS 15.05.010(4).

<sup>44</sup> AS 15.05.020(2).

<sup>45</sup> *Fischer v. Stout*, 741 P.2d at 221.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

resident of the district in which he or she is registered. The statute is limited, however, to the circumstance where the officials have no notification of a move to another district. Attorney General's Opinion No. 7 accounts for this limited circumstance.<sup>48</sup>

Accordingly, even where a voter resides in the election district, their vote is properly rejected where they failed to update their official voter residence address.<sup>49</sup>

Here, Dodge has challenged three ballot determinations based on issues of voter residency. First, she alleges that two absentee ballots were wrongfully accepted by the Division and included in the Recount results, despite underlying residency issues for such voters. Dodge contends that Dr. David Odom and Norma Jean Knapp should not have been included in the HD1 ballot count, as each provided commercial properties as their designated residence upon registration. Pursuant to *Fisher v. Stout*, a voter's registered residence need not be a home, but must merely be a specific locale within the district at which habitation can be specifically fixed. Even a park bench will be sufficient, for purposes of establishing residency. Critical to the analysis is the fact that each had a registered residence in HD1, intended to vote in HD1 and indeed did cast and mail in a ballot for the district. No written affidavit was submitted to the Division changing such places of residence in advance of the election, and each individual applied for and cast their votes within the same district. As such, the Director rightfully presumed residence and included the votes at Recount.

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<sup>48</sup> *Cissna*, 931 P.2d at 369.

<sup>49</sup> AS 15.05.010; *Fischer v. Stout*, 741 P.2d 217.



Additionally, Dodge challenged one ballot on the basis that it was wrongfully rejected due to underlying residency issues for such voter. Robert Beconovich submitted an absentee ballot for HD1, though was not registered with a residence therein. Again, the presumption of residency applies, and the Director was limited at Recount to the information available via the voter's registration. The affidavit of Mr. Beconovich was not prepared and submitted to the Director until after the election and Recount was completed. Accordingly, Mr. Beconovich was not properly registered to be an eligible voter in the election for HD1 at the time of the election, and had otherwise provided no notice of change of residency until after the Recount had been certified.

For all three voters, the residency information upon which Dodge seeks to rely did not exist until the election and the Recount were complete, two absentee voters had valid registrations in HD1 at the time of voting and through the date of the Recount certification, and one voter did not, and these voters only provided subsequent notice of an address change upon inquiry of counsel post-election pursuant to this Appeal.

Pursuant to AS 15.05.010, 15.05.020(8), and Alaska precedent, in the absence of advance written notification of change in residency, the Director's presumption that the voters identified in Appellant/Cross-Appellee's statement of points on appeal were legal residents of HD1, the district in which they were registered at the time they requested an absentee ballot, voted their respective ballots, signed the certification that

all statements included therein were true, and submitted their ballots to the Division, was proper.

### III. CONCLUSION

While Intervenors/Cross-Appellants LeBon and ARP allege errors occurred at Recount regarding what ballots, parts of ballots, or marks for candidates on ballots were deemed valid, and to which candidate each vote should be attributed, such errors do not disturb the election results and the Division Director acted properly in certifying the same. In accordance with the foregoing, LeBon and ARP respectfully request that the Division Director's certification of the election results pursuant to the Recount be affirmed.

DATED this 17th day of December, 2018, at Anchorage, Alaska.

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**CERTIFICATE OF SERVICE**

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