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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
Trial Court Case No.: 3AN-18-00001RA

INTERVENORS' REPLY BRIEF

Intervenors Barton LeBon and the Alaska Republican Party, by and through their attorneys, Holmes Weddle & Barcott, P.C., hereby submit their reply to Appellant Dodge's Hearing Brief, lodged December 17, 2018.

1. The Scope of the Recount Appeal.

Appellant Dodge seeks an AS 15.20.510 recount appeal. The purpose of the recount appeal is to analyze the decisions of the Division Director to determine whether her determinations regarding ballot validity and allocation of votes were proper. The scope of review is to examine the decisions of the Director 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.¹ The appellate court looks 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."²

Given the scope of review, the propriety of the Director's determinations depends on the objective evidence which was provided and available to the Division at the time of the recount.³ This is true even where the same was not specifically considered by the Director in making their determination.

¹ *Cissna v. Stout*, 931 P.2d 363, 367-71 (Alaska 1996); *see also Willis v. Thomas*, 600 P.2d 1079, 1081 (Alaska 1979).

² *Id.*

³ *See Cissna*, 931 P.2d 363 (votes of three nonresidents, who certified in writing to election officials that they no longer resided in election district *prior to certification*, were properly rejected; two voters filled out oath on back of absentee ballot envelope claiming residency outside district, and third voter's reregistration to vote at new address outside district was received by Division of Elections *before votes were counted*); *Finkelstein v. Stout*, 774 P.2d 786 (Alaska 1989) (affidavits of voters stating
(footnote continued...))

Dodge's residency challenges are based only on evidence which was not provided to the Division or available at the time of the recount, as it was produced post-recount in anticipation of this Appeal. While the Court is not limited to determining the facial validity of the ballots, and can search underlying election records and materials, the purpose of the recount appeal is to review the Director's recount decisions under AS 15.20.480.⁴ The Director is unable to base her decisions on information which did not exist at the time of recount. Nor has this Court ever considered evidence submitted to the Director *after* the results of an election were publicly known. To do so would be clear error and such challenges must be rejected.

2. Ballot Markings.

As set forth in the hearing briefs, there are four ballots identified in the Appeal and Cross-Appeal which include non-compliant markings, or combinations of markings (i.e., the under- and over-votes): (1) one regular in-person ballot rejected as the voter filled in the official ovals for both HD1 candidates, and placed an "X" over the oval for LeBon; (2) one regular in-person ballot accepted despite the voter having filled in the official oval for Dodge, and placed a horizontal line in the official for

(continued from previous page)
that they were not residents of the district were untimely as the same were submitted *after the election and the recount* were concluded); *Fischer v. Stout*, 741 P.2d 217 (Alaska 1987) (a vote should not be counted where the Division received a declaration or other papers from a voter *prior to certification* stating that their permanent residence had changed from their registration, as such advance notice was sufficient to rebut the presumption of residence).

⁴ *Cissna*, 931 P.2d at 367; *Willis*, 600 P.2d at 1082.

LeBon; and (3) two regular in-person ballots rejected as the voter drew an oval over LeBon's name as opposed to placing a mark on the official oval to the left of his name.

The decision for whether to include or reject ballots containing non-compliant markings should be based on whether the voter's intent is clear and apparent from the face of each ballot. 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."⁵

- a. One ballot rejected as the voter filled in the official ovals for both HD1 candidates, and placed an "X" over the oval for LeBon.

The Division maintains a directory list of valid and invalid ballot marks, which indicates which marks will be accepted as a valid vote for such candidate, and which marks will "invalidate the section of the ballot in which they appear."⁶ For the examples of valid marks, the directions state:

Only the following ballot marks are valid:

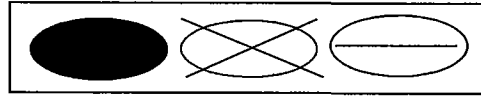
Solid marks, diagonal, or vertical marks. "X" marks, stars, circles, asterisks, checks or plus signs.

⁵ *Id.*

⁶ Exhibit A, p. 9.

The Division directions further provide pictorial examples of valid marks which would successfully indicate a voter's selection, and invalid marks that will be rejected.⁷

For valid marks, the examples include the following:



The examples provided are not enumerated in any hierarchical order, nor is there any indication that any one mark would be “more” indicative of a voter's choice over any other mark. All examples are categorized as “valid.”

One in-person voter filled in the official ovals next to both of the HD1 candidates' names, and also included an “X” on top of the oval for LeBon. Pursuant to the Division's directions on valid and invalid markings, marking a ballot by: (1) filling in the official oval to the left of a candidate's name, or (2) placing an “X” over the official oval to the left of a candidate's name, are each valid marks designating a voter's selection of that candidate.⁸ Had the voter filled in one oval or marked an “X” over one oval, the ballot would have contained a single valid mark and not been questioned during the counting process. In fact, had the voter filled in one oval and marked an “X” over the top of the same oval, the Division optical machine would have still counted the ballot as validly marked. However, as here, the voter over voted the ballot by filling in the ovals for both HD1 candidates and marking an “X” over the oval

⁷ *Id.*

⁸ *Id.*

for LeBon. As such, the ballot was rejected as an improper over-vote, and the Division Director determined that the voter intent was unclear.

Dodge argues that the marking of an “X” over one oval indicates the voter’s intent to eradicate that selection.⁹ The argument ignores the fact that an “X” is indeed a valid designation of a voter’s selection and an “X” over an oval is included in the list of valid ballot mark examples maintained by the Division.¹⁰ Further, Dodge’s argument cherry-picks examples related to common usage, as it is equally common for an “X” to be used to mark one’s selection and to indicate a choice or applicable item in a list (e.g. placing an “X” in a checkbox on an insurance or medical form, certification of method of service on a legal form, etc.).

LeBon/ARP maintain that, in including two valid marks for LeBon (i.e., a filled in oval and an “X”), and only a single valid mark for Dodge (i.e., a filled in oval), it is readily apparent that the voter made a mistake on the ballot, and instead of requesting a new ballot, added the additional valid ballot mark (the “X”) to indicate their selection for LeBon. If either a filled in oval or an “X” would have been counted as a valid selection, using both valid marks simultaneously over the same oval reiterates the same

⁹ Dodge cites part of the Merriam-Webster’s Dictionary definition for “X” in support of her assumption that this voter intended to “X”-out and cancel a mistake, though Dodge conveniently omits part of the definition:

X (verb):

- 1: to mark with an x;
- 2: to cancel or obliterate with a series of x’s.

¹⁰ Merriam-Webster’s Dictionary also includes a “legal definition” of “X”:

- 1: a mark used in place of a signature when the maker is incapable of signing his or her name;
- 2: a mark used in indicating a choice or applicable item.

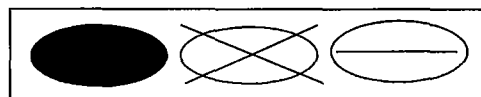
selection and indicates that the voter attempted to distinguish the dual filled-in ovals with an additional valid mark for LeBon.

While LeBon/ARP maintain that voter intent is reasonably apparent for the selection of LeBon, they concede that the use of multiple overlapping markings for the HD1 race creates ambiguity as to voter intent. As each party has presented a viable and divergent explanation for use of the “X,” it is clear that the Division Director properly determined that the ballot was over voted and lacking in definitive voter intent to allocate the vote to either candidate. Accordingly, the decision to reject the over-voted ballot should be affirmed.

- b. One ballot accepted despite the voter having filled in the official oval for Dodge, and placed a horizontal line in the oval for LeBon.

As provided above, except in races where voters are explicitly directed to select multiple candidates, a ballot which includes valid marks over the official ovals for more than one candidate in a single race has over voted their ballot.

Again, Division maintains directions providing the list of valid ballot marks and such examples include the following, without any hierarchical order or indication as to any mark being “more” indicative of a voter’s choice over another¹¹:



¹¹ Exhibit A, p. 9.

One in-person voter marked a diagonal line in the official oval for LeBon, and filled in the official oval for Dodge. Pursuant to the Division's directions on valid and invalid markings, marking a ballot by: (1) filling in the official oval to the left of a candidate's name, or (2) placing a diagonal mark in the official oval to the left of a candidate's name, are each valid marks designating a voter's selection of that candidate.¹² Had the voter filled in one oval or marked a diagonal line in one oval, the ballot would have contained a single valid marking and the Division optical machine would have counted the ballot as validly marked. However, as here, the voter over voted the ballot by marking a diagonal line in the oval for LeBon and filling in the oval for Dodge. As such, the ballot was rejected from the optical scanner as an over-vote.

Upon examination of the ballot, the Division Director determined that the voter intended to cast a vote for Dodge, and included the vote in the official count. As set forth above, LeBon/ARP maintain that the decision to count this ballot was in error, as a ballot which includes valid marks over the official ovals for more than one candidate in a single race has over voted their ballot, and in such case, voter intent is ambiguous.

The Division's directions explicitly set forth that a diagonal line through the official oval of a candidate is indeed a valid ballot mark indicating the voter's selection for that candidate. If, upon inspection, the Director found that the voter had placed only a diagonal line in the oval for LeBon, the ballot would have been counted as a vote in his favor.

¹² *Id.*

Dodge argues that the challenge is frivolous as the filled in oval for Dodge should trump the diagonal line marked for LeBon. However, as set forth above, the valid ballot marks are not enumerated into any hierarchy, such that the inclusion of a certain valid ballot mark would render a different type of valid ballot mark to be “invalid.” Each remains a valid mark under the Division’s directions. If a voter places a mark in both HD1 candidate ovals, whether such marks are the same type or different types of valid marks, the result is the same: a ballot which includes valid marks over the official ovals for more than one candidate in a single race has over voted their ballot.

LeBon/ARP maintain that the use of multiple valid markings for the HD1 race creates ambiguity as to voter intent. Accordingly, the Division Director should have rejected the ballot as over voted and lacking in definitive voter intent to allocate the vote to either candidate.

- c. Two ballots rejected as the voter drew an oval over LeBon’s name as opposed to placing a mark on the official oval to the left of his name.

Two ballots were rejected as blank which actually included marks for candidates in the HD1. Two voters cast ballots which included marks which failed to touch the official oval next to any candidate name. Instead, each voter appeared to draw their own oval directly on LeBon’s name (situated to the right of the official oval). While the ballots identified in the previous subsections included valid marks combined in a non-compliant manner and resulting in uncertainty as to voter intent,

these two ballots included a single mark for one candidate which merely failed to touch the official oval next to such candidate's name.

Where intent to select a single candidate is clear, the voter should not be disenfranchised where at this stage the election law governing markings is to be considered directory.¹³ The rule requiring marks to touch the official oval to the left of a candidate's name is directory here, and in the event of evidence indicating clear voter intent, a voter's ballot should not be rejected for failure to place their mark in the perfect position.¹⁴ 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.¹⁵

Viewing the ballots in their entirety provides clear evidence of intent to vote for each candidate on the ballot whose name was marked. Examination of each ballot as a whole shows uniformity in the voters' mark type and location for every race. The voters marked every race on the ballot with a circle drawn over the name of the chosen candidate, and each circle was placed to the right, equidistant from each official oval. The marks were uniform across the ballots and appeared in the same position across each race. The reasonable conclusion to draw is that each voter intended the drawn an oval on the candidate name to indicate their selection for that candidate for each race.

¹³ *Finkelstein*, 774 P.2d at 790 (quoting *Willis*, 600 P.2d at 1083 n.9).

¹⁴ Notably, in again reviewing the Division's directions on valid and invalid ballot marks, a small oval drawn over a candidate's name is not explicitly listed as an invalid mark which invalidates the section in which it appears.

¹⁵ *Carr v. Thomas*, 586 P.2d at 626.

The only alternative would be to assume that these voters possibly did not intend for such marks to be their selections, which would necessitate an unreasonable conclusion (i.e., that each of these voters presented at their designated polling places on election day, waited in line to vote, registered and received their ballots, only to choose to leave every single race therein blank).

The fact that the voters completed their ballots in a uniform manner evidences a lack of knowledge or ability to fill out the ballot in compliance with the election rules.¹⁶ In stark contrast to the ballots in the previous subsections, the intent for these two ballots is clear. The Court has found that voter intent is paramount, and the election law must be interpreted “to preserve a voter’s clear choice rather than disenfranchise that voter.”¹⁷ LeBon/ARP maintain that, viewing each ballot in its entirety, there is no ambiguity as to the voters’ intent to cast their votes for LeBon. Accordingly, the Division Director should have accepted the ballots as properly voted with definitive voter intent and allocate the vote to LeBon.

3. Residency.

Dodge has challenged three ballot determinations based on issues of voter residency. In support of the same, Dodge now seeks to introduce affidavits of certain

¹⁶ Moreover, while the in-person ballots are commingled without voter identification, the fact that each of these two voters placed their marks uniformly, equidistant to the right of the correct placement suggests a visual impairment without proper assistance at the polling place. As many rural polling locations lack alternative and accessible election equipment to assist disabled voters in marking their ballots, to reject these ballots which were clearly marked in a uniform manner with apparent voter intent would risk disenfranchising a specific subset of voters where assistance in complying with the directory election rules was not available.

¹⁷ *Miller v. Treadwell*, 245 P.3d at 870.

voters, post-certification, attesting that the addresses registered with the Division are not their accurate residential addresses. Not only were the affidavits regarding residence not available for consideration at the time of the election certification and recount, the statements set forth therein directly conflict with the other evidence of residency which was provided by these voters, made available to the Division, and reviewed by the Director in making her determination at recount. The production of such conflicting statements does not provide clear evidence related to voter residence, but merely creates uncertainty and ambiguity with respect to voter intent and residence.

Dodge argues that the Division failed to take “objective” evidence of residence into consideration. However, objective evidence of residency was indeed considered by the Division Director in her determination on ballot validity. This evidence included the address listed in the voters’ voter registration, their application for a HD1 absentee ballot, and the signed absentee ballot envelopes certifying under penalty of perjury that the information included therein, including their residence address, was accurate at the time of casting their ballot. Dodge’s objection is not that no objective evidence was considered, but that she would like to cherry-pick which objective evidence is given the greatest weight.

Alaska case precedent is clear with respect to a voter’s self-declaration of residence for purposes of their assignment of voting district: the location need not be a

house or apartment, and can even be a park bench.¹⁸ Dodge's objections to Ms. Knapp's designated residence being a commercial property are unfounded, and fail to align with well-established principles of Alaska election law.¹⁹ For purposes of the Director's decisions at recount and pursuant to this Appeal, residence need only be some specific locale within the district at which habitation can be specifically fixed.²⁰ The voter designated the address, received her ballot at such address, marked her ballot, signed her ballot envelope certifying under penalty of perjury that the information included therein, including her address, was accurate at the time, and returned the ballot for counting. There is no indication under the circumstances that Ms. Knapp is not a qualified voter pursuant to AS 15.05.010, and Dodge has provided no basis, beyond speculation related to property zoning, to justify disenfranchising Ms. Knapp and rejecting her vote cast.

At recount, Dodge's challenge to Dr. Odom's residence was founded on her assumption that the address was incorrect and that Dr. Odom likely did not live at the same, as it was a commercial structure. However, Dr. Odom has for several years maintained his "residency" on his voter application and information as: 3514 International St., Fairbanks, Alaska. He, like Ms. Knapp, designated the address, received his ballot at such address, marked his ballot, signed his ballot envelope

¹⁸ *Fischer*, 741 P.2d 217.

¹⁹ *Id.*

²⁰ *Id.* That is, one can in fact physically inhabit a commercial structure, though they cannot physically inhabit a P.O. Box.

certifying under penalty of perjury that the information included therein, including his address, was accurate at the time, and returned the ballot for counting. Therefore, the ballot was properly accepted for counting.

Consistent with prior decisions of the Court, a voter's intention is paramount.²¹ The fact that Mr. Odom and Ms. Knapp properly registered in HD1 prior to the election, and verified their HD1 address in requesting and submitting their HD1 ballots, establishes that these voters clearly intended to cast their votes with respect to the HD1 election.²² The Director reviewed all existing and available objective evidence which had been produced to the Division as of the date of the recount, and properly accepted the ballots of Dr. Odom and Ms. Knapp, in accordance with prevailing case precedent concerning these voters' residences.

Moreover, in registering, requesting their ballots, and signing under penalty of perjury, voters set forth a statement as to their true and correct address. Now, Dodge seeks to introduce subsequent statements, produced after the election, certification, and recount, indicating that these registered addresses are not correct.

With regard to Mr. Beconovich, the record demonstrates that for the years 2017 and 2018 he elected to change his voter registration through the permanent fund

²¹ *Miller v. Treadwell*, 245 P.3d 867 (Alaska 2010); *Edgmon v. State, Office of Lieutenant Governor, Div. of Elections*, 152 P.3d 1154, 1157 (Alaska 2007)

²² See *Finkelstein*, 774 P.2d 786 (the Court determined that voters properly registered in an election district who submitted absentee ballots listing no permanent Alaska residence should have been counted, as there was already sufficient evidence of residency in such district, and the voters' intent to indicate a new legal residence outside the district was unclear).

dividend application.²³ As is evidenced in sworn testimony from the State, Mr. Beconovich was mailed an opt-out notice to his purported residency address which was indeed (likely not coincidentally) forwarded to his address at 104 Kutter Road, where he registered to vote in 2017 and 2018. It is not sufficient that the voter would only provide the Division with information regarding a purported change in residency, post-certification and after the Director's inquiry is complete, and more importantly, after the results of the vote totals are made public.

Pursuant to the Court's decision in *Willis v. Thomas*,²⁴ "Alaska's election laws require that a person be properly registered in the district in which the vote is to be cast at least thirty days before the election."²⁵ Voter registration requirements are strictly construed, and ballots from those who fail to re-register to reflect changes to their registration information in advance of the election should be held invalid.²⁶ The registration requirement is critical, and the burden is on the voter to ensure that they provide a complete, accurate, and current address in advance of the election to cast a valid ballot for the election district in which they reside.²⁷ Failure to do so is no fault of election officials, and as such, it is proper for such ballot to be rejected and not

²³ See Affidavit of Carol Thompson, dated December 17, 2018, lodged with the State's Hearing Brief of the same date.

²⁴ 600 P.2d 1079 (1979).

²⁵ *Id.* at 1086 (there are limits to the extent to which defects in registration can be ignored or "cured" after the fact).

²⁶ *Id.*; see also *Hammond v. Hickel*, 588 P.2d 256, 271 (Alaska 1978).

²⁷ *Id.*

counted.²⁸ Accordingly, as Mr. Beconovich has self-declared his residency address as 104 Kutter Road, the same was accepted as his residency and his ballot was properly rejected by the Division.

CONCLUSION

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 19th day of December, 2018, at Anchorage, Alaska.

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²⁸ *Willis*, 600 P.2d at 1086.

CERTIFICATE OF SERVICE

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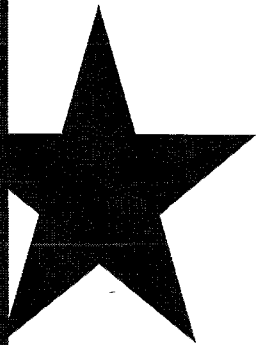
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State of Alaska Division of Elections Recount Handbook



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Recount Information

Overview

All recounts are conducted in Juneau at a location specified by the Director of Elections.

Paper ballots and touch screen ballots will be counted separately as described below.

A candidate or groups advocating for or against a ballot measure may have one observer at each table where ballots are being recounted. Each observer must wear a badge identifying their name and who they are representing and sign a statement of confidentiality.

During the recount, observers may not touch or handle any of the ballots or other official election materials. Observers may see material containing confidential information, however no one may copy, write down, or record in any manner any material that is considered confidential such as social security number, date of birth, voter number, or Alaska Driver's License/State ID number.

Paper Ballots

Paper ballots are recounted using the optical scan tabulators. At least 20 optical scan units will be used during a statewide recount. For a Senate or House District recount, three to six optical scan tabulators will be used.

Precinct ballots are counted first followed by absentee and questioned ballots.

For those precincts where the voted ballots may have been destroyed or lost, the results as reported by the election board are used as the recount results for that precinct.

Optical Scan Memory Cards

An optical scan memory card is programmed for each precinct and for the various absentee/questioned ballots. The memory cards are tested by the State Review Board for accuracy following the Division's testing procedures prior to the recount.

Memory cards are programmed to count only the race included in the recount request and to reject all "over-voted" and "under-voted" ballots.

- **Over-voted** ballots are those where the voter voted for more than one candidate in the race.
- **Under-voted** ballots are those that have been "marginally

marked," or where the voter has not chosen to vote in the race.

Marginally marked ballots are those where the voter did not properly mark, or fill in the oval. Marginally marked ballots occur if the mark is too light to be read, or if a different type of marking device was used that the Accu-Vote unit wouldn't read. For those ballots that have been marginally marked, the Director will determine whether or not the ballot should be counted.

Once ballots have been processed through the memory card, the results will be uploaded to the host ballot tabulation system (GEMS).

Processing Paper Ballots

In a statewide recount at least 20 optical scan tabulators will be used and one table will be assigned to a house district. Voted ballots from each house district are recounted, one precinct at a time.

In a single house district recount, three to six optical scan tabulators will be used. Voted ballots from the house district are recounted, one precinct at a time.

Prior to the start of the recount, a zero totals report is printed to confirm the memory card does not have any results.

During the recount, any ballot that cannot be read by the optical scan unit is set aside until all ballots in the precinct or absentee/questioned batch have been scanned.

Blank Ballots – ballots that are clearly blank, which have no mark at all in the race, will be processed as an under-vote.

Over-voted or Marginally Marked Ballots –ballots that are over-voted or marginally marked, will be reviewed by the Director to determine whether or not the ballot should be counted.

If the Director determines a marginally marked ballot should be counted, a facsimile will be made of the ballot. The facsimile will be verified for accuracy and then will be counted by the optical scan unit. The original and facsimile ballots will be kept together in a clearly marked envelope.

After the precinct ballots have been recounted, the ballot feeder compares the number of ballots appearing on the optical scan LCD

screen to the number of ballots cast certified by the state review board. The total of the optical scan and touch screen ballots should equal the certified state review board results. Any deviation will be brought to the attention of the director before running the ender card.

After receiving director approval, the ender card is run and results are printed. The ballot feeder signs the results tape. If requested, a second copy of the results tape is printed for the observer. The first copy of the results tape is banded to the memory card and given to the Election Supervisor. The recount results are recorded on the results spreadsheet and the memory card results are uploaded to GEMS.

Touch Screen Ballots

All touch screen ballots are recounted by hand using the voter-verifiable paper receipt.

Touch screen precinct ballots are recounted first then the early vote ballots.

No absentee or questioned ballots are cast on the touch screen units. There are no over-voted ballots, as the unit does not allow for over voting, and it is not possible to determine the voter's intent on an under-voted ballot.

If the voter-verifiable paper receipt is not available, reprint ballots from the precinct touch screen memory card. If the memory card is not available or useable, the results as reported by the election board on election night are used as the recount results for that precinct.

Processing Touch Screen Ballots

Teams of four workers count the touch screen ballots. One worker reads the ballot, while another person watches. One worker tallies on one tally sheet, while another worker of a different political party tallies on a second sheet. Each time a vote is called, a downward stroke is made. Every fifth vote is marked with a diagonal stroke. When all ballots have been counted, the tally marks for each race are added and the totals on both tally sheets are compared and added to the tally summary sheet.

Absentee and Questioned Ballots

After all precinct ballots have been recounted, the absentee and questioned ballots accepted for the race are recounted. Following AS 15.20.480, absentee ballots postmarked on time, but received too late to be counted during the District Absentee and Questioned Ballot Review process, will be counted during a recount.

Full count ballots are recounted first and then partial count ballots that can be counted for the race.

After all ballots have been recounted, there is a review of the absentee and questioned ballots that were rejected or challenged during the District Absentee and Questioned Ballot Review Board process.

**Hand-count
Verification**

There is a hand-count verification of the recount results for paper ballots. One precinct in each district is randomly selected for hand-count verification after the ballots have been recounted. The hand count will be conducted in only the race(s) being recounted.

**Final
Authority**

The Director of the Division of Elections is the final authority at the recount. If any candidate or representative disagrees with the determination made by the Director, the ballot is placed in a separate envelope with the name of the challenger, the ballot's district and/or precinct number, and the name of the candidate for which the ballot was counted written on the outside.

Rules for Counting Ballots

AS 15.15.360. Rules for counting ballots.

(a) The election board shall count ballots according to the following rules:

(1) A voter may mark a ballot only by filling in, making "X" marks, diagonal, horizontal, or vertical marks, solid marks, stars, circles, asterisks, checks, or plus signs that are clearly spaced in the oval opposite the name of the candidate, proposition, or question that the voter desires to designate.

(2) A failure to properly mark a ballot as to one or more candidates does not itself invalidate the entire ballot.

(3) If a voter marks fewer names than there are persons to be elected to the office, a vote shall be counted for each candidate properly marked.

(4) If a voter marks more names than there are persons to be elected to the office, the votes for candidates for that office may not be counted.

(5) The mark specified in (1) of this subsection shall be counted only if it is substantially inside the oval provided, or touching the oval so as to indicate clearly that the voter intended the particular oval to be designated.

(6) Improper marks on the ballot may not be counted and do not invalidate marks for candidates properly made.

(7) An erasure or correction invalidates only that section of the ballot in which it appears.

(8) A vote marked for the candidate for President or Vice-President of the United States is considered and counted as a vote for the election of the presidential electors.

(9) Write-in votes are not invalidated by writing in the name of a candidate whose name is printed on the ballot unless the election board determines, on the basis of other evidence, that the ballot was so marked for the purpose of identifying the ballot.

(10) In order to vote for a write-in candidate, the voter must write in the candidate's name in the space provided and fill in the oval opposite the candidate's name in accordance with (1) of this subsection.

(11) A vote for a write-in candidate, other than a write-in vote for governor and lieutenant governor, shall be counted if the oval is filled in for that candidate and if the name, as it appears on the write-in declaration of candidacy, of the candidate or the last name of the candidate is written in the space provided.

(12) If the write-in vote is for governor and lieutenant governor, the vote shall be counted if the oval is filled in and the names, as they appear on the write-in declaration of candidacy, of the candidates for governor and lieutenant governor or the last names of the candidates for governor and lieutenant governor, or the name, as it appears on

the write-in declaration of candidacy, of the candidate for governor or the last name of the candidate for governor is written in the space provided.

(b) The rules set out in this section are mandatory and there are no exceptions to them. A ballot may not be counted unless marked in compliance with these rules.

EXAMPLES OF VALID BALLOT MARKS

The marks must indicate clearly that the voter intended that particular oval to be designated.

Only the following ballot marks are valid:

Solid marks, diagonal, horizontal or vertical marks, "X" marks, stars, circles, asterisks, checks or plus signs.

 CANDIDATE'S NAME

 CANDIDATE'S NAME

 CANDIDATE'S NAME

 CANDIDATE'S NAME

 CANDIDATE'S NAME

 CANDIDATE'S NAME

 CANDIDATE'S NAME

 CANDIDATE'S NAME

EXAMPLES OF INVALID BALLOT MARKS

Invalid marks only invalidate the section of the ballot in which they appear.

 CANDIDATE'S NAME X

 CANDIDATE'S NAME

 CANDIDATE'S NAME ✓

 CANDIDATE'S NAME

 CANDIDATE'S NAME

 CANDIDATE'S NAME

 CANDIDATE'S NAME

Alaska Statutes on Recounts

ARTICLE 02. ELECTION RECOUNTS

Sec. 15.20.430. Authorization of recount application.

(a) A defeated candidate or 10 qualified voters who believe there has been a mistake made by an election official or by the counting board in counting the votes in an election, may file an application within five days after the completion of the state review to the director for a recount of the votes from any particular precinct or any house district and for any particular office, proposition, or question. However, the application may be filed only within three days after the completion of the state review after the general election for a recount of votes cast for the offices of governor and lieutenant governor. If there is a tie vote as provided in AS 15.15.460, the director shall initiate the recount and give notice to the interested parties as provided in AS 15.20.470.

(b) The date on which the director receives an application rather than the date of mailing or transmission determines whether the application is filed within the time allowed under (a) of this section. If the actual physical delivery by telegram of a copy in substance of the statements made in the application for recount is received in the office of the director at or before 5:00 p.m. Alaska Standard time on the due date, the application will be accepted; providing the original signed application is postmarked at or before 5:00 p.m. Alaska Standard time of the same day.

Sec. 15.20.440. Form of application.

(a) The application shall state in substance the basis of the belief that a mistake has been made, the particular election precinct or election district for which the recount is to be held, the particular office, proposition, or question for which the recount is to be held, and that the person making the application is a candidate or that the 10 persons making the application are qualified voters. The candidate or persons making the application shall designate by full name and mailing address two persons who shall represent the applicant and be present and assist during the recount. Any person may be named representative, including the candidate or any person signing the application. Applications by 10 qualified voters shall also include the designation of one of the number as chair. The candidate or persons making the application shall sign the application and shall print or type their full name and mailing address.

(b) Candidates, political parties, or organized groups having a direct interest in a recount and who are seeking to protect their interests during a recount may provide, at their own expense, two or more observers to witness the recount.

Sec. 15.20.450. Requirement of deposit.

The application must include a deposit in cash, by certified check, or by bond with a surety approved by the director. The amount of the deposit is \$1,000 for each precinct, \$2,000 for each house district, and \$15,000 for the entire state. If the recount includes an office for which candidates received a tie vote, or the difference between the number

of votes cast was 20 or less or was less than .5 percent of the total number of votes cast for the two candidates for the contested office, or a question or proposition for which there was a tie vote on the issue, or the difference between the number of votes cast in favor of or opposed to the issue was 20 or less or was less than .5 percent of the total votes cast in favor of or opposed to the issue, the application need not include a deposit, and the state shall bear the cost of the recount. If, on the recount, a candidate other than the candidate who received the original election certificate is declared elected, or if the vote on recount is determined to be four percent or more in excess of the vote reported by the state review for the candidate applying for the recount or in favor of or opposed to the question or proposition as stated in the application, the entire deposit shall be refunded. If the entire deposit is not refunded, the director shall refund any money remaining after the cost of the recount has been paid from the deposit.

Sec. 15.20.460. Determination of date of recount.

If the director determines that the application is substantially in the required form, the director shall fix the date of the recount to be held within three days after the receipt of an application requesting a recount of the general election votes cast for the office of governor and lieutenant governor and within five days after the receipt of an application requesting a recount for any other office, question, or proposition.

Sec. 15.20.470. Requirement of notice.

The director shall give the candidate or designated chairperson signing the application, the two or more persons appointed to represent the applicant during the recount, and other directly interested parties, notice of the time and place of the recount by certified mail, telegraph, telephone, or facsimile.

Sec. 15.20.480. Procedure for recount.

In conducting the recount, the director shall review all ballots, whether the ballots were counted at the precinct or by computer or by the district absentee counting board or the questioned ballot counting board, 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. For administrative purposes, the director may join and include two or more applications in a single review and count of votes. The rules in AS 15.15.360 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, proposition, or question. 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. The recount shall be completed within 10 days. The director may employ additional personnel necessary to assist in the recount.

Sec. 15.20.490. Certification of results.

If it is determined by recount that the plurality of votes was cast for a candidate, the director shall issue a certificate of election or nomination to the elected or nominated

candidate as determined by the recount. If it is determined by the recount that a proposition or question should be certified as having received the required vote, the director shall so certify except that the lieutenant governor shall so certify if the proposition or question involves an initiative, a referendum, or a constitutional amendment.

Sec. 15.20.510. Provision for appeal to courts.

A candidate or any person who requested a recount who has reason to believe an error has been made in the recount (1) involving any question or proposition or the validity of any ballot may appeal to the superior court in accordance with applicable court rules governing appeals in civil matters, and (2) involving candidates for the legislature or Congress or the office of governor and lieutenant governor may appeal to the supreme court in accordance with rules as may be adopted by the court. Appeal shall be filed within five days of the completion of the recount. Upon order of the court, the director shall furnish the record of the recount taken, including all ballots, registers, and other election material and papers pertaining to the election contest. The appeal shall be heard by the court sitting without a jury. The inquiry in the appeal shall extend to the questions 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. The court shall enter judgment either setting aside, modifying, or affirming the action of the director on recount.

Sec. 15.20.520. Provision for appeal to legislature or Congress.

A candidate or persons who requested a recount, who have reason to believe an error has been made in the recount involving a candidate for the general election for the state legislature or Congress, may appeal to the chamber in which the candidate seeks membership in accordance with applicable rules of the legislature or Congress. Upon request of the legislature or Congress, the director shall furnish the record of the recount taken including all ballots, registers, and other election material and papers pertaining to the election contest.

Sec. 15.20.530. Determination of tie votes.

If after a recount and appeal two or more candidates tie in having the highest number of votes for the same office, the director shall notify the candidates who are tied. The director shall notify the candidates of a reasonably suitable time and place to determine the successful candidate by lot. After the determination has been made by lot, the director shall so certify.

Alaska Administrative Code

6 AAC 25.067 Facsimile Ballots at a Recount

(a) The procedures in this section apply to voted ballots being reviewed by the director for a recount under AS 15.20.480 regarding a particular race, proposition, or question.

(b) The director will set aside a ballot described in (a) of this section if, after reviewing the ballot, the director determines that

(1) it was marked by the voter in a manner that caused an Accu-Vote precinct tabulator to register as being unmarked on the ballot the race, proposition, or question that is the subject of the recount; and

(2) the ballot contains clear evidence of the voter's intent regarding that race, proposition, or question.

(c) An exact copy of the relevant portion of a voted ballot described in (b) of this section will be made at the direction of the director, for substitution as a facsimile ballot. As provided in AS 15.20.480, the facsimile ballot will be counted using the rules in AS 15.15.360 for counting hand-marked ballots.

(d) The original of a voted ballot for which a facsimile ballot is prepared under this section will be clearly labeled "original." A facsimile ballot prepared under this section will be clearly labeled "facsimile." After completion of the counting process, the original and the facsimile of a voted ballot will be placed in marked envelopes and the envelopes will be sealed.

(a) The procedures in this section apply to voted ballots being reviewed by the director for a recount under AS 15.20.480 regarding a particular race, proposition, or question.

(b) The director will set aside a ballot described in (a) of this section if, after reviewing the ballot, the director determines that

(1) it was marked by the voter in a manner that caused an Accu-Vote precinct tabulator to register as being unmarked on the ballot the race, proposition, or question that is the subject of the recount; and

(2) the ballot contains clear evidence of the voter's intent regarding that race, proposition, or question.

(c) An exact copy of the relevant portion of a voted ballot described in (b) of this section will be made at the direction of the director, for substitution as a facsimile ballot. As provided in AS 15.20.480, the facsimile ballot will be counted using the rules in AS 15.15.360 for counting hand-marked ballots.

(d) The original of a voted ballot for which a facsimile ballot is prepared under this section will be clearly labeled "original." A facsimile ballot prepared under this section will be clearly labeled "facsimile." After completion of the counting process, the original and the facsimile of a voted ballot will be placed in marked envelopes and the envelopes will be sealed.

6 AAC 25.200 Recounts

(a) All recounts will be conducted in the director's office or at another site in Juneau, selected by the director. The director will, in his or her discretion, prescribe reasonable rules and procedures for the orderly conduct of recounts.

(b) In the conduct of a recount, the director will open and count properly cast absentee ballots that are received after the deadlines established in AS 15.20.081 (e) and (h) but before the completion of a recount.

(c) A recount may be conducted using Accu-Vote counting systems and a random sampling of votes cast in one precinct per house district in those precincts where there are Direct Recording Electronic (DRE) voting systems. If a candidate wishes to have a record of each ballot in the affected race printed, the candidate must pay the cost of printing.

(d) A recount using a Direct Recording Electronic (DRE) voting system shall be conducted by recounting the paper receipt from that voting system for that polling place. If the paper receipt is not

(1) available, the results reported election night by the election board for the affected precinct is the result for the recount for that precinct;

(2) readable, the result reported election night by the election board for the affected precinct is the result for the recount for that precinct; if the election results reported by the election board are not available, a duplicate receipt may be printed from the polling place memory card. (a) All recounts will be conducted in the director's office or at another site in Juneau, selected by the director. The director will, in his or her discretion, prescribe reasonable rules and procedures for the orderly conduct of recounts.

(b) In the conduct of a recount, the director will open and count properly cast absentee ballots that are received after the deadlines established in AS 15.20.081 (e) and (h) but before the completion of a recount.

(c) A recount may be conducted using Accu-Vote counting systems along with a hand-count verification of the recount results from one precinct per house district.

(d) A recount of the ballots cast on the Direct Recording Electronic (DRE) voting system shall be conducted by hand counting the voter-verifiable paper receipt from that voting system for that polling place. If the voter-verifiable paper receipt is not

(1) available, the election results reflected on the printed results report and reported election night by the election board for the affected precinct is the result for the recount for that precinct;

(2) readable, the election results reflected on the printed results report and reported election night by the election board for the affected precinct is the result for the recount for that precinct; if the printed results report from the election board are not available, a duplicate receipt may be printed from the polling place memory card.

SUMMARY OF ABSENTEE AND QUESTIONED BALLOT CODES

Accept and Partial Count Codes

- A Accept whole ballot
- B Accept Ballot measure only
- F Accept federal only
- H Accept Presidential only – General Election Only
- J Accept statewide and judicial only – General Election Only
- L Accept statewide and senate only
- M Accept all but superior and district court – General Election Only
- N Accept statewide, judicial and senate only – General Election Only
- S Accept statewide only

Reject Codes

- D Duplicate ballot voted
- E Ballot envelope empty
- G Voter failed to provide required identifiers
- I Voter is inactive
- K Ballot not properly applied for
- O Voter does not meet certification requirements
- T Voter registered too late
- U Ballot not dated or postmarked and received after Election Day
- V Ballot received too late
- W Postmarked , voted or witnessed after Election Day
- X Voter is not registered
- Y Inadequate witnessing
- Z Voter failed to sign
- 1 Voter resides in different jurisdiction
- 2 Incomplete notary
- 3 Ballot hand delivered after Election Day
- 4 Ballot voted by somebody other than voter
- 5 Voter requested a primary election ballot for which they are not eligible
- 6 Cancelled ballot received
- 7 No identification provided at time of voting

ABSENTEE AND QUESTIONED BALLOT ACCEPT CODES

A Accept Whole Ballot

This code is used when the entire ballot may be counted. The voter is eligible to vote on all issues and races appearing on the ballot.

B Accept Ballot Measure Only

This code is used during the primary election when the voter is not eligible to vote for the candidate races due to registered party affiliation and political party ballot received, but eligible to vote for the ballot measure.

F Accept Federal Only

This code is used when only the federal races (President, Vice President, U.S. Senate, and U.S. Representative) may be counted. There are two sets of circumstances in which this code will apply.

1. Former residents of Alaska who reside overseas may register and vote in federal elections even if they no longer have a residence address in Alaska. These voters are registered with a status and condition code of I/OS.
2. In general elections, the federal government provides a special write-in ballot which may be used by overseas voters who have also applied for a state ballot. The State Review Board handles this type of voter following the special advance overseas ballot process.

H Accept Presidential Only

This code is used when only the presidential race may be counted. The voter either registered after the 30-day deadline or supplied sufficient information on the ballot envelope to register to vote.

J Accept Statewide and Judicial Only - General Election Only

This code is used when only the statewide races, judicial races, and ballot measures may be counted. The voter moved from one senate district to another within the same judicial district. The senate and house races on the ballot will not be counted.

L Accept Statewide and Senate Only

This code is used when only the statewide and senate races may be counted. The voter has moved between house districts that share the same senate district but have different judicial districts.

M Accept All But Superior and District Court - General Election Only

This code is used when the entire ballot, except the Superior and District Court judges may be counted. The voter moved within a house district that is split by two or more judicial districts. All issues and races, except Superior and District Court judges, will be counted.

N Accept Statewide, Judicial, and Senate - General Election Only

This code is used when only the statewide races, judicial races, senate races and ballot measures can be counted. The voter moved between house districts that share the same senate and judicial districts.

S Accept Statewide Only

This code is used when only the statewide issues and races may be counted. The voter is not eligible to vote for the house race, senate race, or the Superior Court or District Court judges.

ABSENTEE AND QUESTIONED BALLOT REJECT CODES

D Duplicate Ballot Voted

This code is used if it is determined that the voter voted more than one ballot.

E Ballot Envelope Empty

This code is used if the voter's ballot envelope does not contain a voted ballot. **G Voter Failed to Provide Required Identifiers**

This code is used if the voter failed to provide at least one identifier such as their voter number, social security number, Alaska driver's license number or date of birth when voting by mail or electronically.

I Voter is Inactive

This code is used if the voter's record is inactive.

K Ballot Not Properly Applied For

This code is used if a ballot was received from a person who has not applied for the ballot. For example, a wife applied for a ballot, the husband did not, and the husband fills out the ballot envelope and votes the ballot. This code is also used for special needs ballots when the personal representative did not properly complete Step 1 on the ballot envelope.

O Voter Does Not Meet Certification Requirements

This code is used if the voter marked through any of the certification requirements on the voter oath or checked "No" on the citizenship, birth date, or residency box.

T Voter Registered Too Late

This code is used if a voter registered after the 30-day deadline. The only exception for the registration deadline is during presidential elections.

U Ballot Not Dated or Postmarked and Received After Election Day

This code is used when there is no postmark or witnessing date on the ballot envelope and the ballot was received after Election Day.

V Ballot Received Too Late

This code is used if a ballot is postmarked on time, mailed from within the US and not received by the 10th day following the primary election. If a ballot was mailed from overseas, it must be received within 15 days following the general election.

Ballots that are postmarked on time, but received too late, may be counted during any official recount.

W Ballot Postmarked/Voted After Election Day

This code is used if a ballot is postmarked or witnessed after Election Day.

X Voter is Not Registered

This code is used if the voter is not registered and does not appear in VREMS or if the voter appears as I/AV or I/QU.

Y Inadequate Witnessing

This code is used if a ballot envelope was not witnessed properly. For by mail and electronic ballots an authorized official or person over the age of 18 must witness the voter's signature. (This code does not refer to ballots not witnessed properly by notaries).

Z Voter Failed to Sign

This code is used if the voter failed to sign the ballot envelope.

1 Voter Resides in Different Jurisdiction – REAA Election ONLY

This code is used during an REAA/CRSA election if the voter does not reside or is not registered in the REAA/CRSA and does not provide enough information on the ballot envelope to register. If the voter is registered in another jurisdiction, but on the ballot envelope provides registration information that would place the voter in the REAA/CRSA, use the reject B code.

2 Incomplete Notary

This code is used when the notary public witnessing the ballot envelope failed to execute the notarization properly.

3 Ballot Hand Delivered After Election Day

This code is used if a by-mail ballot was hand delivered after Election Day.

4 Ballot Voted By Somebody Other Than Voter

This code is used if it is clear on the ballot envelope that somebody other than the voter voted the ballot.

5 Voter Requested a Primary Election Ballot in Which They Are Not Eligible

This code is used in the primary election if the voter requested a political ballot type in which the voter was not eligible to vote. For example, the voter is registered as a democrat and requests the republican ballot and no ballot measure appears on the ballot.

6 Cancelled Ballot Received

This code is used during a primary election. When a voter requests a different party ballot than the one initially mailed, the first ballot is canceled and a second ballot is sent.

If the first ballot is voted and returned, it will not be counted because the voter requested it to be canceled.

7 No Identification Provided at Time of Voting

This code is used if the election official marked on the ballot envelope "No ID Presented" and the voter has a status and condition code of A/ID. This code is also used if an A/ID voter is voting a by mail or electronic ballot and does not submit the required identification with the ballot. A/ID means the voter initially registered to vote by mail and the voter's identity could not be verified. These voters must show ID at the time of voting for their ballot to count.