IN THE SUPREME COURT OF THE STATE OF ALASKA

Kathryn Dodge,	)	
	)	
Appellant,	)	
	)	
v.	)	Supreme Court No. **S-17301**
	)	
Lt. Governor Kevin Meyer, and Division of Elections Director Josephine Bahnke,	)	
	)	
Appellees.	)	
	)	

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

STATE'S RESPONSE BRIEF

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

INTRODUCTION

After a recount, the Division of Elections ("Division") certified the House District 1 race for Intervenor Barton LeBon by one vote. The two candidates—Appellant Kathryn Dodge and Mr. LeBon—have filed hearing briefs explaining their positions regarding the Division's count/no-count decisions on nine ballots. Because neither candidate's arguments are sufficient to disturb the Division's decisions or the election result, this Court should recommend that the Alaska Supreme Court uphold the Division's decisions and its consequent certification of Mr. LeBon as the winner.

ARGUMENT

I. Under- and over-votes: The Director's decisions on whether to count four ballots based on their markings were correct.

Mr. LeBon argues that the Director should have counted two ballots where voters—rather than filling in the ovals provided to the left of a candidate's name—created their own oval-like marks to the right of the name. [LeBon Br. 13-14; R. 128, 131] But the Director's decision to reject these ballots rests firmly on *Miller v. Treadwell*,[1] where the Alaska Supreme Court followed the strict and unambiguous instructions of AS 15.15.360(a)(5). That statute requires the voter to make a mark "inside the oval provided"—even where some voters had expressed their intent another way. The Director properly followed the statute and the Supreme Court's guidance.

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

[1] 245 P.3d 867, 877-78 (Alaska 2010).

Next, Mr. LeBon agrees with the Director's decision not to count the overvoted ballot with the ovals for both candidates filled in and an "X" over the oval for him, but Ms. Dodge argues this should ballot have been counted as a vote for her. [R. 3; Dodge Br. 30-33] In her view, the "X" indicates the voter's intent to "cross out" the vote for Mr. LeBon, meaning that the voter intended to vote for her. But as the Division explained, this is merely one of two plausible interpretations of the voter's intent. [Division Br. 15-16] AS 15.15.360(a)(4) addresses overvotes and makes clear that "[i]f 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.

Finally, Mr. LeBon argues that the ballot with the oval completed for Ms. Dodge and a single mark in the oval beside his name is also an overvote. [LeBon Br. 14] But the Division correctly counted this vote for Ms. Dodge for the same reasons explained by the Alaska Supreme Court reviewing extremely similar ballots in *Edgmon v. State*.[2] Where, as here, the voter has marked the oval for one candidate consistent with her markings for candidtates in other races on the same ballot, and a mere "stray mark" appears in the other candidate's oval, there is no ambiguity about voter intent.

II. Incorrect identifiers: The Director properly excluded the two ballots with mis-matched voter identifiers.

Mr. LeBon urges the Court to overturn the Director's rejection of two ballots where the voters provided each other's identification numbers on their absentee ballot

[2] *Edgmon v. State, Office of Lieutenant Governor, Division of Elections*, 152. P.3d 1154, 1157 (Alaska 2007).

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

envelopes. [Dodge Br. 11-13] Acknowledging that the ballots lack valid identifiers, Mr. LeBon argues that the Director should nevertheless have "consider[ed] the ballots in conjunction with each other" and counted them despite the mistake. But Mr. LeBon ignores the governing statute, AS 15.20.081(f), and its implementing regulation, 6 AAC 25.510. Both are mandatory and by their plain language require an accurate piece of identification information to appear on the by-mail voter's own ballot envelope.[3]

Mr. LeBon instead cites a related statute, AS 15.20.203(b)(1), which instructs the Director that "[a]n absentee ballot may not be counted if . . . the voter has failed to properly execute the certificate," or if the certificate is not witnessed and attested and postmarked on time. [LeBon Br. 12 n.30] Contrary to Mr. LeBon's argument, this statute provides an alternative reason—in addition to the rules specifically referencing identification information on absentee ballot envelopes—why the Director was required to reject the two ballots. The voters' failure to include an accurate identifier is a "fail[ure] to properly execute the certificate." And the language of AS 15.20.203(b)(1) is again mandatory, not discretionary. Discretionary language would read "the Director may reject an absentee ballot if . . . ." But the passive construction here—"an absentee

---

[3] AS 15.20.081(f) ("The director *shall require* a voter casting an absentee ballot by mail to provide proof of identification or other information to aid in the establishment of the voter's identity as prescribed by regulations adopted under AS 44.62 (Administrative Procedure Act)." (emphasis added)); 6 AAC 25.510(a) ("A voter *shall provide* at least one form of identification specified under (b) of this section at the time the voter . . . executes *the voter's certificate in voting an absentee ballot* by mail . . . .") (emphasis added).

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

ballot may not be counted" is mandatory on its face and leaves no discretion for the Director to count a ballot that lacks proper execution and witnessing.

Relying on Alaska Supreme Court authorities, Mr. LeBon argues that the Director should have relaxed the rules for these two voters because "election statutes are to be considered directory post-election." [LeBon Br. 9-13] But Mr. LeBon misconstrues the Court's caselaw about mandatory and directory election laws.

The Alaska Supreme Court has indeed said that when construed post-election, election laws may be considered "directory only, in support of the result,"[4] but Mr. LeBon ignores the words "*in support* of the result"—the Court does not *disrupt* election results by retroactively relaxing statutory and regulatory requirements and requiring the Division to count otherwise correctly rejected ballots.

Not only that, but the general rule that election laws are considered "directory only, in support of the result" when considered post-election is subject to several important exceptions: this rule does not apply if the provision violated is "of a character to affect an obstruction to the free and intelligent casting of the vote or to the ascertainment of the result," or "affect[s] an essential element of the election," or if "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."[5] Thus, laws that "protect the essence

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

---

4 *Carr v. Thomas*, 586 P.2d 622, 626 (Alaska 1978) (quoting *Rich v. Walker*, 237 Ark. 586, 374 S.W.2d 476, 478 (1964)).

5 *Id.*

of free and intelligent voting" and "safeguard the integrity of the ballot process" are considered mandatory even post-election.[6] The Court explained: "[W]here 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."[7]

The laws regarding voter identifiers safeguard the integrity of the ballot process and should be considered mandatory even post-election. Not only is the language of the applicable statutes and regulations phrased as mandatory, but the requirement that a voter provide a correct identifier is necessary for the functioning of the absentee ballot system. *Finkelstein v. Stout* is instructive—there, the Court held that the requirement that an absentee ballot be cast in the presence of two non-official witnesses was mandatory, and that non-compliant ballots had to be rejected.[8] The requirement that an absentee voter provide an accurate identifier is of a similar character.

Violations of such mandatory requirements justify rejecting votes regardless of the voters' fault for the violation; the Court in *Finkelstein* rejected the non-compliant ballots even though the voters' mistake was "due in part to the failure of the voter instructions on the voter oath form to state explicitly the requirement that the vote be

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

---

6 *See Finkelstein v. Stout*, 774 P.2d 786, 791 (Alaska 1989), *abrogated in part on other grounds by Nageak v. Mallott*, 426 P.3d 930 (Alaska 2018).

7 *Id.*

8 *Id.*

cast in the presence of the witnesses."[9] And here, there is not even a suggestion that the mistake was caused by election officials rather than the voters themselves. The Director properly rejected these non-compliant absentee ballots.

III. Voter residence issues: The Director properly counted the absentee ballots of two voters whose presumptive residences were unrebutted.

Ms. Dodge urges the Court to accept and consider new evidence that was not available at the recount—specifically, evidence about some voters' residence situations. That evidence does not fall within the scope of a recount appeal and cannot rebut the statutory presumption that a voter resides where registered.

A. A recount appeal is distinct from an election contest and should be an appellate review of the Director's recount decisions.

Ms. Dodge contends that the Court appears to have considered evidence of the type she proffers in prior recount appeals. [Dodge Br. 8-12] But the Court has not relied on new, post-recount evidence to overturn recount decisions in a pure recount appeal, and the nature of a recount appeal is that of an *appeal*—not a trial de novo.

Some prior recount appeal cases were broader in scope because they were consolidated with election contests, which originate in the superior court and naturally require taking new evidence.[10] In *Cissna v. Stout*, the Court observed that "[p]rior cases

---

9 *Id.*

10 *See Willis v. Thomas*, 600 P.2d 1079, 1081 (Alaska 1979) ("Because neither statute specifies exactly what the difference between the two actions is, appellant Willis filed both an election contest in the superior court under AS 15.20.540 and a direct appeal of the recount to this court under AS 15.20.510. The election contest case was consolidated with this direct appeal before Judge Ripley."); *Hickel v. Thomas*, 588 P.2d 273 (Alaska 1978) (recount appeal companion case to election contest *Hammond v.*

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

may have blurred the line between issues appropriately considered in a recount appeal and in election contests," opining that "[i]n large part any confusion results from the consolidation of recount appeals and election contests for review."[11] Despite this confusing line-blurring, "an election contest and a recount appeal are distinct proceedings."[12] This case does not involve an election contest.

In past cases that were purely recount appeals, the Court has not relied on new, post-recount evidence to overturn recount decisions:

In *Carr v. Thomas*, the Court considered a recount appeal that presented a single legal question: should the Division count votes cast by questioned voters via punch-card ballots rather than standard paper ballots?[13] Although the Court mentioned an affidavit by the Division Director, this affidavit was simply background on how the punch-card ballots were used, not new information on any disputed factual issue, and certainly not information unknown to the Director at the time of the recount.[14]

In *Fischer v. Stout*, the Court based its ballot-counting decisions on Division records such as ballots, ballot applications, and ballot envelopes, apparently without an

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

Hickel, 588 P.2d 256 (Alaska 1978)); *Nageak v. Mallott*, 426 P.3d 930 (Alaska 2018 ("We consolidated the appeal from the superior court in the election contest with the recount appeal from the Division.").

11 931 P.2d 363, 371 (Alaska 1996).

12 *Willis*, 600 P.2d at 1081.

13 586 P.2d 622, 624 (Alaska 1978).

14 *Id.*

evidentiary hearing or referral to a master.[15] The Court mentioned one voter's claims about her attempts to register—which could suggest that the Court heard the voter's testimony—but the Court then said that "election officials found this evidence insufficient" to count the voter's vote, clarifying that the "evidence" the Court was referring to had been available to the election officials at the recount.[16] The Court also mentioned "inconclusive and unconvincing" evidence about another voter's residence, and "records" that "conclusively show[ed]" yet another voter's residence, but the Court never said that this evidence post-dated the recount—on the contrary, the context suggests that the Court was referring to the Division's records.[17]

In *Finkelstein v. Stout*, the Court referred a recount appeal to a special master who prepared a report, but the Court's opinion did not mention the master holding an evidentiary hearing, nor did any of the Court's decisions on the challenged ballots appear to rely on post-recount evidence.[18] On the contrary, the Court affirmatively rejected such evidence—when confronted with "[p]ost-election affidavits demonstrating non-residency" for twenty-one voters, the Court held that "this objection was untimely as it was raised after the recount was concluded."[19]

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

---

15 741 P.2d 217, 220-25 (Alaska 1987).

16 *Id.* at 224.

17 *Id.*

18 774 P.2d at 787-92.

19 *Id.* at 788.

Finally, in *Cissna v. Stout*, the Court's opinion largely concerned the legal question of whether the Director properly rejected the ballots of voters who certified in writing on their absentee ballot envelopes that they resided at addresses outside the district.[20] In looking at one additional challenge, the Court considered affidavits on the issue of whether the Division was at fault for the voter's untimely ballot, but ultimately concluded that the untimely ballot had to be rejected regardless of fault.[21] The Court did not use post-recount evidence to overturn a count/no-count decision by the Division.

Thus, the recount appeal caselaw does not support overturning recount decisions based on post-recount evidence and thus, does not support the wide-ranging factual inquiry into residency that Ms. Dodge seeks.

Indeed, by statute, the nature of a recount appeal is that of an *appeal*—i.e., an inquiry into whether the Director made mistakes at the recount. A person "who has reason to believe an error has been made *in the recount*" may file an appeal.[22] The Director does not err "in the recount" by failing to take into account evidence that is not available at the recount.

Ms. Dodge notes that the statute says that a recount appeal will be heard by the Court "sitting without a jury," implying that evidence might be taken. [Dodge Br. 10 n.16] But if the legislature had intended for a challenge to recount decisions to be

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

---

20 931 P.2d 363, 367-70 (Alaska 1996).

21 *Id.* at 370.

22 AS 15.20.510 (emphasis added).

simply another form of wide-ranging election contest, the legislature would not have provided an entirely separate procedure for such cases.[23] By contrast to the election contest statute, the recount appeal statute characterizes a challenge to the recount as an "appeal," and directs that it either initiate in the appellate court or—for the subset of such appeals that begin in superior court—that it be considered "in accordance with applicable court rules governing appeals in civil matters."[24] The statute directs the Division to provide the Court with "the record of the recount taken."[25] The statute therefore contemplates an appellate proceeding distinct from an election contest.

Policy concerns support maintaining a meaningful distinction between a recount appeal and an election contest. The wide-ranging approach Ms. Dodge advocates would transform recount appeals from limited appellate proceedings into essentially election contests, but without the high burden of proof that prevents such cases from easily disrupting election results. Election results should not be disrupted lightly—that is why the standard for an election contest is so high, the "general rule" being that "every reasonable presumption will be indulged in favor of the validity of an election,"[26] because "the public has an important interest in the stability and finality of election

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

---

23 *Compare* AS 15.20.540-.560 (election contest statute) *with* AS 15.20.510 (recount appeal statute).

24 AS 15.20.510.

25 *Id.*

26 *Turkington v. City of Kachemak*, 380 P.2d at 595.

results."[27] Thus, election contest plaintiffs "carry a heavy burden"[28]: they must show more than just that errors occurred—they must prove "malconduct, fraud, or corruption on the part of an election official" or "any corrupt practice as defined by law."[29] A plaintiff who merely wants the Court to double-check the Director's recount decisions can bring a recount appeal, but a plaintiff who wants to present new evidence about alleged election-related problems—for instance, voters making fraudulent claims of residence—should bring an election contest and meet the applicable high standards. Otherwise, every close election will result in a recount appeal reaching far beyond the Division's records to disrupt the election result without the protection and stability afforded by the high election contest standard.

Without conceding the relevance of new evidence about residency, the Division recognizes that this Court may prefer to receive whatever evidence the parties wish to present at the hearing—letting the parties argue about its significance—given that there is no time for a remand if the Supreme Court disagrees with the Division.

B. The Director properly relied on the presumption of residence in counting David Odom's and Norma Jean Knapp's ballots.

Because Dr. David Odom and Ms. Norma Jean Knapp were registered to vote in House District 1 and the evidence "at the recount" did not definitively establish that they were not actually residents of the district, the Director properly counted their votes.

---

27 *Dansereau v. Ulmer*, 903 P.2d at 559.

28 *Grimm v. Wagoner*, 77 P.3d 423, 432 (Alaska 2003).

29 AS 15.20.540(1).

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

Ms. Dodge argues that "the director and/or the court must require the voter to provide 'additional information'" if the address is "facially inadequate" to be the voter's residence. [Dodge Br. 19] But as explained in the Division's opening brief, Dr. Odom's and Ms. Knapp's addresses are not facially inadequate to be residences. [Division Br. 24]

Nor is it the Division's position that "no amount of objective evidence can overcome the presumption" that a voter resides where she is registered. [Dodge Br. 20] Rather, the Division's position is that the statutory presumption of residence cannot be overcome by speculation that an address does not seem like a typical residence. As explained in the State's opening brief, the Alaska Supreme Court has held that the statutory presumption was overcome only when either (1) it was physically impossible for the voter to reside at the registered address,[30] or (2) the voter notified the Division of Elections of a change of address.[31] [State Br. 20-22]

Although there may be other ways to overcome the presumption, it would be inappropriate for the Director to disenfranchise a voter based on evidence that does not conclusively prove the voter's non-residency in the district. "[T]he burden of proving a vote should not be counted is on the challenger to that vote."[32] The Supreme Court has repeatedly emphasized the "bedrock principle" that the right to vote "is one of the

---

30 *See Fischer*, 741 P.2d at 221.

31 *See id.*; *Cissna*, 931 P.2d at 369.

32 *Edgmon*, 152 P.3d at 1159.

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

fundamental prerogatives of citizenship" and that it is "fundamental to our concept of democratic government" and of "profound importance."[33] Given the fundamental nature of the right to vote, discarding votes based on the outward appearance of a residence address or singling out a few voters for extra residence-based scrutiny might raise equal protection concerns if any voter were wrongly disenfranchised as a result.[34]

Ms. Dodge relies on *Lake and Peninsula Borough Assembly v. Oberlatz*, which concerned voter residence, [Dodge Br. 22-24]but that case was before the Court in an entirely different procedural posture and does not support her position. In *Oberlatz*, a borough's canvassing committee rejected the ballots of voters it concluded were non-residents.[35] The voters then brought a separate original action in superior court claiming that the rejection of their votes had violated the constitution and other laws.[36] As relief, they did not seek to disturb the election results—rather, they sought injunctive and declaratory relief reinstating them as registered voters in the borough.[37] The superior court concluded that the voters were residents, and the borough appealed.[38] Given this

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

---

33 *Miller v. Treadwell*, 245 P.3d 867, 869 (Alaska 2010) (quoting *Carr*, 586 P.2d at 626 and *Dansereau*, 903 P.2d at 559).

34 *Cf. Bush v. Gore*, 531 U.S. 98, 105 (2000) (concluding that different standards applied to different ballots in recount violated equal protection); *State v. Planned Parenthood of Alaska*, 35 P.3d 30, 42 (Alaska 2001) (explaining the sliding-scale equal protection analysis under the Alaska Constitution).

35 329 P.3d 214, 218 (Alaska 2014).

36 *Id.* at 219.

37 *Id.*

38 *Id.*

very different procedural posture, *Oberlatz* does not inform what kind of voter residency inquiry is appropriate in the context of a recount appeal.

Moreover, given the limited scope of the borough's appeal to the Alaska Supreme Court in *Oberlatz*, the Court "express[ed] no opinion on the propriety of the legal standards the superior court used" to determine residency and instead "review[ed] only the superior court's factual findings for clear error."[39] Thus, the Court's opinion cannot be considered an endorsement of the residency standards the superior court used. Nonetheless, those standards do not support Ms. Dodge's position. The superior court applied the presumption of residency under AS 15.05.020(8) and said that "the party challenging residence bears the burden of overcoming that presumption; the challenger must prove the voter does not intend to remain in the place the voter wishes to vote."[40] This is consistent with the Division's position. Moreover, in reviewing the superior court's factual findings, the Supreme Court noted that "business ownership in a particular location does not disqualify a person from claiming that location as home" and that "the acts of working and resting seem to constitute the entirety, or at least the majority, of 'residing.'"[41] And the Court upheld the findings that the voters were borough residents despite their minimal presence there—for example, one lived in Switzerland and had spent less than three weeks in the borough over the past three

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

39 *Id.* at 222.

40 *Id.* at 221 n.17.

41 *Id.* at 223.

years, but his storage of personal effects at a family home in the borough was considered sufficient to establish his residency there for voting purposes.[42]

Perfection in an election is not possible, particularly given that "[u]nique problems are presented in the vast area encompassed as well as the varied cultural backgrounds and primary languages of voters."[43] And in *Cissna v. Stout*, the Court recognized that perfection with regard to voter residency determinations is not possible, observing that "[a]s a practical matter," the votes of nonresidents may sometimes be counted "simply because election officials do not know that their residency has changed."[44]

Thus, given that (1) the burden of proving a vote should not be counted is on the challenger to that vote, (2) the addresses provided were not facially invalid, (3) the voters did not claim residency elsewhere before the election or even before the recount, and (4) even quite minimal ties can be sufficient to constitute residency for voting purposes as illustrated in *Oberlatz*, the Division properly counted the ballots of Dr. Odom and Ms. Knapp.

IV. PFD voter registration: The Director properly excluded Robert Beconovich's questioned ballot because he changed his registration address.

Finally, as explained in the State's opening brief, the Director properly excluded Robert Beconovich's ballot because he stated on his PFD application—before the

---

42 *Id.* at 218 & 223.

43 *Hammond v. Hickel*, 588 P.2d 256, 259 (Alaska 1978).

44 *Cissna*, 931 P.2d at 369.

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

election—that he resides outside of House District 1. [State Br. 27-29] A voter who does not wish to have his registration changed should not claim residence in a different location, and as a backstop, can utilize the PFD registration law's "opt-out" option.

Ms. Dodge argues that PFD applicants are not aware that "they will be disenfranchised" if they claim a different residence address, but this is inaccurate. [Dodge Br. 28 n.56] First, a PFD applicant like Mr. Beconovich is not "disenfranchised"—his voter registration is simply updated to the new district he claims to reside in, enabling him to vote in that district. Second, an applicant *expressly agrees* to this—the PFD application requires an applicant to certify his understanding that "if I am a United States citizen and otherwise eligible to vote … I will be automatically registered to vote at the residential address provided on this application."[45] This language is clear; it is not a "confusing form[]" as Ms. Dodge argues. [Dodge Br. 29] Moreover, the Division of Elections mails notice to any voter whose address on his PFD application is different than his voter record address that the PFD information will be used to update his voter registration unless he opts out within thirty days.[46] This process is sufficient to notify voters of the requirements of the PFD registration law.

---

45 *See* Alaska Department of Revenue, Permanent Fund Dividend Division, 2018 Adult Certification Form, https://pfd.alaska.gov/LinkClick.aspx?fileticket=2R4LPj55Xgs%3d&portalid=6&timestamp=1544636957806.

46 *See* AS 15.07.070(j)-(l) (instructing the Division of Elections to send notice by mail and provide a 30-day opt-out opportunity); *see also* Affidavit of Carol Thompson and attached exhibit (showing example opt out notice and confirming that Division records include Robert Beconovich among those voters to whom the notice was sent).

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

"[W]hen election officials have written notice of a change in residency, this notice suffices to rebut the presumption of voter residency at the district where that voter previously registered."[47] The Court should uphold the Director's decision not to count Mr. Beconovich's ballot because he was not registered to vote in House District 1.

CONCLUSION

For the foregoing reasons, the Court should recommend that the Alaska Supreme Court uphold the Director's ballot counting decisions and consequent certification of Barton LeBon as the winner of the House District 1 state representative election.

DATED: December 19, 2018.

KEVIN G. CLARKSON
ATTORNEY GENERAL

By: K Demarest
Katherine Demarest (1011074)
Laura Fox (0905015)
Margaret Paton-Walsh (0411074)
Assistant Attorneys General

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

47 *Cissna*, 931 P.2d at 369.

Certificate of Service and Typeface
This is to certify that on this date, a copy of the foregoing is being served electronically and via U.S. mail to:

Thomas P. Amodio
500 L St., Suite 300
Anchorage, AK 999501
Email: tom@reevesamodio.com

Patrick W. Munson
Boyd Chandler Falconer & Munson LLP
911 W. 8th Avenue, Suite 302
Anchorage, AK 99501
Email: PMunson@bcfaklaw.com
LRasmussen@bcfaklaw.com

Stacey C. Stone
Molly A. Magestro
Holmes, Weddle & Barcott, P.C.
701 W. 8th Avenue, Suite 700
Anchorage, AK 99501
Email: Sstone@hwb-law.com
Mmagestro@hwb-law.com
Bfontaine@hwb-law.com

CC VIA E-MAIL:

Marilyn May, Clerk of the Appellate Courts
mmay@akcourts.us
mmontgomery@akcourts.us
sanderson@akcourts.us

Nancy McKewin, Judicial Assistant to Judge Aarseth
nmckewin@akcourts.us

I further certify, pursuant to App. R. 513.5, that the font used in the aforementioned document is Times New Roman 13.

12-19-12

Kyle Emili Date
Law Office Assistant

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