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Sent: Tuesday, March 25, 2025 9:27 PM
To: Senate State Affairs
Subject: Public Testimony: Opposition to SB 64

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Public Testimony: Opposition to SB 64 – A Call for Full Legal Compliance and Constitutional Integrity

Honorable Members of the Senate and House of Representatives,

I stand before you today to strongly oppose the passage of SB 64 in its current form. While its intentions to improve voter access and streamline election processes are commendable, this bill, as written, fails to fully comply with constitutional protections, federal mandates, and tribal rights. We cannot afford to pass a bill that is half-right; it must be 100% in compliance with the law, ensuring no infringement on the rights of voters, particularly those from marginalized communities.

1. Violation of Federal Election Law and Preemption

Federal preemption is a critical issue in this bill, particularly concerning the National Voter Registration Act (NVRA), the Help America Vote Act (HAVA), and the Voting Rights Act. These federal laws set minimum standards for election administration that states must follow. If SB 64 contains provisions that are inconsistent with these laws, they will not stand.

The National Voter Registration Act (NVRA)

The NVRA requires states to allow voters to register and update their registration at government agencies, including public assistance offices and disability agencies (42 U.S.C. § 1973gg). SB 64 does not explicitly address this requirement, which is a violation of the NVRA's provisions. If SB 64's measures conflict with federal law, particularly regarding voter registration, it risks disenfranchising eligible voters and would likely face legal challenges.

The Voting Rights Act

Section 2 of the Voting Rights Act prohibits any state law that discriminates based on race or color, even if the law does not explicitly target a specific group (52 U.S.C. § 10301). The bill's failure to adequately provide language assistance for Alaska Native populations or non-English speakers could be seen as a violation of Section 2. The state must ensure that all voting-related materials are accessible to these communities to avoid discriminatory impact.

The language assistance provisions in SB 64 are vague, lacking clear guidelines for implementation. Federal case law has repeatedly emphasized that insufficient language assistance violates the Voting Rights Act (e.g., LULAC v. Perry, 548 U.S. 399 (2006)).

Help America Vote Act (HAVA)

Under HAVA, states must provide voting systems that are accessible, accurate, and error-free. SB 64's lack of specific guidelines for the implementation of electronic voting or the protection of absentee ballots risks violating HAVA's

security and accuracy standards. If the bill does not explicitly ensure that all voting methods are compliant with federal standards, it will likely be challenged for not meeting HAVA's requirements.

2. Tribal Sovereignty and Consultation Failures

Alaska Native tribes have unique rights under federal and state law that must be respected. These rights include the ability to govern their internal elections and manage electoral processes on their lands. Executive Order 13175 mandates meaningful consultation with tribes before implementing policies that affect tribal communities.

Failure to Consult Alaska Native Tribes

SB 64 makes no mention of consultation with Alaska Native tribes or consideration of the Alaska Native Claims Settlement Act (ANCSA), which outlines the rights of Native corporations and individuals within the state. By not engaging with these tribes, SB 64 risks violating tribal sovereignty and failing to ensure that the bill does not infringe on the ability of Alaska Native tribes to manage their own affairs, particularly election-related matters.

The Indian Self-Determination and Education Assistance Act also gives tribes control over various governmental matters, including elections, which could be undermined by SB 64 if it fails to consider tribal needs and governance (25 U.S.C. § 5301).

Impacts on Native Voter Access

Many Alaska Native communities face significant geographical barriers to voting. The U.S. Supreme Court in *Harper v. Virginia Board of Elections* (383 U.S. 663 (1966)) ruled that any law that imposes undue burdens on voters, particularly in remote areas, violates the Equal Protection Clause of the 14th Amendment. While SB 64 offers mobile voting stations, these provisions must be adequately structured to guarantee that they reach rural and Native communities. If they do not, the bill risks further disenfranchising these communities.

3. Constitutional Violations: Equal Protection, Due Process, and Voting Rights

The Equal Protection Clause

The 14th Amendment guarantees equal protection under the law, including in the context of voting rights. Any law that imposes disproportionate burdens on voters in rural Alaska or Native communities would be subject to constitutional scrutiny under this clause. SB 64's absentee voting provisions, if overly restrictive, could place undue burdens on voters who have limited access to polling places, especially Alaska Native voters. Case law such as *Reynolds v. Sims* (377 U.S. 533 (1964)) emphasizes that laws that disproportionately affect certain communities violate the Equal Protection Clause.

Similarly, the Due Process Clause of the 14th Amendment requires that any changes to the election process must be fair and not create arbitrary or unnecessary obstacles for voters. The SB 64 provision regarding voter identification and absentee ballots, if too onerous, could violate this principle.

Freedom of Speech

The First Amendment guarantees the right to participate in democratic processes, including voting. Any provision in SB 64 that unduly restricts voter participation (such as excessive absentee ballot requirements or restrictions on early voting) could infringe upon this constitutional right. In *Buckley v. Valeo* (424 U.S. 1 (1976)), the Supreme Court held that any law that significantly restricts the right to vote must be subject to strict scrutiny. SB 64 must not create such restrictions without compelling reasons.

This also protects the use of AI. It is freedom of speech and press. No matter what you decide.

4. Voter Access and Due Process Violations

Absentee Ballots and Access to Voting

SB 64's provisions for absentee ballots raise serious due process concerns. The U.S. Supreme Court in *Anderson v. Celebrezze* (460 U.S. 780 (1983)) emphasized that laws that impose burdens on absentee voting must be balanced against the state's interest in regulating elections. SB 64's proposed changes, especially those requiring voters to jump through additional hurdles to validate absentee ballots, could violate due process by placing an undue burden on Alaska voters, particularly those in remote areas. This is especially concerning for Alaska Native communities, where geographical isolation limits access to in-person voting.

5. Legal Precedents and Case Law

Relevant Case Law

In *Shaw v. Reno* (509 U.S. 630 (1993)), the Supreme Court reaffirmed that laws that disproportionately affect minority populations in the voting process must pass strict scrutiny. SB 64, if it does not adequately protect Alaska Native voting rights, could face legal challenges based on this precedent.

In *Vieth v. Jubelirer* (541 U.S. 267 (2004)), the Court emphasized that voting laws must adhere to constitutional standards that protect equal access to the polls. If SB 64's provisions fail to provide equal access, particularly for marginalized communities, it will be vulnerable to constitutional challenges.

In conclusion, SB 64, while well-intentioned, is fraught with legal deficiencies that cannot be overlooked. The bill risks violating federal election law, tribal sovereignty, constitutional rights, and due process protections. It imposes undue burdens on voters, particularly Alaska Native communities, and may inadvertently disenfranchise marginalized populations. I urge you to reconsider the passage of this bill unless it is fully compliant with federal, state, and tribal laws, and constitutional protections.

If the bill cannot be 100% compliant with the law, then we must reject it entirely. We cannot compromise on the fundamental rights of our citizens.

References

National Voter Registration Act, 42 U.S.C. § 1973gg

Help America Vote Act, 52 U.S.C. § 21081

Voting Rights Act, 52 U.S.C. § 10301

Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 5301

Alaska Native Claims Settlement Act, 43 U.S.C. § 1601

Harper v. Virginia Board of Elections, 383 U.S. 663 (1966)

Reynolds v. Sims, 377 U.S. 533 (1964)

Buckley v. Valeo, 424 U.S. 1 (1976)

Anderson v. Celebrezze, 460 U.S. 780 (1983)

Shaw v. Reno, 509 U.S. 630 (1993)

Vieth v. Jubelirer, 541 U.S. 267 (2004)

Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Public Testimony: Opposition to SB 64 – Ensuring Full Legal Compliance and Constitutional Integrity

Honorable Members of the Senate and House of Representatives,

I stand before you today to express strong opposition to SB 64 in its current form. While the bill aims to improve voter access and streamline election processes, it falls short of ensuring full compliance with constitutional protections, federal mandates, and tribal rights. It is imperative that we uphold the integrity of our electoral system by enacting legislation that is entirely consistent with legal standards.

1. Violation of Federal Election Law and Preemption

Federal preemption is a critical concern, especially regarding the National Voter Registration Act (NVRA), the Help America Vote Act (HAVA), and the Voting Rights Act. These federal laws establish minimum standards for election administration that states must adhere to. Provisions in SB 64 that conflict with these laws risk being invalidated.

The National Voter Registration Act (NVRA)

The NVRA mandates that states provide opportunities for voter registration at various public assistance and disability agencies (42 U.S.C. § 1973gg). SB 64's lack of explicit alignment with this requirement could lead to non-compliance issues.

The Voting Rights Act

Section 2 prohibits any state law that discriminates based on race, color, or previous condition of servitude (52 U.S.C. § 10301). The bill's inadequate language assistance provisions for non-English-speaking voters, including Alaska Native populations, may constitute a violation of this section. The recent Supreme Court case *Louisiana v. Callais* highlights the Court's scrutiny of redistricting plans that may dilute minority voting strength, emphasizing the importance of compliance with the Voting Rights Act.

Help America Vote Act (HAVA)

HAVA requires states to provide voting systems that are accessible and accurate. SB 64's vague guidelines on electronic voting and absentee ballots may fail to meet HAVA's standards, potentially leading to security and accuracy issues.

2. Tribal Sovereignty and Consultation Failures

Alaska Native tribes possess unique rights under federal and state law, including governance over their internal elections. Executive Order 13175 mandates meaningful consultation with tribes on policies affecting them.

Failure to Consult Alaska Native Tribes

SB 64 omits any mention of consultation with Alaska Native tribes or consideration of the Alaska Native Claims Settlement Act (ANCSA). This oversight risks infringing on tribal sovereignty and the ability to manage their own electoral processes. The Supreme Court's decision in *Brackeen v. Haaland* underscores the necessity of respecting tribal sovereignty in legislative matters.

Impacts on Native Voter Access

Many Alaska Native communities face significant geographical barriers to voting. The Supreme Court's decision in *Harper v. Virginia Board of Elections* ruled that laws imposing undue burdens on voters, particularly in remote areas, violate the Equal Protection Clause of the 14th Amendment. SB 64's mobile voting station provisions must be adequately structured to ensure they reach rural and Native communities, preventing further disenfranchisement.

3. Constitutional Violations: Equal Protection, Due Process, and Voting Rights

The Equal Protection Clause

The 14th Amendment guarantees equal protection under the law, including voting rights. Any law that imposes disproportionate burdens on rural Alaska or Native communities violates this clause. The Supreme Court's decision in *Shaw v. Reno* reaffirmed that laws disproportionately affecting minority populations in voting must pass strict scrutiny. SB 64's absentee voting provisions, if overly restrictive, could place undue burdens on Alaska voters, particularly those in remote areas.

Freedom of Speech

The First Amendment protects the right to participate in democratic processes, including voting. Provisions in SB 64 that unduly restrict voter participation, such as excessive absentee ballot requirements or early voting restrictions, could infringe upon this right. The Supreme Court's ruling in *Buckley v. Valeo* held that significant restrictions on voting rights must be subject to strict scrutiny. SB 64 must not create such restrictions without compelling justification.

4. Voter Access and Due Process Violations

Absentee Ballots and Access to Voting

SB 64's absentee ballot provisions raise due process concerns. The Supreme Court's decision in *Anderson v. Celebrezze* emphasized that laws imposing burdens on absentee voting must be balanced against the state's interest in regulating elections. SB 64's proposed changes, especially those requiring voters to navigate additional hurdles to validate absentee ballots, could violate due process by placing undue burdens on Alaska voters, particularly in remote areas.

5. Recent Legal Developments

Tribal Sovereignty: The Supreme Court's recent decision in *Brackeen v. Haaland* affirmed the rights of tribes to govern their internal affairs, including electoral processes. SB 64's failure to consult with Alaska Native tribes contradicts this precedent, potentially infringing on tribal sovereignty.

Voting Rights: The Supreme Court's deliberations in *Louisiana v. Callais* underscore the importance of adhering to the Voting Rights Act, particularly concerning the creation of majority-Black districts. SB 64's potential to disproportionately affect minority voters highlights the need for careful scrutiny to prevent violations of voting rights.

Conclusion

SB 64, while well-intentioned, presents significant legal challenges that cannot be overlooked. The bill risks violating federal election laws, tribal sovereignty, constitutional rights, and due process protections. It imposes undue burdens on voters, particularly Alaska Native communities, and may inadvertently disenfranchise marginalized populations. I urge you to reconsider the passage of this bill unless it is fully compliant with federal, state, and tribal laws, as well as constitutional protections.

If the bill cannot be 100% compliant with the law, then we must reject it entirely. We cannot compromise on the fundamental rights of our citizens.

References

National Voter Registration Act, 42 U.S.C. § 1973gg
Help America Vote Act, 52 U.S.C. § 21081

Voting Rights Act, 52 U.S.C. § 10301

Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 5301

Alaska Native Claims Settlement Act, 43 U.S.C. § 1601

Harper v. Virginia Board of Elections, 383 U.S. 663 (1966)

Shaw v. Reno, 509 U.S. 630 (1993)

Buckley v. Valeo, 424 U.S. 1 (1976)

Anderson v. Celebrezze, 460 U.S.

OPPOSITION TESTIMONY: SB 64 - Violation of Constitutional, Federal, State, and Tribal Laws

Introduction: I stand in strong opposition to SB 64, a bill that represents a clear violation of numerous fundamental legal principles, including constitutional rights, federal statutes, state laws, and tribal sovereignty. The provisions of this bill threaten the integrity of voter rights, electoral transparency, and tribal governance. Furthermore, this bill's potential impact on marginalized communities is severe, making it a direct infringement on protected rights and privileges under the U.S. Constitution and Alaska's own state laws.

1. Violation of Voting Rights and Constitutional Protections: SB 64 undermines core constitutional protections guaranteed by the Fifteenth Amendment of the U.S. Constitution, which prohibits the denial or abridgment of the right to vote on the basis of race, color, or previous condition of servitude. The bill's provisions concerning voter qualification, preregistration, and electronic registration methods introduce unnecessary barriers to voting, which could disproportionately disenfranchise marginalized groups, particularly Indigenous populations, low-income communities, and people of color.

Shelby County v. Holder, 570 U.S. 529 (2013): The U.S. Supreme Court decision struck down key provisions of the Voting Rights Act. However, the principle that election reforms must promote accessibility and fairness is still enshrined in the Constitution. SB 64's restrictions on voter eligibility and changes to voter registration processes may exacerbate inequalities and disenfranchise voters who face systemic barriers.

Harper v. Virginia Board of Elections, 383 U.S. 663 (1966): The Court ruled that voter qualifications cannot impose arbitrary or discriminatory barriers to participation. Provisions within SB 64 may be interpreted as creating such barriers, especially for Alaska Natives and others living in rural or remote areas.

Crawford v. Marion County Election Board, 553 U.S. 181 (2008): This case clarified the burden that voting laws place on citizens. SB 64's stipulations on absentee voting and electronic registration are likely to add significant burdens on voters in Alaska's rural communities and Alaska Natives, which would be unconstitutional.

2. Violation of Tribal Sovereignty and Treaties: SB 64's provisions fail to respect the sovereignty of Alaska's Native tribes and their right to self-governance in managing their own election systems. Indian sovereignty, as upheld by the Indian Self-Determination and Education Assistance Act (ISDEAA) and subsequent legal decisions, guarantees that tribal nations have the authority to govern their electoral processes without state interference.

United States v. Kagama, 118 U.S. 375 (1886): The Supreme Court recognized federal responsibility to protect the interests of Indigenous peoples. SB 64's attempt to impose state voting laws over tribal governance directly contradicts this principle by imposing standards that may conflict with established tribal policies.

Worcester v. Georgia, 31 U.S. 515 (1832): Chief Justice Marshall's opinion in this case emphasized that tribal nations are distinct political communities, and as such, they retain the right to regulate their own affairs, including elections. SB 64's interference in tribal elections undermines this foundational principle of tribal sovereignty.

Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1601 et seq.: This act recognizes the rights of Alaska Natives to manage their lands and resources, and by extension, their own internal governance structures, including elections. SB 64 could infringe upon those rights, particularly if it overrides tribal authority to manage voter registration and election processes within their own communities.

3. Infringement on Federal and State Laws: SB 64 conflicts with several key provisions of federal law, including the National Voter Registration Act of 1993 (NVRA), which ensures that voter registration is simple, accessible, and equitable.

National Voter Registration Act (NVRA), 52 U.S.C. § 20501 et seq.: This federal law mandates that states facilitate voter registration through motor vehicle departments and other public agencies. SB 64's changes to voter registration processes, including potentially burdensome proof-of-residency requirements and limited electronic registration, are in direct conflict with the NVRA's goal of making voter registration easier.

Voting Rights Act of 1965, 52 U.S.C. § 10301 et seq.: The bill's provisions on absentee and electronic voting could disproportionately affect individuals in rural areas, thereby violating federal mandates to ensure voting access for all citizens.

Help America Vote Act (HAVA), 52 U.S.C. § 21081: The bill may violate provisions of HAVA, which provides for uniform standards to ensure fair access to the electoral process. SB 64's lack of clear protections for rural voters and those with language barriers risks violating these standards, particularly in Alaska's Indigenous communities.

4. Disproportionate Impact on Marginalized Communities: The provisions in SB 64, particularly those dealing with voter qualifications, registration, and absentee voting, disproportionately burden rural and Indigenous Alaskans, violating their right to equal protection under the Fourteenth Amendment.

Reynolds v. Sims, 377 U.S. 533 (1964): The Supreme Court held that the principle of "one person, one vote" must be upheld and that voting rights cannot be restricted by arbitrary or discriminatory laws. The bill's provisions would result in unequal access to voting for Alaska's rural and Indigenous communities, effectively violating this constitutional guarantee.

5. Lack of Transparency and Safeguards: The bill's failure to include adequate safeguards for transparency in voting, especially in the digital age, could open the door to election interference and fraud. The absence of clear cybersecurity provisions in SB 64 violates the principles of election integrity outlined by federal law.

Bush v. Gore, 531 U.S. 98 (2000): This decision underscored the necessity of uniform procedures for counting and validating ballots to ensure electoral integrity. SB 64's provisions on absentee and electronic voting, with unclear protocols for validation, fail to meet this standard, undermining voter confidence and the sanctity of the electoral process.

6. Conclusion and Call to Action: SB 64 represents a direct assault on the rights of voters, particularly those from marginalized groups, including Alaska Natives, low-income individuals, and rural residents. The bill violates numerous constitutional principles, federal statutes, and tribal laws. It threatens to undermine the integrity of Alaska's elections and disenfranchise a significant portion of its population.

This bill must not be passed in any form. If lawmakers wish to pursue electoral reform, it must be done in a manner that fully respects federal, state, and tribal laws, guarantees equal protection under the Constitution, and preserves the fundamental rights of all Alaskans to vote without undue burden.

References:

Shelby County v. Holder, 570 U.S. 529 (2013)

Harper v. Virginia Board of Elections, 383 U.S. 663 (1966)

Crawford v. Marion County Election Board, 553 U.S. 181 (2008)

United States v. Kagama, 118 U.S. 375 (1886)

Worcester v. Georgia, 31 U.S. 515 (1832)

Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1601 et seq.

National Voter Registration Act (NVRA), 52 U.S.C. § 20501 et seq.

Voting Rights Act of 1965, 52 U.S.C. § 10301 et seq.

Help America Vote Act (HAVA), 52 U.S.C. § 21081

Reynolds v. Sims, 377 U.S. 533 (1964)

Bush v. Gore, 531 U.S. 98 (2000)

I expected such actions from those driven by hatred and vengeance, but I never anticipated it from my own colleagues—those who, like me, took an oath to serve and protect all people. It is a disgrace to witness this attack on the most vulnerable among us, including the Native Alaskans who welcomed us to their land with open arms. I am disgusted and deeply disappointed. My goal has always been to make this land a better place for all peoples, not just for the white man. We must strive for justice and equality, not perpetuate division and harm.

All we needed was ballot curing and a way to keep our elections secure from cyberattacks, and cryptobros. Not an attack full on assault from the ARP. Do better. The law will not take mercy on any of us, but it will persecute us just the same. Unless you try to make another special law just for elected officials again. Don't get any bright ideas. None of this is funny.

Susan Allmeroth
Two Rivers
Myself