

ALASKA STATE LEGISLATURE
JOINT MEETING
HOUSE JUDICIARY STANDING COMMITTEE
SENATE JUDICIARY STANDING COMMITTEE
Anchorage, Alaska
October 16, 2020
1:06 p.m.

MEMBERS PRESENT

HOUSE JUDICIARY STANDING COMMITTEE

Representative Matt Claman, Chair
Representative Chuck Kopp (via teleconference)
Representative Harriet Drummond (via teleconference)
Representative Louise Stutes (via teleconference)
Representative Gabrielle LeDoux (via teleconference)
Representative Sarah Vance (via teleconference)

SENATE JUDICIARY STANDING COMMITTEE

Senator John Coghill, Chair (via teleconference)
Senator Peter Micciche, Vice Chair
Senator Shelley Hughes (via teleconference)
Senator Jesse Kiehl (via teleconference)

MEMBERS ABSENT

HOUSE JUDICIARY STANDING COMMITTEE

Representative Laddie Shaw

SENATE JUDICIARY STANDING COMMITTEE

Senator Lora Reinbold

OTHER LEGISLATORS PRESENT

HOUSE MEMBERS

Representative Bryce Edgmon (via teleconference)
Representative Ivy Spohnholz (via teleconference)
Representative Sara Hannan (via teleconference)

SENATE MEMBERS

Senator Tom Begich (via teleconference)
Senator Elvi Gray-Jackson (via teleconference)

COMMITTEE CALENDAR

PRESENTATION(S): Alaska's Election Procedures and Practices

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

GAIL FENUMIAI, Director
Division of Elections
Office of the Lieutenant Governor
Juneau, Alaska

POSITION STATEMENT: Answered prepared questions and presented information related to Alaska's election procedures and practices.

CORI MILLS, Assistant Attorney General
Civil Division
Labor and State Affairs Section
Department of Law
Juneau, Alaska

POSITION STATEMENT: Responded to questions related to Alaska elections.

SENATOR ELVI GRAY-JACKSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Asked questions during the presentation on election procedures and practices in Alaska.

SENATOR TOM BEGICH
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Asked questions during the presentation on election procedures and practices in Alaska.

ACTION NARRATIVE

[1:06:52 PM](#)

CHAIR MATT CLAMAN called the joint meeting of the House and Senate Judiciary Standing Committees to order at 1:05 p.m. Present at the call to order were Representatives LeDoux (via teleconference), Drummond (via teleconference), Vance (via teleconference), Stutes (via teleconference), Kopp (via teleconference), and Chair Claman; and Senators Hughes (via teleconference), Kiehl (via teleconference), Micciche, and Chair Coghill (via teleconference).

PRESENTATION(S): Alaska's Election Procedures and Practices

[1:08:33 PM](#)

CHAIR CLAMAN announced that the only order of business would be a presentation on Alaska's election procedures and practices. He opened invited testimony and explained that the presenters would first respond to the list of questions he prepared regarding election procedures and practices. He noted that copies of the questions were also distributed to the members.

[1:10:04 PM](#)

GAIL FENUMIAI, Director, Division of Elections, Office of the Lieutenant Governor, stated that she would answer the questions that Chair Claman provided, but she would start with a snapshot of the division and its work to provide some context to her answers.

She said the 28 fulltime staff at the Division of Elections have been working tirelessly to conduct an election that is as safe and efficient as possible during a pandemic and given a record number of absentee by-mail ballots. She said the division also must be prepared to have voting in all 441 precincts, which entails recruiting over 2,500 election workers, testing voting equipment, preparing supplies, processing absentee applications, mailing ballots, logging ballots, working with the various boards, troubleshooting, and reviewing and counting ballots.

[1:11:55 PM](#)

MS. FENUMIAI read question 1:

1. What are the procedures for counting absentee ballots and early voting ballots?

MS. FENUMIAI explained that absentee ballots, which include by-mail ballots, ballots sent by FAX or online delivery, absentee

in-person ballots, and special-needs ballots, are logged and batched when they are received. Division staff then assign an initial accept or reject code to each ballot based on the registered voter's information. The bipartisan absentee review board, which is authorized by AS 15.20.190-205, convenes not less than seven days before the election to review all absentee ballots and determine whether the absentee voter is qualified to vote in the election and whether the ballot has been properly cast.

She advised that an absentee ballot may not be counted if the voter failed to sign and provide an identifier on the certificate; if it's postmarked after Election Day; if it was delivered after the election by a means other than mail; and if it was not received by the statutory deadline set in AS 15.20.203. For the general election, that would be ten days following the election if postmarked within the United States and 15 days after if postmarked outside the United States.

MS. FENUMIAI stated that the absentee review board must complete its duties by the 16th day after the election. She explained that ballots that go through the review process are counted once duplicate voter research is completed. The division must have all 441 precinct registers in hand and processed to compare and reject absentee ballots from voters who also voted in person. She posited that duplicate voting is likely to increase with an increase in absentee voting. The absentee review and counting process doesn't start for seven days to accommodate more rural locations where it takes longer to get the registers back. Counting will continue through November 18, which is the last day to receive ballots by mail if they were postmarked outside of the United States.

She said early voted ballots do not require any post-voting review, because voter eligibility is determined at the time of voting. The voter signs an early voting certificate that states the information appearing on the certificate is true and correct. Early ballots that are cast through the Thursday before Election Day will be counted on election night. Early voted ballots cast Friday through Election Day will be counted with other absentee ballots on the seventh day following the election.

MS. FENUMIAI read question 1a: [Original punctuation provided.]

- 1.a. If a voter requests an absentee ballot, but then votes in-person instead, is the in-person ballot always considered a "questioned" ballot?

MS. FENUMIAI answered no. A questioned ballot is voted for the following reasons: a person's name does not appear on the precinct register, the information in the precinct register is not correct and the voter wants to correct it, someone challenges the eligibility of a voter, or if it is noted on the precinct register that the person has already voted. During a primary election, a voter has to vote a questioned ballot if they request a ballot for which they are not qualified to vote, based on party bylaws.

MS. FENUMIAI read question 1b: [Original punctuation provided.]

- 1.b. How many people requested absentee ballots, but then voted in-person in November 2018?

MS FENUMIAI answered that the division does not have a report that can produce this information.

MS. FENUMIAI read question 1c: [Original punctuation provided.]

- 1.c. Can a voter vote early in-person at a regional election office (even if is not [in their] region)? If so, are those ballots counted at the same time as other early voting ballots or with the absentee ballots?

MS. FENUMIAI explained that a person can vote early in person at any regional election office. The ballot will be counted according to when the vote was cast.

[1:16:52 PM](#)

CHAIR CLAMAN asked what day of the month the Thursday before the election falls on this year.

MS. FENUMIAI replied Election Day is October 29, 2020. She added that the ballots cast at the early voting locations from October 19 through October 29 will be counted on Election Day. Early voted ballots cast on October 30 through November 3 will be counted seven days following the election.

[1:17:30 PM](#)

MS. FENUMIAI paraphrased question 2a that read as follows:

- 2.a. How many drop boxes for absentee ballots are set up in Anchorage, Fairbanks, Juneau, and the MatSu?

MS. FENUMIAI said there are 10 drop boxes in those locations and one at the Kenai Peninsula Borough office.

MS. FENUMIAI paraphrased question 2b that read as follows:

- 2.b. Which communities have drop boxes in rural Alaska?

She answered that there are no drop boxes in rural Alaska, and continued to the third section of questions.

[1:18:04 PM](#)

CHAIR CLAMAN asked her to respond to questions 2c and 2d that read as follows: [Original punctuation provided.]

- 2.c. Will there be opportunities to add additional drop boxes before November 3, 2020?
- 2.d. Has the Division partnered with local government for drop boxes and locations (municipalities, boroughs, and cities)?

[1:18:47 PM](#)

MS. FENUMIAI said the logistics of shipping secure drop boxes around the state is not feasible due to the many other duties the division is currently overseeing. Regarding partnering with local governments, she restated that the Kenai Peninsula Borough has a drop box and is monitoring it for the division. The drop box in the MatSu Borough is shared with the borough whose local election is also on November 3.

MS. FENUMIAI turned to the next section of questions regarding the schedule for counting absentee and early voting ballots. Question 3a read as follows:

- 3.a. Are early in-person ballots counted on election day? [Original punctuation provided.]

MS. FENUMIAI explained that early voted ballots cast through October 29th will be counted on Election Day. Early voted ballots cast after October 29 and absentee in-person ballots will be counted seven days after the election.

MS. FENUMIAI read question 3c:

3.c. Is there a recommendation for when a voter should put an absentee ballot in the mail?

She said the division encourages voters to return their voted ballots as soon as possible.

[1:20:45 PM](#)

MS. FENUMIAI read question 4 regarding the history of voter fraud in Alaska and asked to defer it to Ms. Mills with the Department of Law.

CHAIR CLAMAN replied that is acceptable.

MS. FENUMIAI read question 5: [Original punctuation provided.]

5. What steps is the Division taking to prevent voter fraud in 2020?

MS. FENUMIAI said fraud prevention starts at the registration level when a person's identity is verified before they are registered. Verification can occur when a person registers in front of a registrar, at a Division of Motor Vehicles (DMV) office, or via the division's online voting system. Verification is done as required by Help America Vote Verification (HAVV) through the Social Security Administration. Verification is also done when a voter applies for an absentee ballot and provides their date of birth and another identifier. This information is then checked against what appears in the state's voter registration system to ensure that the voter is authentic and eligible to receive a ballot. When a person goes to vote, they provide identification to the election worker or the election worker can note that they know the person. If the voter does not present identification and is not personally known by the election worker, the voter must vote a questioned ballot. The process for reviewing a questioned ballot is the same as for an absentee ballot.

MS. FENUMIAI read questions 6 and 6a: [Original punctuation provided.]

6. What steps is the Division taking to increase the availability of early in-person voting?
 - a. What is the number of early voting locations state-wide?

MS. FENUMIAI stated that there are eight true early voting locations: two in Juneau, two in Anchorage, one in Wasilla, one in Palmer for Districts 7-12, one in Fairbanks, and one in Nome. The University of Alaska Anchorage and the University of Alaska Fairbanks will also have early voting locations open on November 2nd and 3rd.

MS. FENUMIAI read question 6b: [Original punctuation provided.]

- 6.b. What is the relationship if any, between the number and location of early voting locations in Alaska and settlement of the earlier lawsuit about voting options in rural Alaska?

MS. FENUMIAI advised that all other early voting locations are conducted as absentee in-person voting.

[1:24:20 PM](#)

CHAIR CLAMAN asked what the difference is between early in-person voting and absentee in-person voting.

MS. FENUMIAI explained that early voting typically takes place in a regional elections office. However, the division may also designate other locations where elections officials have access to the statewide voter registration system and are able to print early voting certificates that voters sign to verify that the information on the certificate is accurate. The voter can then vote a ballot and no further review of that ballot is needed.

MS. FENUMIAI continued to explain that absentee in-person voting is usually conducted in single-site districts where ballots for just one district are available and just one or two voting officials are onsite. The voter must complete an absentee in-person oath and affidavit envelope. The voter votes the ballot for the district, it is sealed in the envelope, and the ballots are returned to the division. Once the division receives the ballots, they are batched and logged and later reviewed by the absentee voter review board to determine the voters' eligibility to cast that ballot.

CHAIR CLAMAN asked her to respond to the question about the lawsuit.

[1:27:01 PM](#)

MS. FENUMIAI answered that there was a significant push in 2014 to increase the number of absentee in-person voting locations statewide. Since then, the division has reached out to communities each year to solicit continuing and new interest in having an absentee in-person voting location in the community. She noted that a new location was added this year at the Cook Inlet Tribal Corporation building. It will be an absentee in-person location that will have ballots for all 40 House districts.

[1:28:12 PM](#)

CHAIR CLAMAN asked her to speak to the Native American Rights Fund lawsuit regarding the number of towns, particularly in rural Alaska, that have absentee in-person voting locations. He specifically asked how many locations were added and about the efforts to maintain those locations.

[1:28:37 PM](#)

MS. FENUMIAI said she would defer to Cori Mills with the Department of Law because she didn't recall that the settlement required a specific number of locations. She added that she would do some research and follow up with her findings.

CHAIR CLAMAN asked how many absentee in-person voting locations are outside of Anchorage.

[1:29:22 PM](#)

MS. FENIUMIAI estimated that there are about 140 and said she would follow up with the exact number.

[1:29:41 PM](#)

MS. FENUMIAI read question 7: [Original punctuation provided.]

7. How long has Alaska counted absentee ballots after election day and what is the reason to count ballots after election day?

MS. FENUMIAI said the process began with the 2008 general election and continued through the 2014 general election. It was reimplemented with the 2020 primary election to ensure that no voter has more than one ballot counted in an election. Once the division receives and processes the in-person precinct registers, they will run duplicate voter reports and pull any absentee or question ballots of voters who might also have voted at the polls on Election Day.

[1:30:47 PM](#)

CHAIR CLAMAN offered his understanding that Alaska has long had the statutory requirement to continue to count absentee ballots post-election as they arrive in the mail. He asked if there was a statutory change in 2008 and if that was the practice for many years prior to 2008.

MS. FENUMIAI replied there is no statutory requirement for when the division can start counting ballots, when the review boards begin, or how long the ballots must be received.

CHAIR CLAMAN said he included the question because discussion on the national level has suggested that states should not count any ballots that arrive after Election Day. He offered his understanding that Alaska has long counted ballots that arrive after the election as long as they are postmarked by Election Day.

MS. FENUMIAI replied state law provides that ballots in a general election that are postmarked by Election Day and determined eligible can be counted up until 10 days after November 3 and 15 days after if postmarked outside the United States.

[1:32:19 PM](#)

CHAIR CLAMAN asked if she knew when the law took effect.

MS. FENUMIAI replied she would have to do some research before answering.

[1:32:47 PM](#)

MS. FENUMIAI turned to question 8 that read as follows:

8. Why did the community of Mertarvik not receive primary ballots?

MS. FENUMIAI suggested that members refer to the October 12, 2020 letter that she sent to Senator Olson and distributed to all members of the legislature. In summary, it said that on August 7, 2020 the division sent a letter to every voter in Newtok with information about absentee voting and informed them that the division had no [election] workers and that they did not know about the relocation until two weeks before the election.

MS. FENUMIAI said the Region IV Elections Office received a verbal report the day before the election that a community member was willing to travel between [Newtok and Mertarvik] to give people an opportunity to vote absentee in person. That did not happen, but the division didn't learn that until the day after the election. Ballots were only available in the precinct the division was aware of, which was the community of Newtok.

[1:34:05 PM](#)

MS. FENUMIAI read question 8a: [Original punctuation provided.]

8.a. How is the Division addressing this issue in Mertarvik for the general election?

MS. FENUMIAI said an absentee voting official in Mertarvik will start working on Tuesday, November 20th at the Pioneer School and there will be a precinct for Election Day voting in Newtok. Right now, there are two election workers and the division is looking for more.

MS. FENUMIAI read question 8b: [Original punctuation provided.]

8.b. If there is potential for this issue to arise in other communities for the general election, how is the Division addressing this potential issue?

MS. FENUMIAI said election worker recruitment has always been problematic. Today, the division has an adequate workforce in most areas but is still working to secure workers in Clark's Point, Sleetmute, Deering, and Wainwright. Voters in these communities were informed this week of their voting options, sent an absentee by-mail application, and asked to become an election worker. She said the division is continuing to work with the cities, tribes, and Native corporations to find workers in those communities.

1:35:50 PM

MS. FENUMIAI deferred question 9 to Cori Mills with the Department of Law, and read question 10: [Original punctuation provided.]

10. How is the Division planning to spend federal pandemic relief funds specific to the general election?

MS. FENUMIAI recounted that the division has: hired additional personnel in the regional offices to help procure and mail PPE (personal protective equipment); hired additional staff in the absentee office to process the record number of absentee applications and send ballots to voters who timely applied; procured additional office space to allow adequate social distancing of staff and boards; and increased ballots, by-mail ballot materials, and PPE of various sorts for the precincts.

1:37:07 PM

MS. FENUMIAI read question 10a:

- 10.a. Is there an option to have pre-paid postage for ballot return envelopes?

MS. FENUMIAI answered no; the envelopes for the 2020 election have already been printed. Because they are a specialty envelope that is not easily reprinted, it would not be possible to reprint them with pre-paid postage just 17 days before the general election.

1:37:42 PM

MS. FENUMIAI turned to the next section regarding communications with the public and read question 11a: [Original punctuation provided.]

- 11.a. Has the Division hired additional staff to do voter communication?

MS. FENUMIAI replied the division hired a communications manager during the summer to help get messages out to the public. She said that has been successful.

1:38:01 PM

MS. FENUMIAI read question 11b: [Original punctuation provided.]

- 11.b. What steps is the Division taking to ensure transparency and knowledge about changes in election administration and oversight?

MS. FENUMIAI recounted that the division keeps its website updated, extensively uses social media, and regularly communicates with the press through a special press email account.

[1:38:33 PM](#)

MS. FENUMIAI read questions 12 and 12a: [Original punctuation provided.]

12. How is the Division communicating information to let voters know that:
- a. The USPS will deliver their ballot to the Division of Elections, even if it has insufficient postage.

MS. FENUMIAI said the division has heard that it may be USPS policy to deliver ballots that have insufficient postage but it is up to that agency to notify voters if this really is their policy.

[1:39:18 PM](#)

MS. FENUMIAI read question 12b: [Original punctuation provided.]

- 12.b. Witness signatures are no longer required.
- How many absentee ballots did the Division reject for lacking the witness signature in the primary election?

MS. FENUMIAI advised that the division rejected 458 absentee primary election ballots for witnessing in the first round of review. She added that it is not clear how many of these ballots may have been rejected for other reasons.

[1:39:46 PM](#)

MS. FENUMIAI read question 13: [Original punctuation provided.]

13. During the primary election what COVID-19 protection measures did the Division implement (masks, social distancing, handwashing/sanitizer, etc.) to protect election workers, volunteers, and observers as they monitored poll stations and counted ballots?

MS. FENUMIAI said the division provided a significant supply of PPE, including masks, face shields, gloves, hand sanitizer, and disinfectant cleaning supplies. Furthermore, the division enforced social distancing, provided signs in polling stations encouraging votes to wear masks, and required all election workers and staff to wear masks.

[1:40:28 PM](#)

MS. FENUMIAI read question 13a: [Original punctuation provided.]

- 13.a. Will the Division employ the same procedures for the 2020 general election?

MS. FENUMIAI answered, "Yes we will." and continued to question 13b: [Original punctuation provided.]

- 13.b. Will the Division employ any additional procedures for the 2020 general election?

MS. FENUMIAI advised that the division is following the CDC recommendations, just as it did for the primary election. Masks are available for voters and they are encouraged to use them.

[1:40:56 PM](#)

MS. FENUMIAI read statement 14 and question 14a: [Original punctuation provided.]

14. The Division has historically allowed observers to watch the counting of absentee ballots.
a. Why didn't the Division allow for in-person or virtual ballot count observers following the primary election?

MS. FENUMIAI said observers were present for the primary election in the Region II and Region III offices. The division did not ban observers in other locations, but made it clear that

due to COVID-19 it was not possible to have the volume of observers as in past elections.

[1:41:25 PM](#)

MS. FENUMIAI read question 14b: [Original punctuation provided.]

14.b. Will the Division allow in-person or virtual ballot count observers following the general election? If not, why?

MS. FENUMIAI explained that the division notified the different parties and ballot measure groups of the estimated number of observers who could watch the review at any one time in each of the regional offices. The division is working with each party and group to try to accommodate their numbers. She said [absentee ballot] vote reviewing will not be available because the absentee ballot envelopes contain personally identifiable information and voter secrecy and privacy must be maintained. Nor is there space onsite for a separate viewing room where the division could track who is observing. She said the review cannot be held in just any location because the ballots must be secured and transporting batches of ballots from one location to another is problematic.

[1:43:22 PM](#)

CHAIR CLAMAN asked the members if they had questions for Ms. Fenumiai.

REPRESENTATIVE KOPP referenced question 8, and commented that "It is striking" that it wasn't common knowledge throughout the division that the community of Newtok was relocating to Mertarvik since the process started in 2017. He pointed out the significant number of articles, particularly in 2019, that have documented the process. He asked how the division can prevent such an information breakdown from occurring in the future because it speaks directly to the perception in rural Alaska that they don't matter.

[1:45:56 PM](#)

MS. FENUMIAI restated that the division did not have any knowledge of the matter until two weeks before the election. She said nobody in Newtok brought the relocation to the division's attention, even during recruitment. She added that the division can certainly do better and will check with the Division of

Community and Regional Affairs and reach out to the regional Native corporations asking to be kept abreast of this type of situation in the future.

[1:46:53 PM](#)

CHAIR CLAMAN noted that Senator Gray-Jackson, Senator Begich, Representative Edgmon, and Representative Spohnholz were present via teleconference.

[1:47:39 PM](#)

CHAIR COGHILL referenced question 1, and asked if staffing was sufficient to handle the volume of absentee ballots.

MS. FENUMIAI replied the division added 15 new staff in the absentee office to ensure timely processing of absentee applications and enlisted the services of a vendor to help process the increased mailings. She said the regional offices also have increased the size of their review boards so more ballots can be reviewed at one time. Thus, meeting the statutory deadline to process all ballots should not be a problem.

[1:49:28 PM](#)

CHAIR COGHILL asked if there were any glitches with the new in-person voting machines.

MS. FENUMIAI replied the equipment was used for the first time in the primary election and it worked very well. Several recounts were conducted and the results exactly matched the Election Day numbers.

CHAIR CLAMEN noted that Senator Hughes joined the committee via teleconference soon after the meeting convened and Representative Hannan was also listening.

[1:51:00 PM](#)

SENATOR MICCICHE asked if the division initiated extra steps to ensure [absentee] ballot integrity when the requirement for a witness signature was dropped.

MS. FENUMIAI replied the division still requires each voter to provide a signature and unique identifier on the voter envelope. There is also a validation process in the absentee office to

ensure that the voter is a valid voter and eligible to receive a ballot.

[1:52:10 PM](#)

CHAIR CLAMAN asked if there are procedures for a candidate to challenge a voter, suggesting they no longer reside in the district.

MS. FENUMIAI replied any ballot can be challenged for any reason during the review process.

[1:52:44 PM](#)

REPRESENTATIVE VANCE asked for a description of the personal identifiers on the ballot envelope and if there is any indication of party affiliation.

[1:53:04 PM](#)

MS. FENUMIAI replied the voter provides their signature and a personal identifier such as voter number, date of birth, last four digits of their Social Security number, or driver's license number on the ballot envelope that has a sealed security flap to conceal that information. She said she didn't recall whether or not party affiliation is included on the envelope.

[1:53:49 PM](#)

REPRESENTATIVE VANCE asked what responsibility the voter has to notify the division of a change of address and what responsibility the division has to track that information.

MS. FENUMIAI replied it is solely the voter's responsibility to notify the Division of Elections about a change of residence or mailing address. The division has no authority to research or investigate the accuracy of voter addresses.

[1:54:51 PM](#)

REPRESENTATIVE LEDOUX said her question is a follow-up to an earlier response that a vote may be challenged for any reason during the absentee review process. She asked if a ballot [cast at a precinct on Election Day] can be challenged on a residency basis.

MS. FENUMIAI answered that someone who is in the precinct at the time the ballot is cast may challenge a ballot based on residency.

[1:56:24 PM](#)

SENATOR KIEHL asked for a brief description of the security of drop boxes, how often the division empties them, and if they are secure against vandalism.

MS. FENUMIAI replied the drop boxes are relatively secure from being casually moved because they are extremely heavy. Each box is locked with a security lock and has a fire-suppressant inside. The boxes are checked every morning and evening by two people who log the time of pickup, the number of ballots picked up, what the security seal is on arrival, and what new security seal is placed on the box before departure.

[1:57:44 PM](#)

SENATOR KIEHL referred to question 10, and asked for more detail on how much of the federal pandemic relief money the division has spent, how much is obligated, and the plans to spend what money remains.

[1:58:25 PM](#)

MS. FENUMIAI said she would have to follow up with the information.

[1:58:33 PM](#)

CHAIR CLAMAN asked her to send the follow-up data to both his and Senator Coghill's offices and they would distribute the information to the committees.

MS. FENUMIAI agreed to do so.

[1:58:43 PM](#)

SENATOR KIEHL referenced question 14 and the earlier statement that it isn't a good idea to move ballots and registers from one community to another. He recalled a 2020 election in which large numbers of write-in votes from all over the state were counted in one large room. He further noted that recounts are often conducted at election headquarters, and asked why it would be different in this election if there were some reason to count

significant numbers of ballots with the appropriate number of observers appropriately distanced.

MS. FENUMIAI clarified that her comments were directed to the review process, not the counting process. She explained that each regional office has a district absentee review board to review the ballots specific to the House districts within a particular region's jurisdiction. The ballot reviews require access to the voter registration database, and while a 2010 recount did take place in a large warehouse on Thane Road [in Juneau,] that is not the preferred scenario. The division has since secured additional space in Juneau and MatSu and the absentee review board in Region II now has a larger room to accommodate more observers when ballots are reviewed.

[2:00:55 PM](#)

SENATOR KIEHL asked if she thinks the division has the capacity and space to get the ballots counted and reviewed, with appropriate observers, for the upcoming election cycle.

MS. FENUMIAI replied the division is working hard to make the process open and transparent while being cognizant that the review board members have to feel it is safe to be present. If they don't feel safe, that jeopardizes completion of the process. She reiterated that the division has expanded the spaces and is working with all parties and groups to accommodate observers.

[2:02:37 PM](#)

CHAIR CLAMAN offered his understanding that in-person observers were not allowed when primary ballots were counted. He asked if the division would accommodate observers from an unaffiliated candidate's campaign to observe ballot counting during the general election.

[2:03:20 PM](#)

MS. FENUMIAI replied observers typically are present during ballot review, but not when ballots go through the scanner and are counted. She clarified that she had been talking about the actual ballot review by the ballot review boards. When the bipartisan regional counting board scans the ballots, people typically observe this from a distance. But when ballot review takes place, people have to be close together to look at envelopes and reports and hear what is being said.

CHAIR CLAMAN asked if an independent candidate would be allowed to observe when ballots from their district are being reviewed.

MS. FENUMIAI answered that certain statutory provisions allow candidates not represented by a party to be present during ballot review.

[2:05:20 PM](#)

CHAIR CLAMAN asked if it is the division's position that the Democratic and Republican parties can have someone present, but the individual candidates do not have a right to be present during ballot review for their particular district.

MS. FENUMIAI replied the division is trying to resolve that issue, but it would be difficult in all situations. For example, a District 1 review with Republican, Democratic, and Independent candidates would account for six observers. She said that takes up a lot of space when there are four other teams reviewing ballots and the room can only accommodate 20 people. She said it's difficult to accommodate people while keeping everyone safe and ensuring the process is transparent, but the division is working to that end.

[2:07:16 PM](#)

REPRESENTATIVE LEDOUX posited that most elections aren't that close. She asked if the division couldn't solve some of the problems by counting the close elections separately.

MS. FENUMIAI replied that is dependent on locating additional space and allowing the regional supervisor to manage the process. Also, it's difficult to allocate a specific activity to a particular room

[2:08:18 PM](#)

REPRESENTATIVE LEDOUX asked whether the statute requires the division to allow each candidate to have observers.

MS. FENUMIAI deferred the question to Cori Mills with the Department of Law.

[2:08:41 PM](#)

CORI MILLS, Assistant Attorney General, Civil Division, Labor and State Affairs Section, Department of Law, Juneau, Alaska, explained that under AS 15.10.170, the Division of Elections is required to allow poll watchers. The division historically has interpreted that language to apply to Election Day poll watchers. The statute talks about who can appoint a poll watcher and the identification the person must provide in order to watch the counting in a particular precinct. That statute does not address the absentee review process which is when observers become part of the process.

MS. MILLS stated that the absentee review process requires an absentee ballot review board to have bipartisan representation when a review is conducted. She said there is no statutory requirement for candidates or political parties to be present during a recount, but people are allowed to challenge if they are present. She agreed with Ms. Fenumiai that the division historically has allowed this and is trying to accommodate it in the upcoming election.

MS. MILLS further advised that AS 15.10.170 states that individual candidates who are nominated by parties for the general election must work with their political party to determine who will be a poll watcher. They do not have a right in and of themselves to have a poll watcher.

MS. MILLS continued to state the following:

The primary is different, of course, because at that point you don't have nominees. But it's only the political party that can appoint a poll watcher, and all of their candidates that are nominated by that party have to work with the party on that. If you are a no-party candidate, that is different and you get your own poll watcher, again, under AS 15.10.170.

[2:11:29 PM](#)

REPRESENTATIVE LEDOUX asked if every candidate is allowed to appoint a poll watcher during a primary election. She further asked if the political parties play a role in selecting poll watchers during the primary.

MS. MILLS read the first sentence of AS 15.10.170(a) that says a political party is covered by any election. It reads as follows:

Sec. 15.10.170. Appointment and privileges of watchers.

(a) The precinct party committee, where an organized precinct committee exists, or the party district committee where no organized precinct committee exists, or the state party chairperson where neither a precinct nor a party district committee exists, may appoint one or more persons as watchers in each precinct and counting center for any election.

REPRESENTATIVE LEDOUX indicated that she had a follow-up question.

CHAIR CLAMAN said he wanted Ms. Mills to proceed with her presentation, starting with the history of voter fraud in Alaska.

[2:13:21 PM](#)

MS. MILLS referred to Chair Claman's earlier question about the lawsuit regarding the number of absentee in-person voting locations in rural areas and explained that *Toyukak v. Treadwell* was about language assistance under Section [203] of the Voting Rights Act. The only reference to absentee voting, other than to make sure that oral translations were available, was to permanent absentee voting. That is conducting voting entirely by absentee by-mail with no option for in-person voting. She said the only reference to permanent absentee voting in the settlement was that the plaintiffs had to be notified if permanent absentee voting was ever set up in their census areas within the settlement timeframe. She posited that that is because the preference in most of rural Alaska is to have in-person voting locations rather than by-mail elections. She offered to do follow up if the committees wanted more information.

CHAIR CLAMAN said he would like more information because he understood that the settlement included specific numbers for early voting locations.

MS. MILLS replied she was happy to follow up and that perhaps a case other than *Toyukak* may have been involved.

[2:15:30 PM](#)

MS. MILLS turned to question 4 regarding the history of voter fraud in Alaska and advised that Kaci Schroeder, the Criminal

Division legislative liaison, and John Skidmore, the deputy attorney general, would follow up with this history. Neither were available to talk to the committee today. She noted that most of the irregularities that were caught in the 2018 election were caught in the absentee ballot application part of the process. Those were flagged for the division to follow up and criminal charges are pending in some of those cases.

CHAIR CLAMAN said he sent a question to the Department of Law yesterday about the Heritage Foundation website that identified three cases since 2000 that had convictions for voter fraud. He asked if it was her understanding that those were the only cases of voter fraud at the present time.

[2:17:56 PM](#)

MS. MILLS answered yes.

CHAIR CLAMAN asked her to respond to question 9.

MS. MILLS said she would discuss four lawsuits, all of which are preliminary injunction cases. The only matter that has been decided is whether the court should halt some process in this election and later make a final determination on the merits. The only case that has changed the election rules is the witness ballot case. The court declined to issue any change to the election in the other three cases. The superior court decided one of the cases yesterday and it is in the appeal period. That is the only case of the four that is outstanding for the 2020 election.

[2:20:25 PM](#)

MS. MILLS addressed question 9.a. that read as follows:

9. The status of the three existing 2020 lawsuits related to the general election:
 - a. Mailing of absentee ballot applications to seniors.

She explained that the Disability Law Center v. Meier is a federal case in which the plaintiffs asserted that the Division of Elections needed to send by-mail absentee ballot applications to every registered voter instead of just those voters age 65 and older, as the lieutenant governor had directed. The federal district court declined to grant the injunction and the emergency appeal to the Ninth Circuit Court of Appeals was also

refused. The issue is decided for the 2020 election, so all voters younger than age 65 who want to vote absentee by-mail must request an application to do so. She listed the different ways that voters can make the request.

[2:22:30 PM](#)

MS. MILLS addressed question 9.b. about the status of an existing 2020 general election lawsuit. It read as follows:

9.b. Party identification on the general election ballot.

MS. MILLS explained that the issue in the case of Galvin v. State was whether the Division of Elections violated either statute or the state constitution by not listing a candidate's voter registration affiliation on the general election ballot. The candidates instead are listed by name and the political party that nominated them. No-party candidates who are petition nominees are listed by name and "petition nominee" as the affiliation.

The Alaska Superior Court denied the request to have the Division of Elections reprint the election ballots with the candidates' voter affiliation added. The court findings were that there may be substantial and serious legal questions about whether the statute was followed, but the plaintiffs did not show probable success on the merits. The court denied the injunction saying that agreeing with the plaintiff would impose a severe burden on the Division of Elections. The Alaska Supreme Court upheld the lower court's finding on appeal based on the standard that the lower court did not abuse its discretion in finding that a preliminary injunction should not issue. She noted that the majority of the argument is about the statute. She said this is an existing question and pending case that the plaintiff could ask the court to address post-election to determine the underlying legal merits of the claim.

[2:25:11 PM](#)

MS. MILLS addressed question 9.c. about the status of an existing 2020 general election lawsuit. It read as follows:

9.c. Second signature requirement for absentee ballots.

MS. MILLS explained that the Arctic Village Council v. Meyer case addressed the issue of whether the witnessing requirement for absentee ballots was unconstitutional under the specific circumstance of the existing COVID-19 pandemic. The argument was not that the witness requirement is unconstitutional under any circumstances; the question was whether the pandemic changed that analysis.

She said the Alaska Superior Court holding, which the Alaska Supreme Court upheld, was to grant the preliminary injunction on the grounds that the plaintiffs had shown probable success on the merits. That is that the pandemic has made the witnessing requirements a severe burden on the right to vote that was not justified by the state's interest in integrity and trust in the election. The court struck down the witnessing requirements in just this very narrow circumstance. She said the state will go back to court in December for a status conference to see if the plaintiffs think there are any remaining issues post-election.

[2:27:25 PM](#)

MS. MILLS addressed question 9.d. related to the status of an existing 2020 general election lawsuit. It read as follows:

9.d. Any 2020 lawsuits that are not listed above.

MS. MILLS said the last lawsuit she would discuss is Alaska Center for Education Fund v. Fenumiai. The legal question in this state court case is whether it is unconstitutional for the Division of Elections to prevent voters from curing any deficiencies on their absentee ballot before the election is certified. This would include the lack of voter signature or identifier and the lack of witnessing if witnessing is found enforceable. She noted that the statute currently provides that the voter is informed post-election that their ballot was not counted and for what reason.

She related that the superior court yesterday denied the plaintiff's request to have the Division of Elections develop a new cure process for the 2020 election. The ruling from the bench was that the request was not justified. The primary grounds for the rejection was that this was a policy question for the legislature. The case could be appealed before the election or after because this is an open question that is not dependent on the pandemic. The issue could be decided more fully post-election with evidentiary hearings.

[2:29:31 PM](#)

CHAIR CLAMAN asked if any members had questions for Ms. Mills.

[2:29:59 PM](#)

SENATOR KIEHL asked if anything in statute or regulation prevents the state, either itself or in partnership with a non-partisan group, from contacting a voter and providing an opportunity to cure a problem with their absentee ballot.

MS. MILLS replied that was one of the arguments in the case and the state's position was that the statutes don't provide for that. The voter certificate is signed and cannot be changed after that.

[2:32:01 PM](#)

SENATOR ELVI GRAY-JACKSON, Alaska State Legislature, Juneau, Alaska, referred to a letter she received from Lieutenant Governor Meyer advising her that a ballot drop box would be placed at Clark Middle School in Anchorage today. She asked Ms. Fenumiai if that already happened or if it would happen sometime today.

MS. FENUMIAI answered that the drop box was put in place yesterday.

CHAIR CLAMAN suggested that she update the division's website to reflect that Cook Inlet Tribal Council is open for in-person absentee voting on Monday through Saturday. The site currently shows just Monday through Friday.

MS. FENUMIAI said she asked staff to update the site this morning and she would follow up to make certain it happened.

[2:33:07 PM](#)

SENATOR TOM BEGICH, Alaska State Legislature, Juneau, Alaska, said he requested an absentee ballot earlier and now has decided to vote absentee in person. He asked if he should take his absentee by-mail ballot when he goes to vote tomorrow so he doesn't have to vote a question ballot.

MS. FENUMIAI answered that he would not need to vote a question ballot. The division asks people in this situation to destroy

their absentee by-mail ballot at home and then proceed to vote at an early voting location or their precinct on Election Day.

[2:33:53 PM](#)

MS. MILLS added that anybody who has posted their voted absentee ballot should not vote again, either early or on Election Day.

[2:34:35 PM](#)

CHAIR CLAMAN closed invited testimony

CHAIR CLAMAN said he wanted to take a moment of personal privilege to thank Senator Coghill for his long service to the state in both the House and Senate. "I like to think of him both as a man of his community, a man of the people, [and] a man of Alaska." He noted that Senator Coghill would also like to remind him that he thinks of himself as a man of God. He said he's also a friend. They put their political differences aside and focus on what is good for Alaska. "I really can't say enough about how much respect I have for the work that he has done over the time that I've been in the legislature - the guidance you've given me, the mentoring, and the friendship."

[2:36:12 PM](#)

CHAIR COGHILL replied, "Thank you; it's been a privilege serving with all of you and I've enjoyed the friendship."

[2:36:17 PM](#)

ADJOURNMENT

There being no further business before the committee, the House and Senate Judiciary Standing Committees meeting was adjourned at 2:36 p.m.