

**ALASKA STATE LEGISLATURE  
SENATE STATE AFFAIRS STANDING COMMITTEE**

January 18, 2022

3:38 p.m.

**MEMBERS PRESENT**

Senator Mike Shower, Chair  
Senator Lora Reinbold, Vice Chair  
Senator Mia Costello  
Senator Roger Holland

**MEMBERS ABSENT**

Senator Scott Kawasaki

**COMMITTEE CALENDAR**

ELECTION/BALLOT SECURITY PROTOCOLS

- 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 questions during the hearing on election security.

THOMAS FLYNN, Assistant Attorney General  
Civil Division  
Labor and State Affairs Section  
Department of Law (DOL)  
Juneau, Alaska

**POSITION STATEMENT:** Provided information and responded to questions during the hearing on election security.

HANS VON SPAKOVSKY  
Senior Legal Fellow  
The Heritage Foundation

Washington, D.C.

**POSITION STATEMENT:** Participated by invitation and responded to questions during the hearing on election security.

J. CHRISTIAN ADAMS  
President and General Counsel  
Public Interest Legal Foundation  
Indianapolis, Indiana

**POSITION STATEMENT:** Invited to testify during the hearing on election integrity.

SCOTT OGAN, Staff  
Senator Mike Shower  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Provided commentary during the hearing on election integrity.

ALAN BIRNBAUM, Chief Assistant Attorney General  
Civil Division  
Information and Project Section  
Department of Law  
Juneau, Alaska

**POSITION STATEMENT:** Responded to questions during the hearing on election security.

#### **ACTION NARRATIVE**

[3:38:34 PM](#)

**CHAIR MIKE SHOWER** called the Senate State Affairs Standing Committee meeting to order at 3:38 p.m. Present at the call to order were Senators Holland, Reinbold, Costello, and Chair Shower.

#### **Election/Ballot Security Protocols**

[3:39:22 PM](#)

**CHAIR SHOWER** announced the committee would go over questions on [The Heritage Foundation] Election Integrity Scorecard for Alaska with Gail Fenumiai, the Director of the Division of Elections. He said Ms. Fenumiai will also provide information about the election system and the process going forward with the new ranked choice voting system and respond to questions the committee has had in the past.

CHAIR SHOWER recognized the subject matter experts J. Christian Adams and Hans von Spakovsky who were online and available to provide information as needed.

3:40:50 PM

GAIL FENUMIAI, Director, Division of Elections, Office of the Lieutenant Governor, Juneau, Alaska introduced herself and relayed that she was prepared to respond to questions the committee may have.

CHAIR SHOWER stated that he has worked on multiple election bills since 2018 and what he has seen since 2016 is that people on both sides of the aisle are unhappy with election security and integrity. He emphasized that his work on this topic has never been political. Rather, it is about doing what needs to be done so voters trust the system and results.

He cited the following data from an unnamed source:

- Democrats prefer mail-in voting on an 8:10 basis.
- Republicans prefer in person voting on a 7:10 basis.

CHAIR SHOWER posited that implementing a system that favors one party over another disenfranchises an entire sector of the electorate, which is why he believes this is a fair discussion to have. He noted the recent data breaches and emphasized that improvements could be made to make the job easier for the Division of Elections. This includes statutory changes, providing the division with additional resources, and ensuring that any changes increase confidence in the results.

He asked Ms. Fenumiai if she had an opening statement.

3:44:56 PM

MS. FENUMIAI answered no, but she was prepared to talk about what has happened since the 2020 election, election security, ballot protocols, and ranked choice voting, also known as Ballot Measure 2.

3:45:23 PM

CHAIR SHOWER stated that the committee has struggled to get information from the Lieutenant Governor's Office. For example, it took more than a year for the committee to get a copy of the election report that former Commissioner Tshibaka generated for release to the public. When it was released, the administration had redacted half of it. He expressed frustration and asked if there is guidance from the report that she could discuss that will help the committee do its job.

MS. FENUMIAI replied she had only seen a draft of the report, and the division's only involvement was to provide factual information to Mr. Ruby, the assigned investigator who assembled the report.

3:48:00 PM

CHAIR SHOWER offered that former Commissioner Tshibaka briefed the administration on the report on July 13, 2020. Based on a conversation before she left the administration, his understanding was that the draft report was intended to be released to the public. He added that he knows that the final report has been released but he has not received a copy. He expressed frustration that as a sitting Senator who is trying to work on the election system, he is unable to get the data.

MS. FENUMIAI clarified that the division had nothing to do with redactions in the report. She suggested that he direct his questions about redactions to the representatives from the Department of Law who were online.

CHAIR SHOWER said he would hold those questions until later in the meeting. Now he would go through the [Election Integrity Scorecard for Alaska that was prepared by The Heritage Foundation.] He told Ms. Fenumiai that he would welcome her input as he reads the questions and answers on the scorecard.

3:50:29 PM

SENATOR COSTELLO asked him to tell the public who provided the scorecard and how Alaska ranked.

CHAIR SHOWER explained that The Heritage Foundation produced the scorecard and two representatives from the foundation were available to provide information and explanations. He reiterated that Ms. Fenumiai was available to answer some questions and provide information about what the Division of Elections is doing currently.

He read the following question and answer from the scorecard:

[Original punctuation provided.]

**Q:** The state requires a photo ID or a unique identifier, such as a driver's license serial number or last four digits of SSN (SSN4), for absentee voting?

**A:** Yes

3:52:21 PM

CHAIR SHOWER asked Ms. Fenumiai what the state has done since the last election to ensure that Alaskans' personal identifying information that has been compromised cannot be used to obtain ballots in future elections.

He noted the discussions last year about how the stolen data could be used to receive an absentee or by mail ballot. He asked how these applications will be crosschecked for the 2022 election and if the division is relying on the same identifiers.

MS. FENUMIAI explained that a person who applies for an absentee ballot must provide their name, residence address or permanent mailing address, date of birth, and an identifier such as the last four digits of their Social Security Number (SSN), their voter ID number, or Alaska driver's license number. They must also provide a ballot mailing address and sign the application. Before a voter is sent a ballot, that information is vetted and compared to what is in the state voter registration system. She said division staff pays close attention to applications and has caught some suspicious activity. In those instances the division notifies the Department of Law (DOL).

CHAIR SHOWER asked how many applications have been referred to DOL.

MS. FENUMIAI replied she did not have the number in her head. She added this was after the 2020 election and had nothing to do with the data exposure he mentioned.

CHAIR SHOWER asked her to follow up with the exact number of application that were referred to DOL.

He noted that applicants must sign the application for an absentee or by mail ballot, but the state does not have a signature validation system. He asked if she agreed.

MS. FENUMIAI confirmed that was correct.

CHAIR SHOWER asked what good it serves to check signatures if they are not subject to a forensic check.

3:54:57 PM

MS. FENUMIAI responded that election staff compares signatures on absentee and by mail ballot applications to the voter signatures in the registration database if there appears to be

suspicious activity. She added that staff at the absentee office has multiple years of experience and has brought suspicious activity to DOL's attention. She cited an example from 2015 or 2016.

[3:55:45 PM](#)

CHAIR SHOWER asked what percentage [of signatures on applications] the division looks at and clears relying on intuition as opposed to a forensic check.

MS. FENUMIAI replied she did not have a percentage. The signatures are checked if the application is deemed suspicious.

CHAIR SHOWER expressed concern that the current system relies on human beings and intuition to crosscheck signatures of what could be hundreds of thousands of voters. He commented that there does not seem to be a way to significantly crosscheck the entire election process.

MS. FENUMIAI replied that is correct for signatures.

[3:57:26 PM](#)

CHAIR SHOWER moved down the scorecard and read the following question and answer from the scorecard:

[Original punctuation provided.]

**Q:** State election officials run data comparisons between the statewide voter registration list and state welfare and public assistance agencies to find information relevant to registration such as address changes, deaths, citizenship status, or other factors affecting eligibility?

**A:** No

CHAIR SHOWER asked why the state does not use those databases as a crosscheck.

MS. FENUMIAI replied the division does not have the statutory authority to use those lists.

CHAIR SHOWER asked if she recalled the committee discussion last year about additional databases that the division does not have the statutory authority to use.

MS. FENUMIAI confirmed that the division does not have statutory authority to use the United States Postal Service (USPS)

National Change of Address (NCOA) information for list maintenance. She explained that the National Voter Registration Act (NVRA) prohibits states from removing names from the voter rolls for not voting in two or more general elections. The Division of Elections adheres to this law and only removes names from the voter rolls at the voter's direction.

CHAIR SHOWER said it leads to the question of why there isn't more checking and that comes down to the fact that the division needs sufficient funding and statutory guidance to clean up the voter rolls.

[3:59:45 PM](#)

CHAIR SHOWER read the following questions and answers from the scorecard:

[Original punctuation provided.]

**Q:** Election officials verify the residence address on all new voter registration forms by comparing it to county tax records or another residential address database to ensure that the address is not actually a commercial or industrial address, or a vacant or undeveloped lot in a residential area?

**A:** Yes

**Q:** If the answer to the previous question is "yes," election officials check to see how many individuals are registered at that address in order to find any anomalies, such as a large number of individuals registered at a single-family home?

**A:** No

CHAIR SHOWER asked why the division does not check to see how many people use the same address when they register to vote.

MS. FENUMIAI replied the division does not have statutory authority to run that check but all voters sign their voter registration application attesting under penalty of perjury that the information provided is true and correct.

CHAIR SHOWER commented that that too needs work.

[4:01:27 PM](#)

CHAIR SHOWER read the following question and answer from the scorecard:

[Original punctuation provided.]

**Q:** Election officials investigate the registrations of individuals registered at the same address with only slight discrepancies in their names?

**A:** No

[4:01:34 PM](#)

CHAIR SHOWER asked if the answer is "no" due to the lack of statutory authority or guidance.

MS. FENUMIAI replied that is correct.

CHAIR SHOWER read the following question and answer from the scorecard:

[Original punctuation provided.]

**Q:** State election officials provide an annual report to their state legislatures on their voter registration maintenance procedures?

**A:** No

He asked if she agreed the answer is "no."

MS. FENUMIAI replied that is correct and that information is available.

CHAIR SHOWER read the following question and answer from the scorecard and asked her to confirm the answer is no:

**Q:** State election officials use the U.S. Postal Service's National Change of Address (NCOA) system to find voters who have moved from their registered address?

**A:** No

[4:02:20 PM](#)

MS. FENUMIAI replied the division receives change of address information from USPS and has started to notify voters and ask if they want to update or cancel their voter registration. She reiterated that the division does not make any changes without direction from the voter.

[4:02:52 PM](#)

CHAIR SHOWER asked if that was a policy decision or driven by statute.

MS. FENUMIAI replied it was a policy decision that the division management team made late last year.

CHAIR SHOWER expressed concern about the flexibility administrations have to make policy decisions, which change with the political wind. He opined that the legislature should provide the division with statutory guidance that is as tight as possible so changes are not made without legislative oversight.

[4:04:05 PM](#)

MS. FENUMIAI responded that the Division of Elections employees are nonpartisan and they carry out elections according to state laws and regulations. She noted that the policy decision she mentioned was an internal decision to improve the accuracy of the voter rolls, which she views as positive.

CHAIR SHOWER restated his concern about the flexibility administrations have to make policy decisions as opposed to relying on tight statutory guidance.

[4:05:03 PM](#)

CHAIR SHOWER skipped down the list and read the following question and answer from the scorecard:

[Original punctuation provided.]

**Q:** If the state uses electronic poll books in polling places, the registration list include photographs of the registered voter?

**A:** No

He asked why the state uses printed poll books as opposed to electronic.

MS. FENUMIAI answered that electronic poll books are not provided for in state statute. Furthermore, she said implementing electronic poll books would be very expensive for the division and may not work statewide because of poor internet coverage in rural areas.

CHAIR SHOWER said he had a note that says that states do not need the authority to use NCOA. He asked if she agreed.

MS. FENUMIAI offered her understanding that the use of NCOA is allowed under the National Voter Registration Act to conduct list maintenance, but it is not in the state's list maintenance

law. There is a fee for use and she understands that the Electronic Registration Information Center (ERIC) uses NCOA to provide the division with the best last-known address.

CHAIR SHOWER asked the Department of Law to comment.

[4:07:04 PM](#)

THOMAS FLYNN, Assistant Attorney General, Civil Division, Labor and State Affairs Section, Department of Law (DOL), Juneau, Alaska, agreed with Ms. Fenumiai that change of address is mentioned in the federal NVRA but not state law. He added that information comes to the Division of Elections a few ways including ERIC and by way of notices the division is sending to voters who have moved. He acknowledged that state law could be more explicit, although the information is coming in.

CHAIR SHOWER asked what it is worth to make sure an election is so tight that the citizens trust the outcome. He said the committee will continue to look at the available options, the cost, and whether they make sense.

[4:08:46 PM](#)

SENATOR REINBOLD asked Mr. Flynn and Ms. Fenumiai if they believe the division needs statutory authority to use the database. She also asked for the access fee for the databases.

MR. FLYNN said it would take further discussion to determine whether or not state law is necessary and he does not know the cost to use the USPS database.

MS. FENUMIAI said voters who do not respond when the division reaches out will never be targeted for the list maintenance process that is provided in state law.

SENATOR REINBOLD restated her question asking if she believes the division needs statutory direction to use key databases and if she knows the cost.

[4:10:29 PM](#)

MS. FENUMIAI answered that she did not know the cost to use the National Change of Address (NCOA) database. Further, she did not have an opinion about the need for statutory guidance to use the database but she views it as beneficial to remove even one person from the list if they should not be there.

SENATOR REINBOLD emphasized the need for the division to give the legislature more definitive answers.

CHAIR SHOWER asked the division or DOL to provide information about what the state currently spends on ERIC. He emphasized that if the state is already using the information it probably should be in statute. He said, "What I don't want is an answer that is, 'Well yeah, it's not authorized but we're doing it anyways.' or we made a policy decision."

[4:13:19 PM](#)

MR. FLYNN agreed to follow up with information about the extent to which ERIC uses the NCOA database, the cost of getting that information on its own, and the extent to which the division's efforts to reach out to people who receive the yellow stickies doesn't already cover that information.

CHAIR SHOWER confirmed that he wanted the answer about how much the state is paying ERIC because it helps inform legislative decisions.

MS. FENUMIAI said she could provide a copy of the data since the state started participating in ERIC. In response to a subsequent question, she said it includes membership fees, the cost to print and mail notices to voters, and the return rates for the various mailings the division does.

[4:14:17 PM](#)

SENATOR COSTELLO informed the public that Alaska ranks 25th on The Heritage Foundation state scorecard. She opined that the legislature should look at every area that the state ranked low and ask whether the statute should be changed in order to improve the score and thus the integrity of elections.

CHAIR SHOWER agreed. He acknowledged that he was only reading the questions that he deemed particularly important.

[4:16:43 PM](#)

CHAIR SHOWER read the following question and answer from the scorecard:

[Original punctuation provided.]

**Q:** The absentee ballot needs to be notarized or witnessed (with identifying information such as name, address, telephone number, and signature)?

**A:** Yes

CHAIR SHOWER commented that the state does this but some things could be done better. He cited the example in 2020 of a judge striking the requirement to have a witness signature on absentee ballots. "One judge writing election law is probably not the way our founders envisioned the state was supposed to run." He mentioned the data breach and asked if the identifiers have been changed so the information floating on the dark web cannot be used in the next election.

MS. FENUMIAI answered no, the division has not changed the identifiers.

[4:18:25 PM](#)

CHAIR SHOWER read the following question and answer from the scorecard:

[Original punctuation provided.]

**Q:** There is a limit on number of absentee ballots one individual can witness?

**A:** No

CHAIR SHOWER asked if she agreed with the answer.

MS. FENUMIAI replied that is correct.

[4:18:45 PM](#)

CHAIR SHOWER read the following questions and answers:

[Original punctuation provided.]

**Q:** The state has a signature comparison requirement?

**A:** No

He acknowledged that topic was discussed previously.

**Q:** The state requires a signed voter request for an absentee ballot?

**A:** Yes

CHAIR SHOWER highlighted this is an area of concern because absentee ballots can be requested electronically. He asked how to stop somebody from using identifying data from multiple people to request multiple absentee ballots.

[4:19:55 PM](#)

MS. FENUMIAI returned to his comment on the 2020 election and stated that the division saw no malicious activity with absentee voting either by mail, in person, early, online, or by FAX. She noted that the division previously provided information about the number of voters involved in the data exposure, as well as the comparison of the number of people who voted in person, early, and by mail. The division found no instances of fraud.

In response to the Chair's question, she explained that the online ballot system has been on the books since the '90s for FAX voting. After that ballots moved toward an electronic version. Rather than going into detail, she asked if it would be acceptable to provide a written explanation of the checks and balances in place for this system.

CHAIR SHOWER agreed. He added that he does not know how she can express confidence that there was no malicious activity in the last election when 113,000 Alaskans were involved in the data breach and there was no forensic check to ensure that their information was not used maliciously to request ballots.

[4:23:15 PM](#)

MS. FENUMIAI explained that of the people whose data was exposed, the division identified those who had to provide identification to receive a ballot because they voted at the polls, absentee in-person, and early. This left a smaller subset of people who voted by mail, online, or by FAX. She said that if the information was readily available, she would provide how many of this subset voted and how many had a current voter history.

CHAIR SHOWER said he would like all that information because he believes the system needs to be much tighter than it is currently.

CHAIR SHOWER asked Mr. von Spakovsky to comment on the foregoing and provide his testimony.

[4:25:25 PM](#)

HANS VON SPAKOVSKY, Senior Legal Fellow, The Heritage Foundation, Washington, D.C., issued the proviso that when analysts from The Heritage Foundation testify they are providing their own opinions.

He explained that the Election Integrity Scorecard is based on 12 broad criteria with 47 standards within each. Some items need legislative authority but election officials can do others on

their own. The questions were developed as best practices to maintain the accuracy of the voter rolls and protect voters. For example, it is important to compare the voter registry against not only DMV records but also state vital records and state public assistance records to pick up those individuals who do not have a driver's license. This protects voters and the accuracy of the voter registry.

MR. VON SPAKOVSKY said the scorecard has been misinterpreted as an analysis of the 2020 election, but it is actually an analysis of the laws and procedures of all the states as of December 2021. The list will be updated and individual state scores will improve as these best practices are adopted.

[4:29:20 PM](#)

SENATOR REINBOLD said she was pleased with the precise reporting.

CHAIR SHOWER asked if he had any thoughts on the discussion about the data breach and that the state is not currently doing anything to prevent the voter identifiers floating around on the dark web from being used maliciously.

MR. VON SPAKOVSKY said he believes a basic security step would be to put an asterisk next to the name of every voter whose information was stolen and do a signature comparison on each one when a request is made for an absentee ballot.

SENATOR REINBOLD offered her belief that that should be in the law. She added that she would like to know who did the hack, who has the data, and what's been done to prevent it from happening in the future.

MR. VON SPAKOVSKY said he had not seen any reports from Alaska that indicate who the hackers were, but a New York criminal indictment of Iranian hackers said that the information of more than 100,000 voters was stolen from an unidentified state. His assumption is that Alaska is the unidentified state.

CHAIR SHOWER asked Ms. Fenumiai to provide any information she may have and is authorized to release about the identity of the hackers.

MS. FENUMIAI nodded.

[4:34:16 PM](#)

CHAIR SHOWER acknowledged that the next questions were discussed in committee last year. He read the following question and answer from the scorecard:

[Original punctuation provided.]

**Q:** The state requires the receipt of all ballots by the close of polls on election day? (with the exception of overseas military ballots)

**A:** No

CHAIR SHOWER asked why the state does not have this requirement.

MS. FENUMIAI replied state law allows ballots to be received up to 10 days after the election for Primary Elections and 15 days for international mailings in General Elections. They must be postmarked on or before Election Day.

CHAIR SHOWER read the following question and answer from the scorecard:

[Original punctuation provided.]

**Q:** The state does not use unattended, unsecure drop boxes?

**A:** No

He asked for an explanation of the state's drop box policy.

MS. FENUMIAI said there is no defined policy to use drop boxes. The decision to use them was made during the COVID-19 pandemic in 2020.

CHAIR SHOWER observed that it was a policy decision. He read the following question and answer from the scorecard:

[Original punctuation provided.]

**Q:** The state has procedures to investigate the validity of a registration when an absentee ballot is returned as undeliverable by the post office?

**A:** No

He asked why the state doesn't have such procedures.

MS. FENUMIAI replied there is nothing in statute, but when a ballot is returned as undeliverable the division looks at the

information a voter provided on their absentee by mail application to determine whether there was a data entry error. If there was an error, the division corrects it and resends the ballot. If it is a new address, they contact the voter to ask where to mail the ballot.

CHAIR SHOWER recalled that the division recently made changes to that procedure.

MS. FENUMIAI said she didn't recall that conversation.

[4:36:46 PM](#)

CHAIR SHOWER asked if the state reviewed the recent Supreme Court ruling on drop boxes and the potential that they are unconstitutional.

MS. FENUMIAI said she was not aware of the ruling.

CHAIR SHOWER asked Mr. Flynn if he wanted to comment.

MR. FLYNN asked if he was referring to the recent Supreme Court case from Arizona.

CHAIR SHOWER answered yes.

MR. FLYNN confirmed he was aware of the case.

CHAIR SHOWER asked if the Department of Law or administration had any thoughts on the case and if there was anything Alaska might want to consider changing before it becomes an issue.

MR. FLYNN said he did not have any thoughts to offer but he was prepared to respond to a proposal on drop boxes if one was forthcoming.

CHAIR SHOWER suggested it was something to think about before it becomes an issue.

[4:37:58 PM](#)

CHAIR SHOWER mentioned that he was working on an elegant solution to ballot harvesting. He asked Ms. Fenumiai if she had any thoughts on why ballot harvesting is allowed and if it is policy as opposed to statute.

MS. FENUMIAI replied she had no comment but, "Whatever policy the legislature wants to enact related to that, the division will follow."

CHAIR SHOWER asked if there have been issues with ballot harvesting that the division has had to overcome.

MS. FENUMIAI answered that nothing comes to mind.

[4:39:15 PM](#)

CHAIR SHOWER read the following question from the scorecard:

[Original punctuation provided.]

**Q:** The state does not allow third-party strangers, other than immediate family or a caregiver, to pick up and deliver a voter's absentee ballot?

CHAIR SHOWER commented that was just discussed and the state allows it ad infinitum.

MS. FENUMIAI clarified that there is a statute that allows anybody to get a ballot through a special needs process. The person must appoint someone to pick up a ballot and bring it to their home. The personal representative serves as the witness for those ballots.

CHAIR SHOWER acknowledged that was discussed last year and it was not of great concern because there is a process. He said that is different than someone going to a senior center and collecting any number of ballots. He noted there were reports of people coming to Alaska and being paid to harvest ballots and testimony from somebody from Hoonah who alleged seeing someone with ballots in their briefcase.

SENATOR REINBOLD asked Ms. Fenumiai to comment on the allegations about ballot harvesting because she witnessed it leading up to the 2020 election. She emphasized that this needs to be fixed.

[4:41:13 PM](#)

MS. FENUMIAI said that to the best of her knowledge there is nothing in state statute that prohibits ballot harvesting.

SENATOR REINBOLD asked, "Wasn't there something in there that could not be done and then [Judge Dani] Crosby overruled it."

MS. FENUMIAI replied the court ruled that witness signatures were not needed for the 2020 General Election. She added that there are multiple election offense statutes that deal with

election tampering but ballot harvesting is not specifically mentioned.

SENATOR REINBOLD asked if the judge's ruling made it easier for ballot harvesting.

MS. FENUMIAI said she didn't know if it made it easier or harder.

[4:43:21 PM](#)

CHAIR SHOWER asked Mr. Flynn or Mr. von Spakovsky if they had any comments.

MR. FLYNN stated that ballot collection is not prohibited by state law, but filling out a ballot for someone else would be a crime. To Senator Reinbold's question, he explained that the witness signature case had nothing to do with ballot harvesting.

CHAIR SHOWER asked how the Division of Elections or the Department of Law would know if somebody filled out 20 ballots for people at a senior center.

MR. FLYNN said voters can track their absentee ballot to see if it was counted, and as Ms. Fenumiai said, elections staff has long experience in picking up on suspicious signatures.

CHAIR SHOWER pointed out that that relies on human intuition and that system probably could not catch 50,000 suspicious signatures. He reiterated that this is an area that needs work.

[4:45:56 PM](#)

MR. FLYNN said that with 50,000 ballots the division would have seen a massive increase in duplicate votes if people were filling out ballots on behalf of other people and others would notice that they were recorded as having voted when they had not. There was no evidence of that in the last election, he said.

CHAIR SHOWER restated his question about how the Division of Elections or the Department of Law would know if somebody filled out 20 ballots for people at a senior center.

MR. FLYNN said there is always going to be some amount of fraud that is impossible to detect. When an election is reviewed after the fact, the question is whether there was enough to change the outcome. No election is perfect and the best the division can do

is to run the best election it can and deter malicious activity by making it criminal.

CHAIR SHOWER offered his solution which is to prohibit ballot harvesting.

He recognized Christian Adams.

[4:48:07 PM](#)

J. CHRISTIAN ADAMS, President and General Counsel, Public Interest Legal Foundation, Indianapolis, Indiana, introduced himself and directed attention to the case U.S. v. Brown (494 F.Supp.2d 440). He said it relates to the question and gives the legislature all the reason it needs to ban ballot harvesting in Alaska. In that case the victims describe a system of how ballot harvesters used social relationships to vote victims' ballots. This was not easy to detect but it is a clear reason that this should be banned.

[4:49:47 PM](#)

MR. VON SPAKOVSKY added that nobody is talking about limiting the ability of voters to return their absentee ballots, but it is unwise policy to give third-party strangers this authority because they may have a stake in the outcome of the election. They are in a position to be able to change ballots and election officials would have no idea this happened. It is also easy for those individuals to not deliver ballots if that serves a political purpose. Finally, there are no observers to prevent ballot harvesters from trying to coerce voters to vote a particular way.

CHAIR SHOWER said that is a good point to consider.

SENATOR REINBOLD asked Mr. Flynn if he believes a witness signature increases election integrity.

MR. FLYNN answered yes; the state defended the witness requirement in the Alaska Supreme Court case arguing that it was a deterrent to fraud. The court ruled against the state but the state appealed and the requirement for the witness signature is back in place.

[4:53:42 PM](#)

SENATOR REINBOLD asked if he would support a forensic audit if money weren't an issue.

MR. FLYNN said he was available to talk about the law and he would defer to the administration for a position.

CHAIR SHOWER reported that the Lieutenant Governor's Office said it would not support a forensic audit.

SENATOR REINBOLD asked Ms. Fenumiai if she would support a forensic audit of the 2020 election.

MS. FENUMIAI replied the division will implement the policy the legislature passes and do its best to uphold the law. She added that while it was not a forensic audit, the division conducted an unprecedented hand recount of a statewide ballot measure. It did not show anything nefarious with the ballot tabulation equipment. More than 300,000 ballots were sorted by hand by a multitude of bipartisan election workers and it did not overturn the results certified by the State Review Board.

SENATOR REINBOLD said there are trust issues in the state and legislators are having to answer to voters. She voiced support for a forensic audit.

CHAIR SHOWER said his concern moving forward is to ensure there is no ballot harvesting and the compromised data is not used inappropriately. He pointed out that a hand count only tells whether the number of ballots going in and out of the machines is the same. The issue is whether any of those ballots were voted maliciously and there is no way to know that without a forensic audit. He said he isn't as concerned about who wins the election as that it is fair and appropriate, has good voter access, and the people trust the election.

[4:59:40 PM](#)

CHAIR SHOWER asked what percentage of absentee ballots were returned by mail and by hand.

MS. FENUMIAI replied the division does not code absentee ballots according to how they were received. When they are returned they are logged and received as an absentee by mail ballot

CHAIR SHOWER asked what happens to the return envelopes.

MS. FENUMIAI replied they are kept for four years.

[5:00:25 PM](#)

CHAIR SHOWER read the following question and answer from the scorecard:

[Original punctuation provided.]

**Q:** The state uses the Systematic Alien Verification for Entitlement (SAVE) Program to help identify non-citizens who register to vote?

**A:** No

CHAIR SHOWER asked if the answer was "No" because there is no statutory guidance.

MS. FENUMIAI replied that was her assumption.

CHAIR SHOWER asked if that was a policy decision.

MS. FENUMIAI replied she did not know the requirements to use the SAVE Program.

CHAIR SHOWER asked if she would follow up with an answer so he knows if that can be done through policy/regulation as opposed to passing legislation.

MS. FENUMIAI agreed to follow up with the information.

CHAIR SHOWER read the following question and answer from the scorecard:

[Original punctuation provided.]

**Q:** The state does not connect voting and tabulating machines to the internet?

**A:** Yes

CHAIR SHOWER commented that while the answer is "Yes," the machines can be connected if they are set up to do so.

MS. FENUMIAI confirmed that machines that have an internal modem can transmit information if they have connectivity.

CHAIR SHOWER suggested people watch the HBO special documentary "Kill Chain" that describes how voter machines can be hacked.

[5:02:48 PM](#)

CHAIR SHOWER read the following question and answer from the scorecard:

[Original punctuation provided.]

**Q:** The state legislature has standing to sue (statutorily or via state constitution) to ensure compliance with election laws as passed by the legislature?

**A:** No

CHAIR SHOWER asked if the answer is "No" because it's not in statute.

MS. FENUMIAI replied that was her understanding.

CHAIR SHOWER said she did not have to respond to the next questions. He was highlighting things that make it difficult for the legislature to do its job. He read the following questions and answers from the scorecard:

[Original punctuation provided.]

**Q:** Any changes to the state's election laws via a court settlement require the approval of the state legislature?

**A:** No

**Q:** The state does not automatically register voters?

**A:** No

He noted that when data is transferred from the PFD Division to the Division of Elections there is no crosscheck, the information is just accepted. He opined that that should be tightened.

SENATOR REINBOLD asked if the division has access to databases at DMV, public assistance, and the permanent fund and if it is helpful.

[5:04:26 PM](#)

MS. FENUMIAI replied the division does not use DMV for voter registration purposes, but people can register to vote online if they have a driver's license. DMV records are used as part of ERIC and the division uses data from the multistate cross check. The division does not have access to the public assistance database but it does have access to the PFD database through the automatic voter registration that was enacted through voter initiative in 2015.

[5:05:01 PM](#)

CHAIR SHOWER asked the following question that was not on the scorecard:

**Q.** Voter identifiers are compromised by the data breach. Will a new voter ID system be in place for the next election?

He asked if she agreed that the answer is "No." Nothing has changed the identifiers for the November 2022 election.

MS. FENUMIAI replied that is correct at this time.

CHAIR SHOWER asked Mr. Ogan if he had anything to add.

[5:06:27 PM](#)

SCOTT OGAN, Staff, Senator Mike Shower, Alaska State Legislature, Juneau, Alaska said the concern is that people with malicious intent could apply for absentee ballots on behalf of voters whose data was breached, particularly those who had not voted in the last four or five election cycles. He asked if that was plausible and if the division would know this was happening.

CHAIR SHOWER asked if she believes it is possible this happened [in 2020] and that it would be difficult to detect.

MS. FENUMIAI replied that is speculative and while she has not seen it happen, people do commit fraud.

[5:08:38 PM](#)

CHAIR SHOWER asked the following about Dominion voting machines:

**Q.** Are the Dominion machines equipped with modems capable of transmitting or receiving data via cell towers?

**A.** Yes

He noted that he had been told that the machines are not connected to the internet.

**Q.** Have the Dominion machines been forensically examined by anyone? If so, by whom and is the information available?

**A.** No

CHAIR SHOWER advised Ms. Fenumiai he was told that information was part of the report he does not have. He said he doesn't know

if something needs to be done with those machines without the data from the report. The legislature's hands are tied.

MS. FENUMIAI reported that since she returned as director in 2019 there has been no forensic audit of the Dominion voting equipment. The division has used Dominion equipment since 1998, and significant functionality and logic and accuracy testing is done on the units prior to each election by two separate bipartisan boards. The new tabulators were used for the first time in 2020.

CHAIR SHOWER asked if a third-party vender who is an IT expert tests the machines.

MS. FENUMIAI answered no.

[5:10:23 PM](#)

CHAIR SHOWER offered his understanding that the report he has only seen with redactions has some of the answers he is seeking about the Dominion equipment, including how they were purchased, but the information is redacted.

SENATOR REINBOLD asked for the number of Dominion machines and how much it would cost to run a forensic audit on one. She also asked for an explanation of the new tabulators that were used in 2020.

MS. FENUMIAI answered that 305 or 306 tabulators were deployed to precincts and another 105 or 106 precincts hand count ballots. She did not know the cost of a forensic audit.

SENATOR REINBOLD asked how many of the 300 some machines should be audited.

MS. FENUMIAI replied she is not a subject matter expert in forensic audit.

[5:12:22 PM](#)

CHAIR SHOWER asked who approved the redactions in former Commissioner Tshibaka's report and under what authority.

MR. FLYNN explained it was done by the Department of Law working with the administration. He suggested that Alan Birnbaum could speak to more specific questions.

CHAIR SHOWER asked Mr. Birnbaum to comment.

5:13:11 PM

ALAN BIRNBAUM, Chief Assistant Attorney General, Civil Division, Information and Project Section, Department of Law, Juneau, Alaska, explained that the Department of Law reviewed the report and discussed the review with the administration. He advised that those conversations are protected under attorney client privilege, as part of the deliberative process privilege, and under the executive communications privilege

CHAIR SHOWER asked who approved each one of the redactions.

MR. BIRNBAUM replied he did not have a response.

CHAIR SHOWER retorted:

I am sick and tired of not getting an answer as a sitting legislator unable to do my job when I have on the record the former commissioner tell me she was asked to produce this report for the public consumption. That report has been withheld from us for almost a year and when I finally get to look at it, half of it (the important part that tells me how I can do my job) is redacted. There is no classified information in that. There isn't. But I was told by the commissioner before she left this administration (we have her on the record in talking a lot of conversations) that that did not exist. What you just said. Now you may be telling me what you believe to be true and that's fine. I'm telling you that there is conflicting information I'm getting. That tells me the commissioner said it was produced for public consumption. That in the public interest, the good of the public interest, there is not client attorney privilege information. So, I've got a problem here with how this has played out for us, because this makes it difficult for another branch of government to do its job when an information report that should be produced under...the records request - can't get it.

MR. BIRNBAUM said his reference to attorney client privilege is with respect to his communication within the administration regarding the redactions. None of the redactions were made based on the attorney client privilege. Rather, they were made based on the deliberative process privilege, executive communications privilege, and under AS 40.25.120(a)(10) that protects state security.

CHAIR SHOWER asked what good it is to spend the time and money to produce an information report when it is withheld from everyone who needs it to do the job. He acknowledged it was a rhetorical question.

SENATOR REINBOLD expressed frustration about the Department of Law blocking her information requests about the Governor's travel to learn about COVID. She warned that this could become a larger issue.

5:18:53 PM

CHAIR SHOWER restated his frustration.

MR. OGAN commented on his experience years ago with federal solicitors and records requests under discovery.

CHAIR SHOWER related he has been advised by counsel that if it is in the greater public good, attorney client privilege and executive privilege do not exist. He offered his contention that the report should be released because it affects the entire state.

He asked Ms. Fenumiai if she had closing comments.

MS. FENUMIAI said she would go through her notes and provide the information she promised as soon as possible.

5:23:40 PM

There being no further business to come before the committee, Chair Shower adjourned the Senate State Affairs Standing Committee meeting at 5:23 p.m.