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43

SENATE STATE AFFAIRS COMMITTEE

BILL NUMBER SB 43

SPONSOR Pouchot

BILL TITLE Conduct & administration of elections

DATE REFERRED 1-9-89

HEARING SCHEDULED 1-20-89

FISCAL NOTE PREPARED ✓

SPONSOR CONTACTED

Jeanne

INTERESTED PARTIES CONTACTED

Don Clocksin
Joe McKinnon
David Finkelstein
Brad Bradley
Devine

Vic Fischer

John Pugh (Demo Party)

League of Women Voters

Cliff Groh, Sr (Repub Party)

OTHER

Jim Baldwin

State Affairs

1:30 - 3:30

Pourchot, Kelly, Faiks



Bradley filed reconsideration special election April 4
1-20-89

get legal opinion & det. Halford bill

→ KOPONEN working on elections bill too.

Faiks - disallow use of word "Repub" & "Demo" as part of other party names
ie "Moderate Repub"

Kelly - not allow get on general election ballot 4200 signatures if weren't in primary
Ct ruled June 15 deadline for being on general if not in primary.
PURSUE W.A.G. → too early - state has appealed to Supreme Ct.
→ primarily 3rd party candidates

Linda Edgeworth - explain SB 43

Sen Ray's bill (1985) to streamline personal representative

now 5 trips
1 pick up appl. from Div.
2 take appl. to voter
3 return appl. to Div. & pick up ballot
4 take ballot to voter
5 return ballot to Div.

Ray: pick up appl. & ballot at same time

Kelly request from Div. written proposal on personal rep. copy of Ray's bill

absentee ballots { only 6 states allow receipt after election day.
Alaska's 10-15 days is longest time - other 5 states allow 2-3 days only. Dept Defense has challenged some states who don't allow receipt after election day, & has won with 10 days.

Kelly wants timeline

Kelly - concern that 54 [40] days (replacement candidate) ^{certification} too long - interfere w/ primary recounts. SUGGEST 43 DAYS.

Linda - general info.

Trends: ① more special elections

from 6 to 12/yr

② more initiative petitions

from 1 to 6/yr

AK very high voter turnout:

liberal election law re absentee voting registration

③ more absentee voting

1986 = 18,000

1988 = 30,000

Finkelstein ① attestation of witnesses to absentees { see Supreme Ct ruling
② status absentee voters { maintaining residency in AK cause intend to return to AK but have no other connection to any specific district. Suggest category of "at large"



SENATE STATE AFFAIRS COMMITTEE

SB 43

Relating to Conduct and Administration
of Elections

Committee Copy



Official Business

Alaska State Legislature

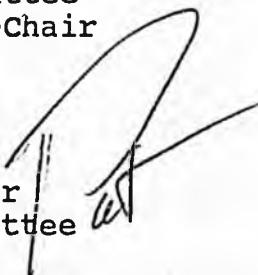
SENATE

P.O. Box V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

DATE: January 20, 1989

TO: Senate State Affairs Committee
Senator Jan Faiks, Vice-Chair
Senator Al Adams
Senator Tim Kelly
Senator Rick Uehling

FROM: Senator Pat Pourchot, Chair
Senate State Affairs Committee 

RE: SB 43 - "An Act relating to conduct and administration of elections by the director of elections; and providing for an effective date."

SB 43 makes several technical changes to the statutes in an attempt to cleanup existing ambiguities and simplify certain procedures. The Division of Elections supports SB 43 and has stated that passage will aid the Division in effectively and efficiently performing its mandated responsibilities.

Last year, a similar bill passed the House and all committees of referral in the Senate but died while awaiting scheduling for a floor vote in the Senate in the waning hours of the session.

As currently written SB 43 would:

- 1) Allow voters who change their names just prior to an election to vote under their old name or vote a questioned ballot under the new name. (Section 1)
- 2) Provide that "whenever possible" the director shall send written notice of a change in a precinct boundary or polling place to affected voters prior to the election. (Section 2)
- 3) Reduce the expense of ballot printing by removing the requirement that judicial retention candidates be printed on a separate nonpartisan judicial ballot. (Sections 3, and 17 through 20)
- 4) Eliminate the unnecessary requirement to record the time an absentee ballot is provided and received - recording of date is sufficient. (Section 4)
- 5) Remove the requirement that applications for an absentee ballot must be postmarked 10 days prior to the election. New language would extend the application period by requiring, simply, that applications be received not later than 4 days prior to the election. (Section 5)

- 6) Amendments to remove conflict in existing statutes (Sections 6 and 7).

Current statutes governing counting of absentee ballots [AS 15.20.081 (e) and (h)] are in conflict with the section governing the procedure for recounts (AS 15.20.480). The amendments remove conflict in accordance with provisions established under AS 15.20.480.

- 7) Drafter's revision. No substantive change. (Section 9).
- 8) Delete unnecessary requirement for "+" signs on computer type ballots (Section 10).
- 9) Change the deadline for candidate withdrawals from 40 to 54 days prior to an election. The current 40 day deadline severely constricts the actual time frame in which ballots must be typeset, proofread, printed and distributed. In addition, the existing deadline allows only 10 days for preparing camera ready sample ballots for inclusion in the Official Election Pamphlet which by law must be printed and in the mail to voters 30 days prior to the election. (Sections 11 and 14; Sections 12, 13, 15 and 16 technical amendments to bring sections into conformity)
- 10) Establish an immediate effective date. (Section 21)

SUMMARY

SB 43 - "An Act relating to conduct and administration of elections by the director of elections; and providing for an effective date.

Section 1. Current statute states that a voter who has changed one's name but wishes to vote under the new name must reregister 30 days prior to the election.

Questions concerning this section of the statute were raised in the 1986 Fischer/Uehling recount. The Supreme Court ordered the ballots counted of those voters who voted under their new name but had not updated their registration records as required by statute.

In order to clarify this statute, the proposed amendment allows a voter to vote under one's previous name OR to vote a questioned ballot if the voter wishes to use his/her new name.

Section 2. This new subsection directs the director of elections, whenever possible, to send written notice of any change in a precinct boundary or polling place to each affected registered voter.

This amendment attempts to mitigate any inconvenience caused a voter because of a change in polling place.

Sections 3, and 17 through 20. These sections remove the requirement that judicial retention candidates be printed on a separate nonpartisan judicial ballot.

In territorial days when elections involved closed partisan races, it was necessary to print the judicial retention candidates on separate nonpartisan ballot cards. Because we now include candidates of all parties on the same card - the card is essentially nonpartisan. The Court System has no problem with the proposed amendment.

Based on a review of the 1986 general election, 14 districts would have required the printing of only 2 ballot cards if the judicial candidates had been printed on the same card as other candidates. This would have resulted in a savings of nearly \$15,000 in ballot printing costs.

Section 4. Current statute requires that an election official record the date and time an absentee ballot is provided and received. This amendment eliminates the requirement to record the time - which serves no useful purpose.

Section 5. Current statute requires that an application for an absentee ballot must be postmarked ten days prior to the election. Because mail often lacks a postmark or the postmark is unreadable, the amendment would delete the reference to a postmark and would require that the application be received four days prior to the election. This would still allow a minimum time for a ballot to be sent to and received by an applicant on or prior to election day.

Sections 6, and 7. Amends current statutes to provide for the counting of absentee ballots received after the statutory deadline but prior to the completion of a recount.

Section 8. Amends language relating to state review board's review and counting of absentee ballots to conform to language in Section 9 relating to procedure for recount.

Section 9. Technical amendment clarifying existing statutes relating to counting of absentee ballots received after an election in the case of a recount.

Section 10. This amendment is "housekeeping" in nature. The section proposes the deletion of references to language "designated by a plus sign" when describing the square box in which the voter punches the ballot. The plus sign serves no purpose. Statutory citations regarding handmarked ballots contain no such descriptive language and no other sections of the election law contain any reference to this "plus sign."

This amendment will eliminate the necessity for printing two versions of the same ballot where there is both punch card voting and handmark voting in the same district and will result in a savings of \$2,000 in ballot printing costs.

Sections 11 and 14. Current statutes set the deadline for withdrawal of a candidate's name from the ballot or the replacement of a name on the ballot 40^{days} prior to the election.

This severely constricts to three weeks the time in which to prepare, print and distribute ballots across the state. In cases where a lawsuit is filed contesting a candidate's eligibility (the 1986 gubernatorial race, for example) the time frame can be further reduced.

A change in the deadline from 40 to 54 days would significantly improve the Division of Elections' ability to meet their statutory deadlines which are dependent on completion of ballot printing.

Sections 12, 13, 15 and 16. Technical amendments to bring these sections into conformity with Sections 11 and 14.

Section 21. Establishes an immediate effective date.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

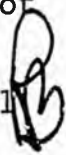
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 13, 1989

SUBJECT: Conduct and administration of elections by the
director of elections [SB 43]

TO: Senator Pat Pourchot

FROM: Richard A. Bradley
Legislative Counsel 

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 of the bill amends AS 15.07.090(a) to alter the procedure under which a voter whose name is changed (by court order or by marriage) may vote. Existing law requires that the voter notify the division of election 30 days before the election or vote under the old name. Under the amendment, the voter may vote a questioned ballot.

Section 2 of the bill amends AS 15.10.020 by adding a new subsection (b). The section provides that "whenever possible," the director shall send written notice of a change in a precinct boundary or polling place to affected voters.

Section 3 of the bill amends AS 15.15.030(10). The goal of the amendment was to eliminate the requirement that judicial retention election ballots be printed on a separate ballot. In that connection note that Art. IV, sec. 6 requires that the retention ballot be "nonpartisan"; presumably this means that judges may not appear on the ballot used for the election of the political officers of the state.

Note in this connection the conforming amendments later in the bill at secs. 17 - 20 of the bill.

Section 4 of the bill amends AS 15.20.071(d). The law relates to absentee voting by personal representative. It amends out the existing requirement that the election official record the "time" that the absentee ballot is provided and returned; it continues the requirement that the date be recorded when the ballot is provided and adds the requirement that the date when the ballot is returned be recorded.

Section 5 of the bill amends AS 15.20.081(b). It substitutes a requirement that an absentee ballot application be "received by the division not less than four days before the election" in place of the former "postmarked not less than ten days before the election".

Section 6 amends AS 15.20.081^e(b). The existing provisions of AS 15.20.081(e) establish the policy that an absentee ballot from within the United States not be counted unless it is received by the election supervisor by the close of business on the tenth day after the election. As amended, the bill establishes the policy that if received after the tenth day but before the completion of a recount, the ballot would be counted. See also the amendment to AS 15.20.480.

Section 7 amends AS 15.20.081(h). The existing provisions of AS 15.20.081(h) establish the policy that an absentee ballot from outside the United States or from a military APO or FPO address not be counted unless it is received by the election supervisor by the close of business on the 15th day after the election. As amended, the bill establishes the policy that if received after the 15th day but before the completion of a recount, the ballot would be counted. See also the amendment to AS 15.20.480.

Section 8 of the bill amends AS 15.20.220(b). The amendment conforms the section to changes made to AS 15.20.081(e) and (h) several years ago regarding the times within which absentee ballots must be received after an election.

Section 9 of the bill amends AS 15.20.480. The section is, I believe, a section that was omitted from an earlier revision of the election recount procedure dates. With the amendment of this section, the general law on the counting of absentee ballots received after an election is now con-

trolled by AS 15.20.081(e) and (h) unless there is a recount. In that case, AS 15.20.480 controls.

Section 10 of the bill amends AS 15.20.730(b). The elimination of the references to "plus signs" is designed to remedy a confusion: The existing law talks about "punches" and "plus signs" and the question has been which controlled.

Section 11 of the bill amends AS 15.25.055. It requires a candidate in the primary election to give notice of a withdrawal from the primary election 54 days before the election. The earlier notice is for the better management of the primary election and the preparation of the ballots.

Section 12 of the bill amends AS 15.25.056(a) (filling vacancy for primary after death, etc. of unopposed incumbent primary candidate). The amendment conforms the section to the changes made earlier in section 11 of the bill.

Section 13 of the bill amends AS 15.25.056(c) (filling vacancy for primary after death, etc. of unopposed incumbent primary candidate). Like sections 12 - 15 of the bill, the amendment conforms this section to the changes made earlier in bill section 11.

Section 14 of the bill amends AS 15.25.110 (filling a vacancy after party nomination). Like sections 12 - 15 of the bill, the amendment conforms this section to the changes made earlier in bill section 11.

Section 15 of the bill amends AS 15.25.120 (filling a vacancy after the primary nomination). Like sections 12 - 15 of the bill, the amendment conforms this section to the changes made earlier in bill section 11.

Section 16 of the bill amends AS 15.25.200 (withdrawal of candidate's name on general election ballot). Like sections 12 - 15 of the bill, the amendment conforms this section to the changes made earlier in bill section 11.

Section 17 of the bill amends AS 15.35.050. It eliminates the requirement that the retention election for supreme court justices be on a judicial ballot; as suggested earlier, there is still a requirement that the ballot be nonpartisan.

Senator Pat Pourchot
Page 4
January 13, 1989

Section 18 of the bill amends AS 15.35.059. It eliminates the requirement that the retention election for court of appeals judges be on a judicial ballot; as suggested earlier, there is still a requirement that the ballot be nonpartisan.

Section 19 of the bill amends AS 15.35.090. It eliminates the requirement that the retention election for superior court judges be on a judicial ballot; as suggested earlier, there is still a requirement that the ballot be nonpartisan.

Section 20 of the bill amends AS 15.35.130. It eliminates the requirement that the retention election for district court judges be on a judicial ballot; as suggested earlier, there is still a requirement that the ballot be nonpartisan.

Section 21 of the bill establishes an immediate effective date.

If I may be of further assistance, please advise.

RAB:gc
WKG5/091

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to the administration of elections by the director."
 Sponsor: Pourchot
 Requestor: Pourchot
 Agency Affected: Office of the Governor
 BRU: Elections
 Components: I - Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-*	-0-	-0-*	-0-
CAPITAL						
REVENUE	-0-	-0-	-0-*	-0-	-0-*	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-*	-0-	-0-*	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-*	-0-	-0-*	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

* See Attached

Prepared by: Linda Edgeworth Phone: 465-4611
 Division: Division of Elections Date: 1/19/89
 Approved by Commissioner: *Sandra Stout* Date: 1/19/89
 Agency: Division of Elections

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

CONTINUATION OF FISCAL NOTE

SB 43

Division of Elections

The Division of Elections anticipates that this bill would generate a cost savings in one area while and causing an expenditure in another area resulting in a general offset with no increase in funding required.

- A. Costs would be incurred in the notification of voters of polling place or precinct boundary changes. These costs would cover the printing of a computer self-mailer and 1st class postage.

Based on the prior bid awards for printing of similar forms, printing would come to \$0.069 per unit and postage is figured at \$.25 per item.

In 1986, for example 65 polling places were changed impacting 44,070 voters.

At approximately \$.32 per item the cost of mailing these notices would have been \$14,102.

- B. The cost saving provisions relate to the elimination of the requirement for a separate judicial card, and elimination of the "+" sign on punch card ballots. The savings estimated would be about \$115.00 per thousand ballot cards. With that in mind, a review of the cost savings for the 1984 and 1986 elections, for example, would have been:

1984	(14.8)
1986	(18.1)

COMMENTS IN SUPPORT OF
SENATE BILL 43

Prepared by
The Division of Elections
January 19, 1989

TITLE: "An act relating to conduct and administration of elections by the director of elections; and providing for an effective date.:

SPONSOR: The Honorable Pat Pourchot
Alaska State Senator

The Division of Elections has reviewed Senate Bill 43 and supports its provisions.

Section 1:

The provisions of this section eliminates the current requirement that voters who change their names may vote under their previous name, but must update their registration record 30 days prior to the election in which they seek to vote, in order to vote under their new names. The Supreme Court, in Fischer vs. Division of Elections directed the Director to count the ballots of voters who voted under their new names, but had not updated their registration as required by statute. The amendment conforms to the courts ruling on this issue.

Section 2:

This section provides that voters impacted by polling place or precinct boundary changes be sent notification of the changes prior to the elections whenever possible. This notification should be beneficial in ensuring that voters know where to vote on election day.

Sections 3, 17, 18, 19 and 20:

These sections relate to the current requirement that judicial retention candidates be placed on a separate ballot. Often there is adequate space on other ballot cards to include the judicial candidates for a specific district. While several districts consistently require printing of a third card during a general election, we anticipate that in any given elections year, 1/3 to 1/2 of the districts in the state could be accommodated with just 2 ballot cards if the requirement for a separate card for judicial candidates were eliminated. Potentially, this amendment could save \$10,000 to \$15,000 in ballot printing costs for general elections.

Section 4:

This section simply eliminates the requirement that a record be kept of the actual time an absentee by personal representative ballot is returned to the election official. The date on which the ballot is returned is sufficient to ensure that the ballot is returned on time, and the requirement that the actual time be recorded is left over from the statutes which at one time required that the personal representative ballot be returned within a specific time period from the date it was issued.

Section 5:

The amendment to this section removes the requirement that applications for absentee ballots be postmarked 10 days prior to the election, but, rather sets a deadline for receipt of the application. This clarification serves to clearly state for the voter, an absolute deadline rather than a flexible one subject to circumstances of mail delivery. It also brings closure to the final mailing of absentee ballots for the Division.

Sections 6, 7, 8 and 9:

These provisions clarify the deadlines for receipt of absentee ballots for inclusion in the count of absentee ballots prior to certification of the election, and clearly provides for the counting of timely voted ballots received after the prescribed deadlines in recounts. The deadline for receipt of absentee ballots mailed from within the United States is 10 days after election day, while overseas ballots, and ballots mailed from APO or FPO addresses may be received up to 15 days after the election. When the statutory deadlines were amended in 1986 as part of House Bill 284, a technical omission to the provision for counting late ballots in recounts only addressed ballots received after the 15 day deadline and left a technical window for ballots received between the 10th and 15th day. This bill corrects this deficiency.

It should be noted that concern has been expressed on a number of occasions that including late ballots in recounts opens a potential for fraudulent use of the absentee program because almost 1/3 of mailed ballots have been found to have no readable postmark. With more and more voters using the by mail voting program, and greater access to absentee voter lists that indicate whether or not the voter has returned a voted ballot, there is concern that greater opportunity exists to "work" the absentee lists to solicit voters who did not return their ballots to cast them after election day, where races are very close, potentially impacting the outcome of the recount.

Section 10:

This bill deletes reference to a "+" sign which appears in the punch boxes in computer type ballots. The "+" sign serves no real purpose, but does require us to print two versions of the same ballot in districts where some precincts vote punch cards and some precincts vote hand marked ballots.

Sections 13, 14, 15, and 16:

These sections suggest conforming amendments to the deadline for withdrawal of a candidate's name from the ballot, or replacement of a name on the ballot prior to an election. The amendments change the deadline from 40 days to 54 days prior to the election. The Division supports this change. The 40 day deadline severely constricts the actual time frame in which ballots must be typeset, proofread, printed and distributed. For example, for general elections, the existing deadline allows only 10 days for preparing camera ready samples of each finalized ballot for inclusion in the Official Election Pamphlet which, by statute must be mailed to voters 30 days prior to the election.

In addition, by mail absentee voters should be mailed their ballots at least three full weeks before election day, and absentee in person voting starts 15 days before each election. That means that even in primary elections, allowing adequate shipping time for rural absentee sites, and adequate preparation for mass mailing of by mail ballots, the Division has at best, three weeks in which to finalize, typeset, proofread, print, receive and sort, and finally distribute and ship ballots across the State. This tight three week period can be further dwindled in situations where lawsuits are filed contesting a candidate's eligibility which is a common occurrence in major election years.

Jan 19 1989
Date

Sandra J. Stout
Sandra J. Stout
Director

THE FOLLOWING DOCUMENT HAS
NOT BEEN FILMED BUT IS
AVAILABLE IN THE ORIGINAL
FILE

ALASKA ELECTION LAWS

Reprinted From the Alaska Statutes, Title 15

As of January 1, 1987

Division of Elections

State of Alaska



STATE OF ALASKA

OFFICE OF THE GOVERNOR

DIVISION OF ELECTIONS
P.O. BOX AF
JUNEAU, ALASKA 99811-0105
PHONE (907) 465-4611

January 5, 1989

The Honorable Pat Pourchot
Alaska State Senate
P. O. Box V
Juneau, AK 99811

Dear Senator Pourchot:

In response to questions raised during last week's meeting with your staff, I have outlined a few recommendations which may offer some solutions to the various elections issues we discussed. They relate specifically to voter registration requirements, and clarifications of procedures regarding candidacy filings. These alternatives have not had the benefit of any legal review. However, they may offer some avenues for your consideration.

AS 15.07.060. Required Registration Information

- (2) address and other necessary information establishing residence and term of residence in Alaska and in election district if requested;
- (4) [TERM OF RESIDENCE IN STATE AND IN ELECTION DISTRICT AND] whether the applicant has previously been registered to vote in another jurisdiction, and, if so, the jurisdiction and address of the previous registration;

Explanation: A voter may register to vote at any time. The criteria for voting in a specific election is that they must be properly registered 30 days prior to the election. The 30 day cut off for registration is the controlling element with regard to their eligibility to vote in a specific election.

As a practical matter, under the Uniformed and Overseas Citizens Absentee Voting Act, the federal government prescribes an official post card form which contains both absentee voter registration application and an absentee ballot application. The form used by overseas and military voters does not specifically request length of residency. Nearly 4,000 Federal Post Card Applications were received this year, and approximately 75% had

The Honorable Pat Pourchot
January 5, 1989
Page 2

to be rejected simply because the voter did not include his or her length of residency. Each of these voters had to be written a letter requesting them to complete new forms which included the length of residency information.

(See suggestions regarding AS 15.25.030.)

AS 15.07.070. Procedure for Registration

- (c) The names of persons submitting completed registration forms by mail which are received by the director or election supervisor [POSTMARKED] at least 30 days before the next election shall be placed on the official registration list for that election. The name of a person submitting a completed registration form by mail which was not received by the director or election supervisor [POSTMARKED] before the 30 day requirement shall not be placed on the official registration list for the next election but shall be placed on the master register after that election.
- (f) Incomplete or inaccurate registration forms may not be accepted and shall be reexecuted. The date of registration shall be the date of reexecution before a registration official, or the date the application is received by the director or election supervisor [POSTMARK DATE] if the application for registration is by mail.

Explanation: Often registration forms completed and returned by mail do not have a postmark. (Based on our study of 1800 absentee envelopes in 1984, we determined that nearly 1/3 had no readable postmark.) Additionally, voters frequently return by mail registrations and updates in an envelope. Requirement that the postmark date be the date of registration for by mail registrants adds a cumbersome and costly administrative burden to the division because it requires retention of envelopes with the applications, and/or microfilming of both sides of each application form to maintain a permanent record of the postmark, if one is affixed.

AS 15.25.030. Declaration of Candidacy

- (2) the full residence and mailing address of the candidate, and the length of the candidate's term of residence in Alaska and in the election district in which the office is being sought;

The Honorable Pat Pourchot
January 5, 1989
Page 3

- (8) that the candidate meets [WILL MEET] the specific residency requirements of the office for which he is a candidate;
- (14) that the candidate [HE] is not a candidate for any other office to be voted on at the primary or general election [AND THAT HE HAS NOT FILED ANOTHER DECLARATION OF CANDIDACY OR NOMINATING PETITION FOR THE OFFICE FOR WHICH THIS DECLARATION IS FILED];
- (b) A person filing a declaration of candidacy under this section shall, on the same date [SIMULTANEOUSLY] file a statement of income sources and business interests which complies with the requirements of AS 39.50.010 - 39.50.200.

Explanation: Length of residency is of specific importance in relation to candidacy filings and candidate eligibility to run for office. Therefore, information about length of residency should be made part of the filing requirement.

With regard to the technical amendment to Section (b), be conflict of interest documents are accepted with the Declaration of Candidacy by the Director of Elections, however, they are really supposed to be submitted directly with APOC. The word "simultaneously" is not appropriate when the documents are actually filed at two separate locations.

Additionally, a new section would have to be added to address your concerns about candidates who withdraw their filings to refile for another seat, withdraw their declarations to file nominating petitions for the general election, or who amend their registrations and declarations of candidacy at the last moment before the filing deadline. Perhaps the simplest way to address these concerns is to provide specifically for the amendment of filings and stipulate a deadline for such amendments.

The second difficulty with the current statutes is in subsection 14 of AS 15.25.030 which requires that the candidate, under oath, state in substance that "he is not a candidate for any other office to be voted on at the primary or general election, and that he has not filed another declaration of candidacy or nominating petition for the office for which this declaration is filed." As indicated above, perhaps the second part of the statement should be deleted from the statutes. As you know, it is not uncommon for a candidate to file for office quite early.

The Honorable Pat Pourchot
January 5, 1989
Page 4

If the oath is to be taken literally, it would mean that no candidate would ever be able withdraw his or her declaration to resubmit a new one, or to make any change his or her candidacy declaration. This may not be practical.

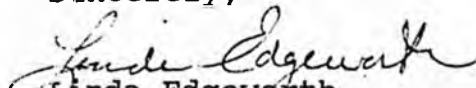
Your attorney can probably assist in clarifying the intent of the legislature in addressing the two issues about which you are concerned. One suggestion might be:

AS 15.25.030. New Section

(c) The information provided in compliance with the requirements of AS 15.25.030 on a declaration of candidacy which as been filed with the director may not be amended, altered or otherwise withdrawn and refiled by the candidate within the 15 days immediately preceding the filing deadline established in AS 15.25.040.

The Division of Elections has always been very grateful for your generous support and commitment. Please let me know if I can be of any further assistance.

Sincerely,


Linda Edgeworth
Information Officer

STATE OF ALASKA

OFFICE OF THE GOVERNOR

DIVISION OF ELECTIONS
P.O. BOX AF
JUNEAU, ALASKA 99811-0105
PHONE (907) 465-4611

January 18, 1989

The Honorable Pat Pourchot
Alaska State Senator
P. O. Box V
Juneau, AK 99811

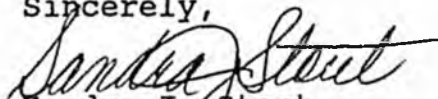
Dear Senator Pourchot:

I appreciate your interest in following up on the implementation of that portion of House Bill 284 covering the special advance ballot often called the "submarine ballot." I am happy to report that in its first implementation during the 1988 elections, it seems to have been a success. In our analysis of voter activity in connection with the use of the special advance ballot we found the following:

Number of Special Advance Ballots Sent to Overseas and APO/FPO Voters	493
Total Returned	<u>349</u>
Never Opened Because Official Ballot Was Also Received	171
Opened and Counted Because Official Ballot Was Not Received	150
Rejected Because of Deficiencies or Determination of Ineligibility, and Official Ballot Was Not Received	24
Returned Undeliverable by Post Office	4
Total Special Advance Ballots Not Received	<u>114</u>
Official Ballots Received	105
No Ballot Received From Voter	39

I hope this information is helpful. Please let me know if I can provide any additional assistance.

Sincerely,


Sandra J. Stout
Director

SUMMARY OF RECOUNTS
1978 - 1986

* Indicates OVERTURNED RACE

Year	District		Original Vote Spread	Recount Vote Spread	Charge
1978 Gen	S-F	*Kelly (R) Willis (D)	+4	+1	Free
1978 Prim	Governor	Hammond (R) Hickel (R)	+98	+98	Free
1980 Gen	H-6	Charney (D) Elliott (R)	+120	+116	Deposit
1980 Gen	H-7	Bierne (R) dal Piaz (D)	+76	+59	Deposit
1980 Gen	H-9	Kubitz (D) Buchholdt (D)	+53	+54	Deposit
1980 Gen	H-16	Chuckwuk (D) O'Hara (R)	+5	+27	Deposit
1980 Gen	H-13	Fritz (R) Malone (D)	+8	+13	Free
1980 Gen	H-20	Koponen (D) Smith (D)	+50	+57	Deposit
1982 Prim	S-J	Goddard (R) McCracken (R)	+3	+2	Free
1982 Prim	H-23	Fondell (R) Hemmes (R)	+19	+19	
1982 Prim	H-24	Juettner (R) Wallis (R)	+6	+8	Free
1982 Gen	S-D	Fischer (R) Smith (D)	+52	+53	Free
1982 Gen	H-12	Uehling (R) dal Piaz (D)	+35	+33	Free
1984 Prim	H-12	Childers (D) *Ratcliff (D)	+1	+1	Free

Year	District		Vote Spread	Vote Spread	Charge
1984 Prim	H-14	Barnes (R) Pignalberi (R)	+997	+998	Deposit
1984 Gen	H-5A	Navarre (D) Sikorski (R)	+79	+72	Deposit
1984 Gen	H-5B	Fritz (R) Marrou (L)	+53	+56	Deposit
1984 Gen	H-10A	Boucher (D) Cowdery (R)	+47	+38	Free
1984 Gen	H-11	Jenkins (R) McKinnon (D)	+33	+32	Free
1984 Gen	H-25	Binkley (R) Vaska (D)	+74	+82	Deposit
1986 Prim	S-F	Faiks (R) Vonhippel (R)	+2296	+2296	Deposit
1986 Gen	S-H	Fischer (D) Uehling (R)	+15	+12	Free

NO REFUNDS WARRANTED

ONLY 2 RACES OVERTURNED - BOTH IN SITUATION IN WHICH THE VOTE SEPARATION WAS 4 OR FEWER VOTES.

Courts have no right to deprive citizens of representation

It was with a sense of alarm that I heard the courts had vacated the election in the Bradley-Finkelstein affair.

I am less disturbed by the thought that the court would look at an election or even that the court would go so far as to tell the Division of Elections that this or that ballot should not be counted than I am that the legislature met without all the areas of the state being represented. This is wrong.

The court in its zeal left several thousand people unrepresented. The judges should be tried for such an action.

When John F. Kennedy became president of the United States by carrying the state of Illinois by 8,000 votes when 13,000 illegal ballots had been counted in Chicago, the thought of leaving our nation without a president was not even considered.

When the court ruled that the election should stand because no



one could prove how many votes had been stolen by which party, a few of us choked. I feel this day that Kennedy did not truly win a majority, but it was better that he be my president than the office be left vacant.

It should be possible to arrest a legislator for major crimes such as murder, but only the body to which he or she was elected should have the right to remove that person from his elected office.

The people should never be left without their legal voice as a result of the action of another

branch of government.

The special privileges given elected officials under both the federal law and in Alaska's Constitution are not given because our elected officials are in themselves so great, it's that the voice of the people shall not be muzzled however inane their voice shall sound. The reason a legislator may not be stopped on his way to and from the chambers or that he or she may not be removed by any but a body of their fellow legislators for acts committed is to ensure that the representatives of the people are not silenced by police, the executive body or the judiciary.

It was not always this protected. In the freewheeling days of Boss Tweed in New York, his police would stop opposition members on their way to the council chambers, and the Boss' tame judges would hold them long enough to avoid a vote or even to avoid embarrassing de-

bate. If, when freed, they spoke out in protest of the arrest and treatment, the courts served as a deterrent to future members who might act so rationally.

Now while the excesses of men like Boss Tweed are today at least partly controlled, the purpose behind the safeguards in our laws and in the state constitution are still valid.

The peoples' voice shall not be silenced, and in a representative form of government, what more complete a silence can there be than that of leaving the seat empty.

For any court to rule that neither candidate has won is a dangerous precedent to allow any judge or any body of judges to set.

Hallbut Cove charter boat skipper Clem Tillion is a former president of the Alaska Senate.

Times

1/15/89

The court rules: a failed election

As the Alaska Legislature moves into its second week, Anchorage's House District 13A remains without representation. The more than 7,000 voters who cast ballots in the November election between Republican Brad Bradley and Democrat David Finkelstein have been told, "Sorry, your votes don't count. We'll have to do it again."

Daily News 1/14/89

Meanwhile, Gov. Steve Cowper is expected to appoint an interim representative. With the district facing a minimum of two months without elected representation, circumstances demand a quick method of filling the void, and perhaps the best solution is to let the governor choose someone.

No, the quarrel isn't with the governor's authority, nor with the Supreme Court's ruling that required a new election, given the situation the justices had to deal with. The quarrel is with an elections system that let things get this far.

Close elections are a fact of life in Alaska. A handful of votes have determined more than one election in the past. Thus, it behooves the people who run state elections — the Division of Elections and Lt. Gov. Steve McAlpine, who supervises the division — to have the resources, regulations and equipment to deal with tight races.

In the counts and recounts of the Bradley-Finkelstein race, a number of problems were discovered.

One was ballots that had been mismarked or marked for both candidates. Some of the mismarkings stemmed from troubles with the machines that punch the ballots.

Another was deficient voter instructions included with absentee ballots. The Supreme Court concluded that the instructions failed to explicitly state that the vote must be cast in the presence of two witnesses.

Voters deserve machinery and election guidelines that prevent such miscounts. When problems arise, elections staff must have the training to handle them properly. Voters deserve a system that produces accurate, conclusive and timely vote counts.

The system failed this time. The voters who went to the polls in November have been, in effect, disenfranchised. A fundamental tenant of democracy went unfulfilled. The Division of Elections, the lieutenant governor, and, if necessary, state legislators should begin work now to assure it doesn't happen again.

McAlpine orders vote for District 13A

By SHEILA TOOMEY
Daily News reporter

Lt. Gov. Steve McAlpine on Thursday ordered a new election for House seat 13A, after a recount of 60 disputed votes failed to establish a clear winner in the contest between Republican Brad Bradley and Democrat David Finkelstein.

The final recount, ordered by the Alaska Supreme Court, put Finkelstein eight votes ahead; but because his lead was based on a mathematical formula, and not on counting actual ballots, he could not legally be declared the winner.

Since Bradley also could not be declared the winner, a ruling by the Supreme Court Wednesday required that a new election be held. Finkelstein won election-night tabulations, but Bradley asked for a recount, setting off a mathematical marathon leading to the court decision that leaves the district without a representative.

Gov. Steve Cowper plans to appoint an interim representative from the district within a week, said press aide David Ramsour. Cowper met with legislators Thursday and his office was already "compiling a list of poten-

tial appointees," Ramsour said.

The seat is legally vacant and does not belong to any party, he said, so Cowper is free to appoint anyone who is a resident of the district.

McAlpine warned that the earliest a new election can be held is in "a minimum — and I think that's the important word — a minimum of 60 to 75 days." If the race is close enough for a recount or court challenge, it could take considerably longer to seat an elected District 13A representative.

McAlpine said he may decide to postpone the election until after the current 120-day legislative session is over, to ensure the people of the district get effective representation during the crucial last few weeks.

"Somewhere around the fifth of May, some poor guy is going to end up sitting down in the legislature when the bills are flying by. . . . If someone would get sworn in in the last 10 days of the session, that would not serve the district well."

In 1977, when a western Alaska House race between Nels Anderson Jr. and Joe McGill had to be done over, an interim representative, appointed by then-Gov. Jay Ham-



The Associated Press

Lt. Gov. Steve McAlpine explains the results of the ballot recount.

mond, served until March 11.

Finkelstein, who got the news of his sort-of victory in Anchorage, urged that the election be held as soon as possible. He estimated that only about 50 percent of the voters who cast ballots in November would be likely to turn out, mak-

ing any prediction about a winner impossible.

Bradley was in Juneau Thursday, where he predicted to The Associated Press that he would win the re-match.

In November, Finkelstein won all the District 13A precincts ex-

cept Elmendorf Air Force Base, which cast enough votes for Bradley to all but wipe out Finkelstein's lead.

In the history of counts and recounts, Finkelstein won the first. Bradley then asked for a recount and won that. Finkelstein went to Superior Court and won that, by .17 votes. But no one won the count that counted, the last one.

Following the Supreme Court's directive, the Division of Elections started with a final vote count, which gave Bradley an eight-vote lead over Finkelstein, 3,582 to 3,554. Then they subtracted two sets of illegal votes from those totals.

Subtracting nine ballots that made up the first set resulted in seven votes being subtracted from Bradley and two from Finkelstein. That left Bradley with a three-vote lead, making him the provisional winner.

Next, 51 votes were subtracted from the two totals. These votes — all absentee or challenged ballots — were disqualified on the basis of the envelopes they came in. Because the actual ballots had long

See Page C-3, RECOUNT

RECOUNT: Election ordered

Continued from Page C-1

since been mixed in with the more than 6,000 ballots cast in the original election, they were subtracted using a proportional formula.

In the next step, Bradley lost 28 votes and Finkelstein 18, putting Finkelstein ahead by eight.

So why wasn't Finkelstein declared the winner? Because declaring a winner on the basis of a formula as opposed to known, counted votes is not acceptable, according to the Supreme Court. That left District 13A with a winnerless race and a need for a new election.

After announcing the re-match, McAlpine listed some of the things his office has to do before the reballoting can take place.

First, he has to get permission from the Alaska courts "to not have to comply with every single state law" governing general elections, such as issuing a voter pamphlet and opening ab-

sentee voting booths around the state.

Then, because Alaska is on a federal list of states that once practiced voter discrimination, the procedural details of the special election must be approved by the U.S. Department of Justice, which has 60 days to issue a decision.

The race will be strictly between Finkelstein and Bradley, McAlpine said. Only the voting has been reopened, not the filing period. And normal registration rules will apply, which means anyone who hopes to vote in the special election must be registered in the district 30 days ahead of time.

McAlpine was reluctant to estimate how much the special election will cost. Probably somewhere between \$100,000 and \$200,000, he said when pushed for a number. "It will be done by the cheapest, most effective method," he said.

Appointment will be made within week

TIMES STAFF and ASSOCIATED PRESS

Gov. Steve Cowper will appoint someone to represent District 13-A "as soon as possible" until a spring election is held, but it could take as long as a week before the appointment is made, said a spokesman from the governors office.

In the election, to be held in mid-March at the earliest, Anchorage voters will get another chance to decide whether Republican Brad Bradley or Democrat David Finkelstein will represent them in the House of Representatives.

Cowper spokesman David Ramseur said the governor is asking legislators for names of possible appointees and that Cowper had one or two ideas of his own on people to appoint.

McAlpine, the state's top elections official, said a new election in the disputed District 13-A race was necessary because of a state Supreme Court order issued Wednesday.

The court ordered a recalculation of the Nov. 8 general election results after Finkelstein challenged the Elections Division's recount of the close contest. Because the recalculation indicated a change in the outcome, with Finkelstein holding an eight-vote edge, a new election was ordered.

Finkelstein had not yet recommended to Cowper, also a Democrat, who should fill the seat temporarily.

"It's an amusing situation," Finkelstein said. "I'd like to have my wife appointed and Bradley would like to have his wife appointed, but I don't think either one is appropriate because of their ties to the campaign. The best person is someone not tied to the campaign," he said.

McAlpine said the election cannot be held for at least 60 days because the Law Department is required to review the election procedure during that period.

The initial election results showed Finkelstein with a three-vote victory, but a recount gave Bradley the election by nine votes. After Finkelstein filed his challenge, the Supreme Court last week stayed Bradley's swearing-in pending resolution of the case.

The court ordered Wednesday that about 60 See Cowper, page B-5

Cowper: Taking suggestions

Continued from page B-1

challenged votes be reconsidered, most under a complex formula used to determine whether errors might have affected the outcome of an election. The court said if the formula showed a different outcome, that a new election be held.

Justices Jay Rabinowitz and Daniel Moore were the dissenters in the 3-2 decision. They argued that

Bradley should be certified as the winner of the Nov. 8 election.

Bradley said after the news conference that the court's order was "rather nit-picking and after the fact." He said he was confident he would win in another election, however.

Finkelstein said he was pleased that a new election would be held.

House Democrats met immediately following McAlpine's announcement.

Court requires recount

Disputed ballots to be reconsidered

By SHEILA TOOMEY
Daily News reporter

The Alaska Supreme Court Wednesday handed the disputed Bradley-Finkelstein House race back to the Division of Elections with instructions to count 60 votes slightly differently and figure out if there's a winner or if a new election is necessary.

Lt. Gov. Steve McAlpine said Wednesday that his office expects to have the latest, and perhaps last, recount of the District 13A vote finished today.

The ballots and absentee voter envelopes in dispute were locked in the Supreme Court chambers and not accessible Wednesday night, McAlpine said. An elections official, accompanied by security personnel, will retrieve them today and the recalculations ordered by the high court should be done fairly quickly, he said.

David Finkelstein, the Democratic contender in a race that has turned into a marathon, said he knows where the disputed votes will go and predicted a new election will be ordered.

Republican Brad Bradley could not be reached for comment. His attorney, David Devine, said he does not remember how nine of the disputed ballots were voted so could not predict an outcome.

So far, each candidate has been a winner at least once. Finkelstein won the first count, right after the Nov. 8 election, by



Finkelstein



Bradley

DISPUTE: Court orders another count in House election

Continued from Page E-1

three votes. Bradley won the first recount, by nine votes. Finkelstein won a decision from Superior Court Judge Joa Kaiz, sitting as a special master for the Supreme Court. She put him 17 votes ahead and ordered a new election, saying the original one was too flawed to figure out who won.

Meanwhile, the 13A seat in the state House of Representatives remains vacant as the legislative session moves toward the end of its first week.

Should a new election be ordered, Gov. Steve Cowper is expected to name an interim representative, with House approval. Finkelstein said he has asked Cowper not to appoint him.

"It's not my seat. It's not Mr. Bradley's seat," he said. "It should be someone not connected to either of us."

Following the instructions issued by the Supreme Court Wednesday, three outcomes are now possible: either Finkelstein or Bradley could be declared the winner, or a new election could be ordered. Finkelstein said it is very unlikely he will pick up enough votes to win outright.

When the Supreme Court finished its count Wednesday, the candidates were eight votes apart, with Bradley leading 3,562 to 3,554. But the court declared 60 of these votes invalid and ordered them subtracted from the totals in a two-step process.

Step 1 involves counting nine ballots that have

declared illegal and simply subtracting them. At this point a provisional winner will be named, the court said.

Step 2 involves 51 envelopes that once contained absentee ballots. For a variety of reasons, the votes submitted in these envelopes have been declared invalid and they must also be subtracted.

Unfortunately, these ballots were long ago mixed with all the other ballots, so it is impossible to know for certain how many should be subtracted from each candidate.

As in past disputed elections, the court ordered these ballots assigned to the candidates in proportion to the number of known absentee ballots they received. Because Bradley received

many more absentee votes than Finkelstein, it is expected that Bradley will lose more of these disputed votes, as he did in the recounts completed to date.

If the provisional winner is still ahead after Step 2, then that candidate should be declared the winner, the court ruled.

If the proportional subtraction changes the provisional outcome, a new election should be held, the court said. In the past, the court has held that declaring a winner on the basis of unknown votes would be inappropriate.

Because applying a proportion is likely to result in numbers that include fractions, it is possible that Bradley or Finkelstein could come out ahead by less than a vote.

Anchorage Daily News Thursday, January 12, 1965 E3

Intrusion by the courts

THE ALASKA Supreme Court treads on mushy constitutional tundra when it tells the legislature, as it did last week, to deny a seat in the House of Representatives to either of two candidates claiming election from an Anchorage district, pending the high court's determination of who actually won the race.

At the risk of meddling in affairs of the judiciary, let's express an opinion that this is a matter which is no business of the courts or the judges.

The courts might be called upon to settle a legal dispute — there's no argument about that.

But neither prior to nor after such a decision has the court the constitutional right to order the legislature not to seat whoever it wants to admit as a member.

THE AUTHORITY is clearly spelled out in the Alaska Constitution.

Says Section 12 of Article II of that guiding document:

(The houses of each legislature shall adopt uniform rules of procedure. Each house may choose its officers and employees. Each is the judge of the election and qualifications of its members.

The House and Senate, in other words, are the judge and jury of those who will be legislators. The constitutional language couldn't be more specific. In an election dispute of this nature, the legislative body involved has the final say.

Not a judge of the Superior Court.

Not the justices of the Supreme Court.

They have no authority, as we read this constitutional provision, to even suggest — much less issue a formal stay, as they did last Saturday — to the Alaska House that it should not swear in Republican Brad Bradley as the new representative of an

East Anchorage district.

Mr. Bradley, a former state senator and most recently a member of the Anchorage Assembly, was certified after a recount as the victor in his race last November with Democrat David Finkelstein. Mr. Finkelstein filed suit, and Superior Court Judge Joan Katz did her own thing with the ballots and declared the Democratic contender as the winner, using some kind of a percentage formula to allocate a share of certain votes that she found questionable.

WE DON'T question Judge Katz' sincere attempt to sort through a bunch of challenged ballots to come up with a decision.

But that's a process that already had been handled by the state election judges.

And the ultimate decision — despite whatever the results might be, in the eyes of whoever last looked at the ballots — belonged to the members of the House, not to the justices of the Supreme Court.

The legislature — not the court — is the judge of its members.

The House, had it been so inclined, could have told Mr. Bradley, yesterday to step aside on its own determination that he had not won the election. And it could have called Mr. Finkelstein forward to be sworn in as the new representative from Anchorage.

What it might more properly have done is declare the seat still vacant and directed the state elections office to conduct a new election in the district.

But that is the legislature's business, not the courts.

Our constitution, we suggest, says as much in language so plain that it's surprising the high court would even bother to get involved.

Court may call re-vote

By PATTI HARPER: 1/6/89
Times Writer

The Alaska Supreme Court was meeting at press time today to decide whether it should order a new election in the District 13 State House race between Republican Brad Bradley and Democrat David Finkelstein.

The state's attorney in the case, John Rubini, wants the court to uphold the election results. But he asked the five justices to order that the declared winner, Brad Bradley, not be sworn in next week if they cannot reach a decision today.

Bradley's attorney, David Devine, said he opposes that idea. It would leave voters in the East Anchorage district without representation, he said. "I don't think Mr. Bradley should be kept from taking office," unless there is a decision ordering a new election, he said.

Anchorage Superior Court Judge Joan Katz recommended to the court late Thursday that the election be re-run. She was acting as a special master to clarify the vote counting issues in Finkelstein's legal challenge to Bradley's apparent nine-vote win.

Katz agreed with Finkelstein that a number of ballots were improperly counted. She calculated that vote totals should be adjusted in a way that reverses the outcome and puts Finkelstein ahead by 1.17 votes.

All attorneys agreed today that she made an error and the actual difference between the two candidates using her decisions is 41, less than one vote.

Since there is no way to identify which of the thousands of ballots counted were the ones improperly cast, the calculations cannot reflect actual votes.

All parties had agreed that if the challenge had this result a new election should be called, Katz noted.

"We haven't even thought of that," Division of Elections spokesperson Lynn Edgeworth said about the logistics of holding a new election.

The state wants the Supreme Court to decide elections officials properly declared Bradley the winner.

See Re-election, page A-8

Re-election: Court considers election to settle disputed race

Continued from page A-1

Any new election would take at least 60 days to satisfy election law requirements, said John Rubini, an attorney representing the state. That's half of the 120-day legislative session.

Edgeworth said this morning that it might be possible to trim that timeline to 40 days.

Gov. Steve Cowper would have the responsibility to appoint someone to represent the district until the ultimate winner is de-

clared, Rubini said.

Speaker-elect of the House, Sam Cotten, D-Eagle River, said this morning that he's already been contacted by the governor's office for suggested appointees. Cotten said he didn't have any names for Cowper.

"We certainly won't seat Bradley or Finkelstein (when the legislature convenes Monday) if the court has called for a new election," Cotten said. "We're going to follow what the court directs."

Cotten said the court decision

won't affect the organizational structure of the House even though Bradley would be minority member if seated while Finkelstein would join the majority coalition.

Finkelstein was the first apparent winner in the hard-fought race to represent the East Anchorage district, which includes Mountain View and Elmendorf Air Force Base. He was initially certified the victor after the Nov. 8 polling.

But a recount in early December left Bradley ahead 3,583 to

3,546.

Finkelstein appealed to the high court, challenging more than 70 votes for a variety of reasons.

Katz agreed with Finkelstein that three of the votes credited to Bradley should be thrown out because the ballots were not clearly punched, the marks falling between the two candidates' names.

Today, attorneys in the case agreed that one of those votes was not counted and so should not have been deducted from

Bradley's total.

Katz also agreed with Finkelstein that nine other ballots were improperly counted.

The division had already decided another 28 absentee ballots were improperly cast. Since none of these votes could be determined, the candidates were each docked a portion of a vote for each vote thrown out. The proportions were based on the percentage of the total absentee vote each candidate had received.

Since Bradley got more of that

vote, he was docked more. That is what left Finkelstein ahead in Katz's calculations.

Bradley was docked about .62 votes for for every vote thrown out, while Finkelstein was docked about .38.

Devine argued to the high court this morning that Katz was wrong to accept Finkelstein's arguments.

Devine said he believes the court will declare Bradley the legitimate winner.

IN THE SUPREME COURT FOR THE STATE OF ALASKA

DAVID FINKELSTEIN,)
)
 Appellant,)
)
 vs.)
)
 SANDRA STOUT, Director of the)
 Alaska Division of Elections,)
 and STEPHEN A. McALPINE,)
 Lieutenant Governor of Alaska,)
)
 Appellees,)
)
 and)
)
 W.E. "BRAD" BRADLEY,)
)
 Intervenor.)

Supreme Court No. S-3107

Filed and Entered
APPELLATE COURTS of the
STATE OF ALASKA

JAN 5 1989

By _____ CLERK Deputy

SPECIAL MASTER'S REPORT

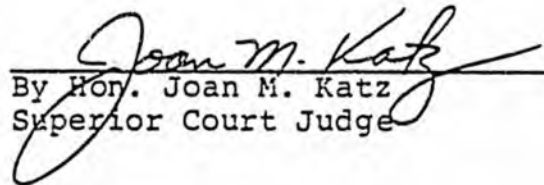

By Hon. Joan M. Katz
Superior Court Judge

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	SPECIFIC BALLOT CHALLENGES	2
	A. Appellant's Challenges	
	1. Absentee ballot envelope oaths suggesting no permanent Alaskan residence	2
	2. Post-Election affidavits demonstrating non-residency	9
	3. Military post office box "residences"	13
	4. Absentee ballot lacking witness signature	18
	5. Undated witness signatures	19
	6. Incomplete voter signature	22
	7. Different witness dates	23
	8. Ballots without postmarks received after the election	26
	9. Unregistered voter	27
	10. Punchmark ballots	27
	B. Intervenor's Challenges	
	1. Absentee ballots lacking voter signatures	33
	2. Special overseas absentee ballots	35
III.	CONCLUSION	37
	APPENDIX A	
	APPENDIX B	
	APPENDIX C	
	APPENDIX D	

I. INTRODUCTION

In the general election of November 8, 1988, David Finkelstein and W.E. "Brad" Bradley vied for Seat A in House District 13. After the election, Finkelstein was certified by appellee Stout, Director of the Division of Elections, to be the winner of that race. The count was 3,549 to 3,546.

At Bradley's request, a recount was conducted on December 1 and 2, 1988. Based on the recount, Stout certified that Bradley had defeated Finkelstein 3,563 to 3,554, a nine vote margin.

In the course of the recount, Stout determined that 26 votes had been improperly counted. Finkelstein Ex. 1. The ballots had been commingled, rendering it impossible to ascertain for whom they had been cast. Based on the formula set forth in Hammond v. Hickel, 599 P.2d 256 (Alaska 1978), cert. denied, 441 U.S. 907 (1979), Stout proportionately reduced Bradley's vote total by 15.02 votes and Finkelstein's total by 9.98 votes. These reductions resulted only in narrowing the gap between the candidates to 3.96 votes. Having determined that the outcome of the election would not have been different based on the rejected ballots, Stout certified the election results premised on the recount totals demonstrating Bradley to be the prevailing candidate by nine votes.

This recount appeal was timely filed with the Alaska Supreme Court pursuant to AS 14.20.510(2). On December 8, 1988, the court appointed the undersigned as special master charged

with making findings and recommendations regarding each ballot issue raised, as well as summary findings and recommendations pertaining to the ultimate fate of this election contest. Bradley was subsequently granted permission to intervene.

A discovery and briefing schedule was established immediately upon the appointment of the master, with supplemental briefing requested by the master as such proved necessary. Oral argument was conducted on January 3, 1989. Limited testimony was taken. The findings and recommendations of the master are based on the complete record and pertinent legal authority. The findings address each of the parties' challenges to specific ballots, or groups of ballots, in the order in which the issues have been presented in the briefings.

II. SPECIFIC BALLOT CHALLENGES

A. Appellant's Challenges

1. Absentee ballot envelope oaths suggesting no permanent Alaskan residence

Finkelstein challenges the state's failure to reject 14 absentee ballots in light of indications on the voter oaths on the ballot envelopes suggesting that these voters did not have a permanent Alaskan residence in District 13 at the time of the election. The statutory framework for this issue is as follows:

Under AS 15.05.010(4), a person may vote in an election if, inter alia, he or she "has been a resident of . . . the election district in which the person seeks to vote for at least 30 days just before the election." Residence is defined in AS

15.05.020(2) as being "that place in which the person's habitation is fixed, and to which, whenever absent the person has the intention to return." Subparagraph (3) of the statute provides that "There can only be one residence." Finally, subparagraph (10) states:

The address of a voter as it appears on an official voter registration card is presumptive evidence of the person's voting residence. If the person has changed voting residence, this presumption is negated only by the voter executing an affidavit on a form prepared by the director setting out the new voting residence.

In Fischer v. Stout, 741 P.2d 217, 222-23 (Alaska 1987), the court held that the absentee voter oath is a "form prepared by the director" sufficient to rebut the presumption of residency arising from the voter registration card. The court struck the ballots of eleven voters who were determined, based on absentee voter oaths, to have resided outside of the district in question. Finkelstein seeks the same result in the case of these 14 challenged ballots.

The state opposes this relief on two grounds. First, appellees contend that Fischer v. Stout should be overturned. Second, the state argues that a statutory provision safeguarding residency as it pertains to students, as well as members of the military and their families, removes most of these 14 cases from application of the Fischer rule.

The state's basis for urging reversal of Fischer is the presumptive validity afforded the residency information provided on a voter's registration form. Appellees insist that the code contemplates that a voter may "have a voting residence at one location, yet 'reside' at still another." Appellees' Brief at 10. Appellees contend that "the registration rolls offer a 'snapshot' of a highly mobile electorate, and the components of the picture consist of the voter's habitation as of the time of registration." Id. (Emph. added.) Appellees cite to AS 15.07.090 as authorizing amendment of registration only by execution of "new" registrations. The presumption raised by registration is said to be "conclusive."

This line of argument is not persuasive. The state overlooks the explicit mandate of AS 15.05.010(4) limiting the class of people entitled to vote to those who have in fact been residents of the district for the 30 days preceding the election. This mandate derives from Article V, Section 1 of the Alaska Constitution, which reads:

Every citizen of the United States who is at least eighteen years of age, who meets registration residency requirements which may be prescribed by law, and who is qualified to vote under this article, may vote in any state election. A voter shall have been, immediately preceding the election, a thirty-day resident of the election district in which he seeks to vote, except that for purposes of voting for President and Vice President of the United States other residency requirements may be prescribed by law. Additional voting qualifications may be

prescribed by law for bond issue elections of political subdivision.

Thus, not only is the 30-day residency requirement a sine qua non of voter qualification, it is clearly differentiated from "registration residency requirements" (emph. added) which must also be observed.

It is obvious, then, that registration supplies only an evidentiary tool for establishing voter residency. Registration cannot provide a "conclusive" presumption. To allow this effect would be to authorize the voting by non-residents in contravention of the Alaska Constitution. This result was prohibited in Turkington v. City of Kachemak, 380 P.2d 593 (Alaska 1963). There, the court invalidated a territorial act which contemplated the voting of non-resident property owners in certain local elections. The court held that the legislation directly contravened Article V, Section 1 of the subsequently adopted constitution.

In a related argument, the state observes that the voter oath is not intended to constitute a new registration. While this may be true, as suggested above, it is irrelevant. The critical fact is that the oath provides updated information which must be taken into account.]

Finally, appellees suggest that the Fischer rule should be overturned, because the absentee voter oath does not make a NC clear distinction between mailing and residence addresses, as does the registration form. In both Fischer v. Stout, supra, at 223-224 and Willis v. Thomas, 600 P.2d 1079, 1087 (Alaska 1979),

the court suggested that errors attributable to the state should not result in disenfranchisement of the electorate.

It is possible that the form could have been clearer in this regard. However, the relevant portion asks specifically for "My permanent Alaskan Residence Address." It advises voters, moreover: "(DO NOT use P.O. Box, Rural Route #. You must use street address, #, legal description, or other physical location description.)" The master does not deem these instructions so misleading as to explain the rationale of voters in putting down out-of-state addresses or writing "no permanent Alaskan residence." The only reasonable explanation for such entries is that the voters did not, in fact, have a permanent Alaskan residence.

Appellees' second argument is more persuasive. AS 15.05.020 provides, in pertinent part:

Rules for determining residence of voter.
For the purpose of determining residence for voting, the place of residence is governed by the following rules:

(1) A person may not be considered to have gained a residence solely by reason of presence or may a person lose it solely by reason of absence while in the military service . . . of the United States or . . . because of marriage to a person engaged in the . . . military service . . . of the United States, while a student at an institution of learning

Subparagraph (2), cited previously, defines "residence" as "that place in which the person's habitation is fixed and to which, whenever absent, the person has the intention to return."

Read together, these two sections require that if a citizen establishes residency as a registered voter in Alaska

prior to leaving the state as a member of the military, a military dependent, or for educational purposes, such person is not deprived of his or her registered voting residency, notwithstanding an absence of intent to return to the precise voting residence location.

This is the only logical interpretation of these sections for two reasons. First, the reality is that many people in the military, as well as those attending institutions of higher education, have lived either in military housing or rental units prior to leaving the state. This is a young and mobile segment of the population which, from a factual standpoint, generally cannot be expected to own a home such as would qualify as a "permanent residence" in the sense intended by subparagraph (2). People who leave the state do not retain an interest in rental units or specific military housing that would support an intent to return to such specific locations.

Additionally, if subparagraph (i) were intended to be limited to those students and members of the military who have purchased a home or otherwise secured a true fixed habitation in Alaska, the provision would be superfluous. Subparagraph (2) already instructs that if anyone is absent from a residence to which he or she intends to return, legal residency is established. It is hornbook law that legislation must be construed to give meaning to all its parts. Alaska Transp. Comm'n. v. AIRPAC, Inc., 685 P.2d 1248, 1253 (Alaska 1984). The only reasonable conclusion here is that voting residents who

leave the state in the military or to go to school are entitled to rely on their last registered address for purposes of voting in Alaska.

Review of the 14 oaths challenged here discloses that ten of the voters explicitly referenced the military or educational pursuits to explain why they had no permanent Alaska address. These voters include Jennifer Dahlmann (Appellees Ex. 8), James W. Dahlmann (Appellees Ex. 9), Ginger Rusnock (Appellees Ex. 10), Jodie Callahan (Appellees Ex. 11), Patrick A. Tuller (Appellees Ex. 12), Candice J. Tuller (Appellees Ex. 13), Anna M. Steward (Appellees Ex. 14), Tony R. Steward (Appellees Ex. 15), Donna S. Kuehn (Appellees Ex. 16), and Judith Hanf (Appellees Ex. 17). Their ballots were properly counted.

Cheryl A. Henry (Appellees Ex. 6) did not mention being a current member of the military. But she wrote her old Elmendorf address on the oath and had her oath notarized by Air Force Captain Richard Henry. Captain Henry can fairly be assumed to be Cheryl Henry's husband. There is enough information provided from which it can reasonably be inferred that Ms. Henry is either military or a military dependent. Her vote was properly counted.

There are three individuals, however, who gave no clear indication that they fall within any of the exceptions authorized by AS 15.05.202(1). Melanie McDermott (Appellees Ex. 5) was in the military in Alaska at the time of her registration. But she did not state in her oath that she continues to serve in this

capacity. McDermott provided a Texas address and gave no information to suggest that it is on a military installation. Homer C. Rice, Jr. (Appellees Ex. 7) similarly made no reference to present military status. The address he provided on the oath is different from that given on his registration. Finally, Adam P. Behnen (Appellees Ex. 18) did not indicate that he was in the military even on his registration. Moreover, he provided an address of "C/o Michael Rethlake" on his oath, with a street location that is outside of District 13.

The state argues generally against rejection of any of these ballots due to the alleged hardship of disenfranchising these voters. However, the last-mentioned three voters would be "disenfranchised" only in respect to a contest in a district in which they have demonstrated that they do not have actual residency. They have not established their entitlement to any exception. Exclusion of these ballots is necessary and reasonable to insure that the "political community" is maintained intact without suffering dilution of the vote of legitimate district residents. See Dunn v. Blumstein, 405 U.S. 330, 31 L.Ed.2d 274 (1972); Reynolds v. Sims, 377 U.S. 533, 555 (1963). The ballots of voters McDermott, Rice, and Behnen should not have been counted.

2. Post-Election affidavits
demonstrating non-residency

Subsequent to both the election and the recount, 21 voters executed official voter registration affidavits attesting to the fact that they were not residents of the district on the

day of the election. In each case, the individuals in question filled in the blank asking for "My current residence at this [non-District 13] address (or in this district [other than 13], whichever is longer) began" with a date prior to the November 8, 1988 election. Appellant claims that the votes of these affiants should not have been counted.

In their briefs, appellees argued that the new affidavits take effect only on the date that they are postmarked or executed (if accomplished in person). Reiterating their position vis-a-vis the absentee voter oath, appellees urged that absent a new registration in effect 30 days prior to the election, the presumptive validity of the old registration governs. It was asserted that:

ominously, Finkelstein's proffered interpretation would create a limbo period in which a voter would be a legal resident of neither district, thus depriving that voter of an opportunity to vote on even statewide matters.

Appellees' Brief at 21.

At oral argument, new evidence surfaced in support of the state's position. It became apparent through representations of counsel and the testimony of Mr. Finkelstein that most, if not all, of the 21 affidavits had been solicited by the Finkelstein campaign. Oral argument transcript at 53, l. 24-58, l. 15. The affidavits do not represent spontaneous decisions by the voters to update their registrations. Rather, the affidavits are the product of one party's attempt to alter the outcome of the election.

Based only on the arguments presented in the briefs, the master would adopt appellant's position. It is true that the amended registrations modify the voter's registration record only as of the date the new forms are executed or postmarked. But if the information contained on the new form explicitly demonstrates lack of residency in the election just passed, such information rebuts the presumption afforded the "valid," older registration. AS 15.05.020(10). The Alaska Constitution would, ordinarily, require that the votes of the non-residents be set aside.

The new registration form is not confusing. Appellees argue that the form does not distinguish between residency for purposes of "living" versus voting. Yet, none of the Division of Elections forms sets forth this distinction. Under the state's analysis, no registration would be valid, because no form alerts the voter to this possible distinction.

Additionally, there is no "limbo," as fearfully portended by the state. The Legislature has anticipated this dilemma. AS 15.07.090(c) allows individuals to change their registration up to 30 days prior to the election. The statute requires the director to transfer the registration of a voter from one district to another when requested by the voter. Again, the voter must reside in the new district for at least 30 days in order to vote. AS 15.20.015 provides as follows:

Moving from election district just before election. A person who meets all voter qualifications except that listed in AS 14.05.010(4) [30 day residency] is qualified to vote by absentee ballot in the election district in which the person formerly resided

if the person lived in that election district for at least 30 days immediately before changing residence.

Thus, to insure against disenfranchisement, the Legislature has authorized people to vote in their old district, at least for state-wide elections, if they cannot meet the 30-day residency requirement at their new address.

Based on the above reasoning, if the affidavits had been submitted spontaneously, constitutional considerations would override claims of administrative convenience. These 21 ballots would be rejected. To apply the Hammond v. Hickel formula to these commingled ballots, however, would work an injustice. The affidavits were solicited by Finkelstein. Presumably, the campaign workers identified themselves as such to these 21 voters; (if not, the failure to do so would in itself have been improper). It is reasonable to assume that the 21 individuals supported Finkelstein, or they would not have been willing to cooperate with his campaign in updating their registrations. There is a high probability that most, if not all, of these 21 votes were cast for Finkelstein. At a minimum, the unusual circumstances under which these new registrations were secured renders it unlikely that these 21 votes were cast in the same proportions reflected in the election at large.

If the proportionate impact formula were to be applied, most of the votes would be deducted from the Bradley column. Finkelstein might, thereby, effectively receive two votes from many of these 21 individuals. He would retain the vote they cast originally, and he would benefit from the vote subsequently

deducted from the Bradley total. To apply the Hammond v. Hickel formula in this case would, thus, subvert its very purpose in attempting to approximate realistic and fair election results. There should be no alteration in the proportionate reduction computations based on these 21 affidavits.

3. Military post office
box "residences"

Eleven people, some of whom voted absentee and some of whom voted in person, utilized an Elmendorf Postal Service Center ("PSC") box number on their registrations. Finkelstein contends that under the supreme court's ruling in Fischer v. Stout, such post office box addresses do not meet residency requirements. Appellees argue, to the contrary, that the court in Fischer also indicated that an address of "Elmendorf Air Force Base" would suffice for residency purposes. The state claims that the addition of a post office box number should not defeat residency based on the designation of Elmendorf.

Fischer v. Stout does provide the starting point for this analysis. The pertinent discussion from that opinion is as follows:

Fischer contests the ballots of five voters who listed as their residence address only "Elmendorf Air Force Base." Elmendorf Air Force Base is a bounded area wholly within Senate District H. Thus, merely listing "Elmendorf Air Force Base" is sufficient to fix a voter's residence to a specific locale within District H. These votes were properly counted.

Fischer also challenges those absentee voters who registered to vote using a post office box or private mail service as the

voter's residence. A post office box or private mail service address is clearly not a voter's fixed place of habitation and is therefore insufficient to fix a voter's residence within a voting district. Thus, any voter providing such an address as his or her residence would be ineligible to vote unless he or she provided additional information regarding that voter's residence.

741 P.2d at 221. It is undisputed that had these 11 voters simply utilized "Elmendorf AFB" as their residence, their votes could not be challenged. The issue is whether the reliance on a military post office box effectively converts their addresses from residences to mere mail receptacles. Resolution of this issue, in turn, depends on identification of the classes of people who are entitled to use these boxes.

Finkelstein supplied the court with copies of a booklet apparently utilized at Elmendorf which describes the function of postal service centers. Finkelstein Ex. 52. At page 3 of the exhibit, the brochure reads:

A civilian contractor operates three postal service centers on base. PSC-1 in building 2-900 and PSC-2 in building 31-160 serve people living in areas where USPS does not provide free resident delivery service. Also, temporary general delivery service is available for people who will not be living in the dormitories.

Finkelstein also furnished an excerpt from the Department of Defense Postal Manual. Finkelstein Ex. A to Ex. 53. This excerpt states, first, that "In CONUS, receptacles are assigned only to service members not afforded free mail delivery by the USPS at their quarters address." The manual then goes on to indicate that postal service center boxes may be used by certain

professionals within the military, regardless of where they reside, for the purpose of receiving professional papers, journals, and other job-related materials. In the case of such assignments, the manual admonishes: "Under no circumstances shall receptacles be used to conduct private business."

The state submitted an unsworn memorandum from one Captain Raymond B. Rounds, Elmendorf's Installation Voting Officer, to Linda Edgeworth, the information officer for the Division of Elections. (Appellees Ex. 21). The memorandum is undated, but appears to have been written in response to a December 13, 1988 telephone call between Edgeworth and Rounds described in Edgeworth's affidavit (Appellees Ex. 1).

Captain Rounds advises that the procedures set forth in the postal manual referenced, supra, are implemented at Elmendorf. He continues:

Receptacles are assigned only to service members who do not receive mail delivered by the US Postal Service. According to the directive no one living off-base will be assigned a receptacle or PSC box number. There may be a PSC box number assigned to a military member who has just arrived or is leaving within a short period of time who does not have an address, but the box number will be withdrawn as soon as the member finds a place to live permanently or has left the area. Further, a person will have his/her receptacle or PSC box privileges taken away if he/she moves from the barracks into off-base quarters or into family housing on Elmendorf AFB. Family base housing is serviced by the US Postal Service. Only those military members who live in the barracks on Elmendorf AFB, or who are in transition, will be assigned a PSC box number. The exceptions noted in the remainder of section 502.2 are designed only for receipt of job-related

materials, are not to be used for private mail delivery, and are therefore not used to receive voting materials.

Id.

In appellant's reply brief and supplemental affidavit of Joseph McKinnon, Finkelstein produces excerpts from the state voter registration lists which demonstrate that of the 343 registered voters who have supplied an Elmendorf PSC box as their mailing address, 26, or 7.6%, have provided an off-base voting residence address. Finkelstein's point is that recitation of a PSC address does not provide complete assurance that the individual actually resides on base.

The master concludes that the evidence¹ generally supports appellees' view that PSC boxes are distinct from private post office boxes. The overwhelming majority of these boxes are used by dormitory residents of Elmendorf who are not entitled to regular mail delivery. Since professionals assigned PSC boxes are not authorized to receive personal mail there, the only individuals likely to use the boxes for voter registration purposes other than base residents would be recent military arrivals or those whose departure is imminent.

None of the 11 voters challenged here has been demonstrated to have another address off-base. This is a critical distinction from the 26 individuals identified by appellant. Each citizen's vote is entitled to a presumption of

¹Due to the time constraints imposed in this case, the "evidence" submitted on this issue included hearsay and uncertified public documents. The master deemed this material sufficiently trustworthy to be relied upon in this analysis.

validity. See Carr v. Thomas, 586 P.2d 622, 626 (Alaska 1978). The presumption is amply supported here by the greater than 90 percent correlation between PSC boxes and residence on Elmendorf.

Additionally, as noted previously, the supreme court has indicated that errors by the Division of Elections resulting in deficient registration of individual voters should not lead to disenfranchisement of these voters. Fischer v. Stout, supra, at 223-224; Willis v. Thomas, supra, at 1087 (Alaska 1979). In this case, Linda Edgeworth of the Division of Elections stated by affidavit:

Military voters and their dependents oftentimes use a Postal Service Center (PSC) Box Number as their residence address in the registration process. The division's longstanding policy is to accept such addresses as a residence address because they indicate an on-base residence. Because military installations are included within a single precinct, use of a PSC address nonetheless allows the division to know in which district and precinct the voter resides.

Appellees Ex. 1, par. 3. It is apparent that the Division never alerted potential voters to any problem with their use of PSC box addresses for residency purposes. To the contrary, reliance on such addresses was officially sanctioned. Under these circumstances, rejection of votes by individuals listing PSC boxes as their residences would be manifestly unjust. These 11 votes were properly counted.

Two of these ballots, moreover, provide independent verification of a physical residence on Elmendorf. Mark A. Bramer is registered at a PSC box. He voted absentee and

identified his permanent residence address as "Arcadia Drive BLD 31-270 RM 355.2." Finkelstein Ex. 39. Intervenor Bradley advises that there is an "Acacia Drive" on Elmendorf. Bradley argues that the building and room number used by Mr. Bramer confirms that the address listed is a barracks location on base. Bradley notes further that the zip code on the oath is 99506, the Elmendorf zip code. In contrast, the zip code for Arcadia Drive is 99503. The master concurs in Bradley's analysis.

Keith E. Boulware registered using a PSC box; his voter's oath contained a building number address on Elmendorf, clearly bringing Mr. Boulware within the physical location requirement of Fischer. Finkelstein Ex. 41.

4. Absentee ballot lacking
witness signature

Finkelstein objects to the vote of Karen J. Leander. Ms. Leander voted absentee. On the place for witness signature, there is only a postmark, with no signature. The state urges acceptance of the postmark as constituting the signature of the postal clerk. The state relies on Fischer v. Stout, quoting from the opinion:

The Director refused to count the ballot of Mr. Baker on the ground that the attesting officer had initialed the attestation section rather than signed. It is black letter law that any mark intended as a signature will function as such.

741 P.2d at 224. Later in the opinion, the court said:

The signature may be affixed in any manner and may consist of any character, symbol,

figure, or name so long as such mark is intended by the signator as a substitute for the individual's given name.

Id. at 225.

The state's citation is its own undoing. It is clear from Fischer that the signature must provide some means of identifying the individual who signed the document. The postmark does not meet this test. Failure to execute the witness certificate requires invalidation of the ballot. AS 15.20.203(b)(2). Leander's ballot was improperly counted.

Ballot
invalid
map

5. Undated witness signatures

Three individuals cast absentee ballots on which the attesting official did not date his or her signature. These voters were Steven E. Walls (Finkelstein Ex. 55); Lisa Crowley Walls (Finkelstein Ex. 56); and DiAnn Schoeff (Finkelstein Ex. 57).

AS 15.20.081(d) requires attesting officials to date their signatures. All parties acknowledge, as did the court in Fischer, that it is the intent of AS 15.20.081(d) that the voter cast the ballot and execute the oath in the presence of the official or other witnesses. The oath to be signed by the official witness attests to the fact that the voter appeared before the official on the date specified.

In considering defects relating to absentee voting, the Alaska Supreme Court has made a distinction between obligations which are mandatory and those which are merely directory. In the case of mandatory obligations, failure to comply requires

rejection of the vote. Violation of directives, on the other hand, does not impair the viability of the ballot. An election requirement is mandatory only if enforcement was sought before the election, or if the requirement is

of a character to affect an obstruction to the free and intelligent casting of the vote or to the ascertainment of the result, or unless the provisions affect an essential element of the election, or unless it is expressly declared by the statute that the particular act is essential to the validity of an election, or that its omission shall render it void.

Carr v. Thomas, supra, at 627 (Alaska 1976).

The supreme court has held that the purpose of postmarks and date-received stamps is to insure that the vote was cast on or before the date of the election. Hammond v. Hickel, supra. Thus, the absence of either or both of those required items does not invalidate a ballot, as long as the witness has dated his or her affidavit in a timely fashion. Id. In Willis v. Thomas, supra, the court somewhat gratuitously included witness dating in its summary of the Hammond v. Hickel ruling: "We held that the postmark, witness date and date stamping provisions of AS 15.20.150 were directory and not mandatory" 600 P.2d at 1083 (emph. added). The facts in Willis, once again, involved ballots which had late postmarks. They were properly dated by a witness on or before the election day.

In this case, the inverse appears to be true. While not properly dated, there is no evidence that the ballots were

not postmarked so as to indicate timely voting. If the only issue is timeliness, the absence of a witness date should be recognized as violative of a directory requirement, and not fatal to the vote.

There is, however, a second issue. Witness presence is required not only to insure timeliness, but to protect against other forms of fraud in the electoral process. Witness presence warrants that the person claiming to have voted is the individual who actually cast the ballot and executed the oath. And most critically, witness presence helps to assure the absence of improper influence and pressure at the time that the ballot is marked.

A voter's identity can be verified by his or her signature, as well as through information supplied regarding birthdate and social security number. Witness presence is not required for this function. There is no substitute for witness presence, however, in assuring that voter fraud in the form of improper influence is prevented. Other courts have signaled the importance of safeguarding the integrity of the electoral process through the witnessing requirement. E.g., Fouche' v. Ragland, 424 S.2d 559, 561 (Miss. 1982); Wrinn v. Dunleavy, 440 A.2d 261, 272 (Conn. 1982); Kiehne v. Atwood, 604 P.2d 123, 133 (N.M. 1979); and Desjourdy v. Board of Registrars of Voters of Uxbridge, 266 N.E.2d 672, 677 (Mass. 1971).

While the cases cited are distinguishable on the grounds of specific facts or statutory provisions, the emphasis

on the importance of witness presence to prevent fraud is applicable to this election contest. AS 15.20.203(b)(2) compels rejection of a ballot when an official fails to execute the certificate. At a minimum, substantial compliance with the execution requirements must be achieved in order to include such ballots in the absentee vote tallies. Wrinn v. Dunleavy, supra.

The three officials whose attestations are questioned here did no more than inscribe their names, titles, and limited addresses. Out of five lines on their respective certificates, they each filled out only two. They did not in any way affirm that the voter's oath was "subscribed and sworn" to before them nor did they indicate the date that such act might have taken place. In light of the fact that the spaces for them to so indicate were immediately above the lines on which they signed their names, there is no basis for alleging reasonable confusion. The emptiness of these simple blanks almost gives rise to an inference that the voters did not subscribe their oaths in the witnesses' presence. The failure of these officials to execute their certificates properly affects an essential element of the election and contravenes the statutory requirement set forth in AS 15.20.203(b)(2). These three votes should have been rejected.

6. Incomplete voter signature

Kevin Dowell apparently began to sign his name on his absentee ballot oath; the first part of the "K" is written on the signature line. For some reason, however, he failed to complete even one letter of his name. Finkelstein Ex. 58. Appellant has

challenged Dowell's absentee ballot on the grounds of lack of signature. The state has defended on the basis of the language in Fischer v. Stout, cited in Section 4, supra.

Finkelstein's challenge is well taken. Mr. Dowell did not complete any mark which can fairly be said to represent a signature. In Willis v. Thomas, supra, at 1086 the court held that "The voter's signature is a basic part of the certificate and failure to properly attach it invalidates the ballot." The court based its decision on the language now found in AS 15.20.203(b), cited above, which requires that a ballot be rejected if the voter has "failed to properly execute the certificate." See also Erickson v. Blair, 670 P.2d 749, 757 (Colo. 1983), where the court stated: "A 'signature . . . is not only a mark' of identity but also a sworn affirmation or adoption of the contents of the affidavit itself. Without the signature, there is in reality no affidavit." Mr. Dowell's vote must be rejected.

7. Different witness dates

Thirty-two voters submitted absentee ballots which had been witnessed by lay persons on different dates. Three additional voters submitted ballots in which only the first witness supplied a date with his or her signature. The Division has segregated 10 of the total of 35 ballots raising lay witness dating issues. (Finkelstein Exs. 60-69). The actual votes in these cases can still be ascertained. The remaining ballots in this category have been commingled (Finkelstein Exs. 70-94). Finkelstein challenges all these votes on the grounds that the

varying dates indicate that at least one of the witnesses was not present when the ballots were cast.

As discussed in Section 5, supra, all parties agree that the Legislature intended for witnesses to be present at the time the vote is cast and the oath executed. The state argues, however, that neither AS 15.20.081(d) nor AS 15.20.203(b) explicitly apply this requirement to the lay witnesses, as opposed to the official witness. The state stresses that while ballots are to be rejected if voters fail to "properly" execute their oaths under AS 15.20.203(b)(1), witnesses are only required to "execute" their certificates, not necessarily to do so "properly." AS 15.20.203(b)(2). The state concludes that dating of lay witness signatures is only directory. It is contended that any lack of dates or discrepancies therein are of no legal significance.

The master determined previously that presence of the official witness when the ballot is cast and the voter's certificate executed is a mandatory aspect of absentee voting. The lay witnesses are to be relied upon only in the event no official witness is available. AS 15.20.081(d). When the court decided, in Hammond v. Hickel, that only one lay witness was required, the Legislature clarified its intent by overturning that decision through an amendment to the election law explicitly requiring two lay witnesses. See Committee Analysis of the Changes Proposed to the Election Code (Finkelstein Ex. 96). As stated in Finkelstein's brief,

It defies logic to conclude that the Legislature would require strict adherence to procedural safeguards when an absentee ballot is voted before a public official, but relax those standard when an absentee ballot is voted in a less preferred manner.

Appellant's Brief at 32.

Based on the above analysis, it would appear that the lack of dates, or inconsistent dating, in connection with lay witness signatures should prove fatal to these 35 ballots. If it is mandatory that one official execute the witness certificate to establish "presence," then, similarly, it must be mandatory that both lay witnesses execute their certificates for the same purpose.

However, once again, the Division has utilized procedures, in this case forms, that are seriously deficient. Option 2 under the witnessing affidavit provides in full:

If no authorized official is reasonably available, you may have the certificate witnessed by two persons over the age of 18.

Witness Signature _____ Date _____

Witness Signature _____ Date _____

at (City/State or Country) _____

Finkelstein Ex. 147, p. 1. Unlike the official executing an affidavit under Option 1, the lay witnesses are not told what it is that they are to "witness." They may reasonably believe that it is sufficient if a person they know to be the individual whose name appears on the oath brings the certificates to them to sign, after the fact. Such an interpretation would be consistent with

the type of certification required on permanent fund dividend application forms.

While the witness' certificate is simply unclear, the instructions to the voter on the secrecy envelope are actually misleading. The voter is directed to take the certain steps. The first four are summarized below. The fifth step is quoted as it appears in the instructions.

[1. & 2. Mark the ballot.]

[3. Turn the ballot over and vote the other side.]

[4. After all choices have been marked, put the ballots in the secrecy envelope.]

5. Complete and sign the VOTER OATH on the back of the return mailing envelope. Also have your oath WITNESSED, using OPTION 1 or OPTION 2 described on the back of the return mailing envelope.

Two additional steps regarding mailing follow.

These instructions suggest that the voting process itself need not be witnessed. There is, furthermore, nothing said to inform the voter that his or her oath should be executed in the presence of the lay witnesses. To negate the votes of 35 individuals on the grounds that they did not meet requirements never made known to them or their witnesses would constitute disenfranchisement of a most egregious sort. Under these circumstances, the ballots of these individuals were properly counted.

8. Ballots without postmarks received after the election

Finkelstein seeks rejection of four absentee ballots which were received after the election and which did not contain

a postmark. Appellant relies on a portion of AS 15.20.081(e) which provides that "If the ballot is postmarked, it must be postmarked on or before election day. After the day of the election, no ballots shall be accepted unless received by mail." Finkelstein observes that delivery of a ballot after the day of election by means other than mail constitutes grounds for rejecting the ballot. AS 15.20.203(b)(5).

In this case, however, there is no evidence that these four ballots were delivered other than by mail. The state does not support its contention that postmarks are frequently lacking on "franked" mailings. But the state is correct in asserting that Finkelstein bears the burden of demonstrating that a means other than mail was used. That burden has not been met. These ballots were valid.

9. Unregistered voter

Appellant demonstrated that voter Eileen M. Snyder was not registered at the time she submitted her absentee ballot. Finkelstein Ex. 101. The state has conceded error and agreed that Snyder's ballot should not have been counted. The court concurs.

10. Punchmark ballots

Finkelstein objects to the counting of 14 votes for Bradley when the punchmarks were placed in the boxes for both Bradley and Finkelstein. Appellant relies on AS 15.20.730(b)(1), which provides that the computer shall be programmed to count votes "only if the punch is clearly spaced in the square designed

by a plus sign following the name of the candidate the voter desires to select. . . ." Appellant also cites administrative rules for evaluating ballots, particularly a paragraph 5 which states: "The marks . . . SHALL BE COUNTED ONLY if they are substantially inside the square provided, or touching the square so as to indicate clearly that the voter intended the particular square to be designated." Finkelstein Ex. 118. Finally, Finkelstein notes that instructions posted in the voting booths advise voters who spoil their ballots to obtain new ballots. Finkelstein Ex. 117.

The state's position regarding these challenges is that a voting machine in Precinct 153 malfunctioned, causing punch marks to register low. No verified evidence was presented to support this theory, other than the ballots themselves, which cannot be tied to a particular voting machine. (But see Affidavit of Diane Holmstrom, submitted by the state in its "Filing of Supplemental Affidavit.")

The supreme court has stated that the "crucial question in determining the validity of ballot markings is one of voter intent." Willis v. Thomas, supra, at 1085. The Willis court examined the entire ballot in at least one instance to ascertain the voter's intent in regard to a specific race. In McCavitt v. Registrars of Voters of Brockton, 434 N.E.2d 620, 625 (Mass. 1982), the court held that "the judge correctly inspected each ballot for patterns that reveal the voters' intent." In the same opinion, it was recognized that the judge must make a de novo

determination of voter intent, and not rely on the administrative determination below.

The master has inspected each ballot to determine whether, standing alone, a pattern of consistently low punchmarks on a particular ballot gives rise to a clear inference of voter intent vis-a-vis that ballot. The statutory and administrative guidelines for assessing ballot marks are intended to accomplish the objective stated by the supreme court: to determine voter intent. There is no deviation from administrative rule 5 in any of the cases in which the master recommends that challenged ballots be counted. The punchmarks attributed to Bradley are all "clearly spaced" when considered in the context of the physical placement of all marks on the respective ballots.

The master's findings are as follows:

Ballot 20 (Finkelstein Ex. 102). The punchmark is evenly divided between the Finkelstein and Bradley boxes. The same is true of the other state legislative races. The races for U.S. Congress and President are the only ones which do not give rise to any question of voter intent. The votes for Young and Bush do not cross over into any other candidate's box. While there is certainly a possibility in this case that all the punchmarks were registering low, the fact that three out of the four marks on the first side of the ballot are squarely divided between two candidates leaves the master with no basis for finding that a vote for Bradley has been demonstrated. The

presidential boxes are large enough that a voter can readily position the lever in varying parts of the box without a clear inference being reasonably drawn from such act. This vote should not have been counted.

Ballot 21 (Finkelstein Ex. 103). In this case, all the punchmarks on the first side of the ballot bisected the line of a box approximately evenly. However, in each race other than the Finkelstein-Bradley contest, the line bisected was the bottom line of the box for the last candidate for that particular race. Thus, there was no question about the voter's intent in regard to three out of the four races on that side of the ballot; it is logical to assume that low registration accounts for the placement of all the punchmarks, including that in the Bradley-Finkelstein race. The vote was properly counted.

Ballot 22 (Finkelstein Ex. 104). This situation is identical to that obtaining on Ballot 21. This vote was also properly counted.

Ballot 30 (Finkelstein Ex. 105). This voter registered in the middle between the Bradley and Finkelstein boxes, low in the Young box, and low in the write-in box for the Martin-Whittle race (with no write-in candidate specified). No vote was cast in the Phillips-Pourchot race. The mark was low in the Bush box. Since the Bradley-Finkelstein race was the only one in which the vote was "split," and because of the irrelevant vote in the Martin-Whittle race, the master does not believe a fair inference

of voter intent can be drawn in this case. The vote should not have been counted.

Ballot 1 (Finkelstein Ex. 106). In three of the four races on the first side of this ballot, the mark was substantially in the upper candidate's box, but touched to some extent the box of the candidate below. In the Phillips-Pourchot contest, the mark was low in the second candidate's box so that it would have crossed into the next candidate's space had there been a name below. Here there is substantial evidence of an intent to vote for the person in whose box the greater part of the mark was located. The vote was correctly included for Bradley.

Ballot 4 (Finkelstein Ex. 107). Well over half of the mark here fell inside the Bradley box. Similarly, the other marks on this side of the ballot were predominantly located in the lower portion of one candidate's box. Bradley was entitled to this vote.

Ballot 6 (Finkelstein Ex. 108). All prevailing candidates received marks substantially within their boxes, crossing over slightly into the box below. The intent of the voter to support Bradley was correctly honored.

Ballot 25 (Finkelstein Ex. 109). Again all votes were substantially in one candidate's box but crossed over the bottom line to some degree. The vote for Bradley was correctly counted.

Ballot 26 (Finkelstein Ex. 110). All votes were on the line between two candidates; all were close to two-thirds into the upper candidate's box. On the reverse side of the ballot,

every presidential candidate except one received a punchmark -- all low in the respective boxes. The intent to vote for Bradley was correctly ascertained.

Ballot 27 (Finkelstein Ex. 111). This is a close call. The ballot is marked slightly more in the Bradley box than in the Finkelstein space, and the punchmark is similarly divided in the Phillips-Pourchot contest. The Young mark is similarly proportioned, but with no candidate below, gives rise to the inference that the mark was registering low. The uncertainty is created by the vote for Martin, which similarly divides the top line of Martin's box. It appears most likely to the undersigned that the voter recognized belatedly that his marks were registering low and sought to correct the problem by going high to eliminate any possibility of confusion. Comparing the high and low marks, it does not appear that a mark squarely within the center of any of these boxes would have been feasible. The vote was properly attributed to Bradley.

Ballot 28 (Finkelstein Ex. 112). Three-fifths of the punchmark was in the Bradley box. Since the same proportion was in the boxes for Pourchot and Whittle, who had no candidates below them on the ballot, it can be assumed that the mark was registering low. Bradley was entitled to this vote.

Ballot 29 (Finkelstein Ex. 113). The mark in the Bradley box here is slightly greater than that in the Finkelstein space. However, this is the only mark between two candidates on this ballot. In voting for Martin and Phillips, the voter

bisected the top line of these candidates' boxes leaving no room for doubt as to the intention. Only the vote for Young -- with no candidate beneath him -- similarly bisected the bottom line of the box. The presidential vote was low. The undersigned does not find that voter intent has been demonstrated. This ballot should not have been counted.

Ballot 31 (Finkelstein Ex. 114). All votes on this ballot were three- to four-fifths in the box of a given candidate, including Bradley. All registered low in that candidate's box. The vote was properly attributed to Bradley.

Ballot 32 (Finkelstein Ex. 115). Again, all punchmarks were predominantly within specific candidates' boxes. This represents a vote for Bradley.

Scrutiny of each of the above-referenced ballots results in a subtraction of three votes from Bradley's total.

B. Intervenor's Challenges

1. Absentee ballots lacking voter signatures

Intervenor contends that 15 absentee ballots which were not counted for lack of voter signatures should have been included. Bradley's position is much the same as was argued by the state in connection with the incomplete signature provided by Mr. Dowell (Section A. 6, supra). Bradley also argues that the placement of the signature line in the general area under the instruction to "Provide at least one of the following for identification purposes," which space includes blanks for voter number, birthdate and social security number, is confusing. The voter,

according to Bradley, might believe that the signature blank is optional, if other identifying information is provided.

As a factual matter, the undersigned does not agree that there is a substantial opportunity for confusion. The request for voter signature is stated in red ink, differentiating it from the black ink utilized to ask for voter number, etc. Moreover, the requests for voter number, social security number, and birthdate precede the line left blank for insertion of the information; the voter signature line is preceded only by an "X." The words "Voter Signature" appear below the line. The instructions on the secrecy envelope into which the ballot itself is placed state in red "Complete and sign," and then in black, "the VOTER OATH on the back of the return mailing envelope." Any voter confusion is due to the individuals' own lack of diligence in following instructions. See, original Exs. 146 and 147 to Appellant's Reply Brief.

In addition to disagreeing with Bradley on the factual basis for his claim, as a matter of law, the master considers the voter signature requirement to be a mandatory one. The reasoning for this position was set forth in Section 6, above.

Bradley does add a new factor, however, in the case of voters Deborah C. Thomas and Michael S. Lynch. These voters executed -- and signed -- new affidavits containing all the information set forth on their original oaths and attesting that the information was true at the time of mailing their absentee ballots and at the time the new affidavits were sworn. The same

witnesses who attested to the original ballots averred that the voter's statements were originally made to them on the date stated on the original envelope. Intervenor Exs. 16 and 17.

As discussed earlier (Section A.2), to insure the accuracy of decisions regarding voter qualifications and ballot validity, some after-the-fact presentations of relevant information on Division of Election forms should be permitted. In this case, however, Intervenor acknowledged at oral argument that these new affidavits were solicited by his campaign. They are akin, in that respect, to the affidavits acquired by Finkelstein to demonstrate non-residency. These Bradley affidavits, moreover, were not presented on Division forms. Without the safeguards of regularity, these affidavits must be disregarded. The Division was correct in refusing to include these 15 ballots in the vote tallies.

2. Special overseas absentee ballots

AS 15.20.082(d) authorizes a procedure whereby voters overseas may receive special absentee ballots prior to the time candidates are certified for all the races. On these special ballots, the voters are given the option of casting their ballots based solely on party preference. Voters submitting such special absentee ballots are subsequently sent regular absentee ballots identifying all the candidates by name. According to statute, "The director shall, if the regular absentee ballot is received within the time required by law, count the regular absentee ballot in preference to the special absentee ballot."

Bradley presents the names of three voters, Cherie D. Riney, Roger A. Sturdy, and Kathleen E. Lund, who submitted valid special absentee ballots (Intervenor Exs. 18, 19 and 29, respectively). These individuals subsequently mailed in regular absentee ballots which, although timely, were rejected by the Division for either lack of signature or witnessing. Bradley argues that since no valid regular absentee ballots were received, the original special ballots should have been counted.

Finkelstein and the state both disagree. While the presumption in favor of enfranchisement of the electorate supports Bradley's position, to allow overseas voters who improperly execute a regular absentee ballot to rely on earlier special ballots would afford one limited class of voters multiple opportunities for casting a valid ballot. According to the statute, once the regular absentee ballot is received, valid or otherwise, it supersedes the special absentee ballot. The only purpose of the overseas ballot is to enhance the opportunity for this group of voters to cast an absentee ballot. Bradley's construction would favor individuals casting ballots overseas in preference to other absentee voters. As such it cannot be adopted.

Moreover, without inspection of the special, regular absentee ballots, there is no way to ascertain whether any of these individuals changed his or her vote from the special to regular ballots. Such inspection would violate these voters' right to ballot secrecy. See Alaska Constitution, Art. V, §3. These votes were properly rejected.

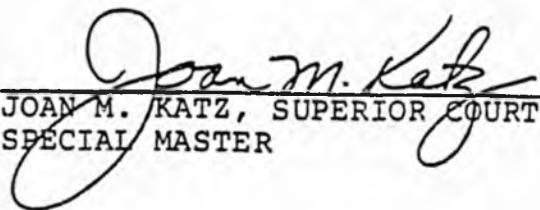
III. CONCLUSION

Based on the findings and recommendations contained hereinabove, it is the master's conclusion that the election should be set aside. The findings made in Section II.A.10 of this report require that three full-count votes be deducted from Bradley's post-recount total. This computation leaves Bradley with 3,560 votes to Finkelstein's 3,554, a six-vote margin. Findings in Section II.A.1, 4, 5, 6, and 9, pertaining to commingled votes, necessitate subtraction of nine votes in addition to those previously deducted by the Director to ascertain proportionate impact pursuant to the Hammond v. Hickel formula. This calculation indicates a potential impact on the outcome of the election to the extent of 1.17 votes in Finkelstein's favor. All parties agree that such a finding, if upheld, requires that a new election be held.

Regardless of how the supreme court rules on this contest, the master recommends that the Legislature and Division of Elections be alerted to the need to modify statutes, forms and procedures, as may be appropriate, to insure that some of the problems which gave rise to challenges in this case do not recur. It is particularly important that the Division specifically prohibit the use of Postal Service Center box numbers, at a minimum for persons who do not reside on base. Additionally, the Legislature or Division should prescribe an oath which advises the official and lay witnesses that they are attesting to

their observation of the casting of the ballot and the execution of the voter's oath; the secrecy envelope instructions should be revised accordingly.

These findings and recommendations are submitted to the Alaska Supreme Court this 5th day of January, 1989.


JOAN M. KATZ, SUPERIOR COURT JUDGE
SPECIAL MASTER

APPENDIX A

FINDINGS ON FINKELSTEIN'S CHALLENGES TO DIRECTOR'S DECISIONS
TO COUNT SEGREGATED VOTES

Vote Improperly Counted?

I. ATTESTATIONS OF TWO WITNESSES ON DIFFERENT DATES

A. Voter Ballots (Finkelstein Ex. Nos. 60-69) NO

B. Results

1. Votes Improperly Counted: 0
2. Subtraction from Finkelstein Total: 0
3. Subtraction from Bradley Total: 0

II. THE PUNCH CARD BALLOTS

A. Finkelstein Ex. Nos.

1. 102	YES
2. 103	NO
3. 104	NO
4. 105	YES
5. 106	NO
6. 107	NO
7. 108	NO
8. 109	NO
9. 110	NO
10. 111	NO
11. 112	NO
12. 113	YES
13. 114	NO
14. 115	NO

B. Results

1. Votes Improperly Counted: 3
2. Subtraction from Finkelstein Total: 0
3. Subtraction from Bradley Total: 3

III. Results of Election After Special Master's Findings on Segregated Votes

A. Vote Totals After Recount

Bradley.....3563
Finkelstein.....3554

B. Vote Totals After Special Master's Findings

Bradley.....3560
Finkelstein.....3554

APPENDIX B
 FINDINGS ON FINKELSTEIN'S CHALLENGES TO DIRECTOR'S DECISIONS
 TO COUNT COMMINGLED VOTES*

<u>Ballot Category</u>	<u>Votes Challenged</u>	<u>Challenges Accepted</u>	<u>Change Per Ballot</u>	<u>Total Vote Change</u>
Absentee Voter Oath Defects	14	3	B: -.6183 F: -.3817	B: -1.855 F: -1.145
Post-Election Affidavits Demonstrating Non-residency	20 in-person 1 absentee	0	B: -.6302 F: -.3698	B: 0 F: 0
Postal Boxes	4 absentee	0	B: -.6183 F: -.3817	B: 0 F: 0
	7 in-person	0	B: -.6302 F: -.3698	B: 0 F: 0
No Witness	1	1	B: -.6183 F: -.3817	B: -.6183 F: -.3817
Undated Witness	3	3	B: -.6183 F: -.3817	B: -1.855 F: -1.145
Two Witness Dates	25	0	B: -.6183 F: -.3817	B: 0 F: 0
Post-Election Day Ballots	4	0	B: -.6183 F: -.3817	B: 0 F: 0
Unregistered Voter	1	1	B: -.6183 F: -.3817	B: -.6183 F: -.3817
No Voter Signature	1	1	B: -.6183 F: -.3817	B: -.6183 F: -.3817
TOTAL		9	Bradley: Finkelstein:	-5.565 -3.435

* applying the formula prescribed in Hammond v. Hickel, 588 P.2d 256, 260 (Alaska 1978).

APPENDIX C
FINDINGS ON BRADLEY'S CHALLENGES TO DIRECTOR'S DECISIONS
NOT TO COUNT VOTES

Votes Improperly Stricken?

- | | |
|---|----|
| I. ABSENTEE BALLOTS NOT SIGNED (15) | NO |
| II. SPECIAL ADVANCED OVERSEAS BALLOTS (3) | NO |
| III. Results of Election After Special Master's Findings on Intervenor Bradley's Challenges: Unaffected | |

APPENDIX D

SUMMARY OF EFFECT ON VOTE TOTALS AFTER
SPECIAL MASTER'S FINDINGS

I. Results of Election After Special Master's Findings on Segregated Votes (See Appendix A)

Bradley.....	3560
Finkelstein.....	3554

II. Proportionate Impact Using Hammond v. Hickel Formula After Special Master's Findings on Commingled Votes

A. Results of Proportionate Reduction by Director of Elections (See Finkelstein Ex. 1)

Bradley.....	3547.98
Finkelstein.....	3544.02
Margin.....	3.96

B. Adjustment to Total Vote Count due to Findings on Segregated Vote Totals

Bradley.....	3544.98
Finkelstein.....	3544.02

C. Results of Additional Proportionate Reduction by Special Master (See Appendices B and C)

Bradley.....	3544.98	
	<u>-5.565</u>	Special Master's Findings
	3539.415	Net

Finkelstein....	3544.02	
	<u>-3.435</u>	Special Master's Findings
	3540.585	Net

NEW MARGIN BETWEEN CANDIDATES.....1.17
(in Finkelstein's favor)

Filed and Entered
APPELLATE COURTS of
STATE of ALASKA

IN THE SUPREME COURT OF THE STATE OF ALASKA

JAN 11 1989

DAVID FINKELSTEIN,)
)
 Appellant,)
)
 v.)
)
 SANDRA STOUT, Director of the)
 Alaska Division of Elections,)
 and STEPHEN A. McALPINE,)
 Lieutenant Governor of Alaska,)
)
 Appellees,)
)
 and)
)
 W.E. "BRAD" BRADLEY,)
)
 Appellee/)
 Intervenor.)

CLERK
By _____

ORDER¹

No. S-3107

Before: Matthews, Chief Justice, Rabinowitz,
 Burke, Compton, and Moore, Justices.
 [Rabinowitz, Justice, and Moore, Justice,
 dissenting.]

I. INTRODUCTION

This is an election recount appeal brought pursuant to AS 15.20.510(2). This court referred the appeal to the Honorable Joan M. Katz of the Superior Court as a Special Master on December 8, 1988. Judge Katz filed her report on January 5, 1989. The report contains a detailed analysis of the challenges from all parties and of the evidence submitted in connection with the

1. An opinion, and partial dissenting opinions, will follow.

challenges.² The following introduction contained in the report sets the context of this case:

In the general election of November 8, 1988, David Finkelstein and W.E. "Brad" Bradley vied for Seat A in House District 13. After the election, Finkelstein was certified by appellee Stout, Director of the Division of Elections, to be the winner of that race. The count was 3,549 to 3,546.

At Bradley's request, a recount was conducted on December 1 and 2, 1988. Based on the recount, Stout certified that Bradley had defeated Finkelstein 3,563 to 3,554, a nine vote margin.

In the course of the recount, Stout determined that 26 votes had been improperly counted. Finkelstein Ex. 1. The ballots had been commingled, rendering it impossible to ascertain for whom they had been cast. Based on the formula set forth in Hammond v. Hickel, 588 P.2d 256 (Alaska 1978), cert. denied, 441 U.S. 907 (1979), Stout proportionately reduced Bradley's vote total by 15.02 votes and Finkelstein's total by 9.98 votes. These reductions resulted only in narrowing the gap between the candidates to 3.96 votes. Having determined that the outcome of the election would not have been different based on the rejected ballots, Stout certified the election results premised on the recount totals demonstrating Bradley to be the prevailing candidate by nine votes.

Judge Katz concluded that because of various errors relating to the counting of ballots, the election should be set aside and a new election held. As explained herein, we conclude that a new

2. We express our gratitude to Judge Katz for her thoughtful and expeditious report.

election may be necessary depending on the count of nine illegally cast absentee ballots which were not commingled³ and on the precise proportionate reduction formula employed by the Director.⁴ For ease of reference we will adopt the same numbering system and terminology employed in the Master's Report.

II. SPECIFIC BALLOT CHALLENGES

A. Appellant's Challenges

1. Absentee ballot envelope oaths suggesting no permanent Alaskan residence

Finkelstein challenged fourteen absentee ballots in this group. Judge Katz accepted the challenges in three cases and rejected the other eleven. A majority of the court is of the view that none of the challenges should have been accepted. There was sufficient evidence in each case so that the voter's intent to indicate a new legal residence outside of the district was unclear. In the absence of a clear expression of intent to change a legal residence the residence cannot be considered to have been changed. Fischer v. Stout, 741 P.2d 217, 222-23 (Alaska 1987).

3. See part II.A.7., infra.

4. See part II.B.3., infra.

2. Post-election affidavits
demonstrating non-residency

After the election and the recount, twenty-one voters signed registration affidavits stating that they were not residents of the district at the time of the election. The Director of Elections had counted the votes of these individuals and they have been commingled. Judge Katz declined to apply the proportionate reduction formula set out in Hammond v. Hickel, 588 P.2d 256, 260 (Alaska 1978), cert. denied, 441 U.S. 907 (1979) to these votes. We agree with this conclusion. In our view, this objection was untimely as it was raised after the recount was concluded.

3. Military post office
box "residences"

Eleven challenges were considered under this category. All of the challenges were rejected by Judge Katz. We concur.

4. Absentee ballot
lacking witness signature

One challenge was made under this category which was accepted by Judge Katz. On the place for the signature of the witness, with respect to this absentee ballot, there is only a postmark, with no signature. We agree with Judge Katz that this ballot should not have been counted.

5. Undated witness signatures

Three individuals cast absentee ballots on which the attesting official did not date his or her signature. Judge Katz accepted these three challenges. We disagree. The attesting official witness is required to date his or her signature. AS 15.20.081(d). However, we have held that this requirement is directory rather than mandatory and does not require invalidation of the ballot so long as the ballot in question is cast on or before election day. Hammond v. Hickel, 588 P.2d 256, 269 (Alaska 1978), cert. denied, 441 U.S. 907 (1979). The burden of proving ballot illegality in general and particularly that the ballot in question was not cast on or before election day is on the challenger. This burden was not carried as all three ballots were received by the Division of Elections prior to the election.

Alaska Statute 15.20.081(d) also requires voting in the presence of the attesting witness. While a majority of the court agrees with Judge Katz that this requirement is mandatory rather than directory, it is our view that Finkelstein did not carry his burden of showing a violation of this requirement.

6. Incomplete voter signature

One voter made a hand written mark which appears to be the beginning of a "K" in the voter signature blank of the voter oath on the back of the absentee ballot. A qualified attesting official witness attested that the oath was subscribed and sworn

to before the witness. Judge Katz ruled that this was not a signature as required by AS 15.20.081(d). She thus accepted the challenge made by Finkelstein. We disagree. The mark could be legally sufficient to serve as the voter's signature if that was the voter's intent. Fischer v. Stout, 741 P.2d at 225. Since the voter oath was properly attested as subscribed and sworn to, it is the view of a majority of the court that it has not been shown that the mark was not intended by the voter to serve as his signature.

7. Different witness dates

Thirty-two voters submitted absentee ballots which had been witnessed by two non-official witnesses on different dates. All of these votes were counted. However, the Division segregated nine of the total so that if they were counted illegally the votes can be directly deducted. The remaining twenty-three votes have been commingled. Judge Katz ruled that all thirty-two of these votes were properly counted. We disagree for the reasons that follow.

a.

Alaska Statute 15.20.081(d) sets out the procedures for voting absentee by mail. In relevant part, that section provides:

Upon receipt of an absentee ballot by mail, the voter, in the presence of [an official] . . . may proceed to mark the ballot in secret, to place the ballot in the small

envelope, to place the small envelope in the larger envelope, and to sign the voter's certificate on the back of the larger envelope in the presence of an official listed in this subsection who shall sign as attesting official and shall date the signature. If none of the officials listed in this subsection is reasonably accessible, an absentee voter shall have the ballot witnessed by two persons over the age of 18 years

In Fischer v. Stout, we interpreted this section to mean that the two non-official witnesses must be present when the voter signs the voter's certificate. We stated:

AS 15.20.081(d) and 6 AAC 25.110(a) specify the classes of persons authorized to serve as an attesting officer. If no appropriate officer is available, the voter may sign the voter's certificate in the presence of two persons over the age of 18 years and have those two witnesses sign the attestation form.

741 P.2d at 223 (emphasis added, footnote omitted). Thus, we interpreted the statute to mean that the role of the two non-official witnesses was the same as the function of the attesting official witness set forth in the statute.

One purpose of this statute is to insure that the ballot was marked by the voter, and not someone else, in circumstances free from coercion. The Mississippi Supreme Court has said concerning a similar requirement:

The certificate . . . in addition to certifying that the voter executed the affidavit, certifies the voter first exhibited a blank ballot which was not marked or voted before it was exhibited to the witness, and that the voter then retired out of the witness' presence but within his sight so that he could see that he voted but not how

he voted, that no one was present as he marked his ballot, that the voter was not solicited or advised in voting, and finally, that after making his ballot in secret, the voter placed it in the envelope, closed and sealed the envelope in the certifying officer's presence, and then signed and made affidavit to the first certificate.

It is thus clear that the Legislature intended both signatures to be on the envelope because there were subsequent requirements to best ensure the integrity of an absentee ballot.

Fouche v. Ragland, 424 So.2d 559, 561 (Miss. 1982).

Since one objective is to insure that the voter mark his or her own ballot and that the vote be uncoerced, it would make no sense to require secret voting in the presence of an official, while waiving the presence requirement when two non-official witnesses are used.

The legislative history of the present statute, AS 15.20.081(d), confirms the view that the ballot is to be voted in the presence of either an attesting official or two non-official witnesses. Prior to 1980, the predecessor section to AS 15.20.081(d) required only one attesting witness who need not be an official. The statute was, however, clear that voting had to take place in the presence of the attesting witness.⁵ Following

5. The former statute, AS 15.20.150, read as follows:

CASTING VOTE BY PERSONAL REPRESENTATIVE OR BY MAIL. Upon receipt of an absentee ballot

(Footnote Continued)

our decision in Hammond v. Hickel the legislature amended the statute, enacting AS 15.20.081(d) in its present form. The legislative committee memo accompanying the amendment said:

Requires a person authorized to administer an oath to witness the signature on an absentee ballot. In the instance that a qualified official is not available, two persons may witness the signature.

Alaska State Senate, Special Committee on Electoral Reform, Document dated April 23, 1980 (section by section analysis). There are two conclusions to be drawn from this comment. The first is that there was no intent to change the requirement of voting in the presence of an attester. Had there been such an intent it would have been mentioned. Second, the two non-official witnesses were regarded as a substitute for the attesting official witness, if one was not available. What was to occur before the

(Footnote Continued)

through a personal representative or by mail, the voter, whether in or outside the state, in the presence of an attesting witness who is at least 18 years of age, may proceed to mark the ballot in secret, to place the ballot in the small blank envelope, to place the small envelope in the larger envelope, and to sign the voter's certificate on the back of the larger envelope in the presence of the above-listed official or described persons who shall sign as attesting witnesses. The voter may then return the ballot properly enclosed in the envelopes, by personal representative to the election official who provided the ballot or by the most expeditious mail service, postmarked not later than the day of the election, to the election supervisor in his district.

attesting official witness or the two non-official witnesses was regarded as identical.

b.

Having established what the law requires, the next step is to determine whether it was complied with. In the case of the thirty-two ballots containing witness signatures subscribed on different dates, it can be said with a high degree of confidence that the voter did not mark the ballot, place it in the small envelope, place the small envelope in the larger envelope and sign the voter certificate on the back of the larger envelope in the presence of both non-official witnesses. If this had been done, the dates following the witnesses signatures would be consistent. Thus, the certificates themselves rebut the presumption of regularity and demonstrate non-compliance with the law.

c.

The next question is whether the director properly counted these absentee ballots even though they were not cast in the presence of the non-official witnesses.

Alaska Statute 15.20.203 requires the district absentee counting board to examine each absentee ballot envelope to determine whether the absentee ballot has been properly cast. Part (b) of the statute provides as follows:

(b) An absentee ballot may not be counted if

- (1) the voter has failed to properly execute the certificate;
- (2) an official or the witnesses authorized by law to attest the voter's certificate fail to execute the certificate;
- (3) the ballot is not attested on or before the date of the election;
- (4) the ballot, if postmarked, is not postmarked on or before the date of the election;
- or
- (5) after the day of election, the ballot was delivered by a means other than mail.

The conditions set out in this statute are not exclusive. In Willis v. Thomas, 600 P.2d 1079, 1083 n.9 (Alaska 1979) we quoted the following language from Carr v. Thomas, 586 P.2d 622, 626 (Alaska 1978), which in turn quoted Rich v. Walker, 374 S.W.2d 476, 478 (1964) as follows:

All provisions of the election law are mandatory, if enforcement is sought before election in a direct proceeding for that purpose; but after election all should be held directory only, in support of the result, unless of a character to affect an obstruction to the free and intelligent casting of the vote or to the ascertainment of the result, or unless the provisions affect an essential element of the election, or unless it is expressly declared by the statute that the particular act is essential to the validity of an election, or that its omission shall render it void.

The requirement of voting in the presence of the non-official witness is, to use the terms of the language quoted above, "of a character to affect an obstruction to the free and intelligent casting of the vote . . . or to . . . affect an essential element of the election" As noted earlier, AS 15.20.081(d) is designed to insure that the vote cast is that of

the elector and that it was cast in circumstances free from coercion. Moreover, this requirement protects the integrity of the ballot process itself. Non-compliance with the requirements of AS 15.20.081(d) risks the frustration of these fundamental principles.

In Fischer v. Stout, 741 P.2d 217, 223, we noted that signing in the presence of the attester was a condition of ballot validity: "AS 15.20.081(d) provides that an absentee ballot will be valid only if the ballot envelope is signed by the voter in the presence of an attesting officer." This statement is dictum. It is, however, correct. Because the requirements of AS 15.20.081(d) serve both to protect the essence of free and intelligent voting and to safeguard the integrity of the ballot process, the requirements should be regarded as mandatory.

Desjourdy v. Board of Registrars, 266 N.E.2d 672 (Ma. 1971) is instructive. There twenty-two absentee ballots were not marked in the presence of a notary as required by Massachusetts law and the ballot envelopes were signed by notaries outside the presence of the voters. Id. at 676, 677. The Supreme Judicial Court of Massachusetts held that these ballots should not have been counted:

The procedure followed violated [the applicable statute] which sets up significant safeguards to ensure that the ballot represents the will of the voter. Its violation results in more than simply a technical irregularity. As these ballots stand, we have no way of knowing whether they were in fact marked by

those in whose names they were received and cast.

266 N.E.2d at 677 (citations omitted).

Kiehne v. Atwood, 604 P.2d 123, 133 (N.M. 1979) is another case where a court invalidated ballots because of attestation illegality. There the oaths on seven absentee ballots were notarized by the county clerk. The voters were not in the clerk's presence when they signed the documents. All of the voters testified that they wanted the county clerk to notarize their signatures. In invalidating the ballots, the court stated:

[A]s to the affidavits in question, swearing to and subscribing by the voter and attesting to by a notary or other official are not mere technicalities. The statutes prescribing these duties are not simply directory. The acts called for are significant safeguards against fraud and mistake, are necessary to preserve the purity of our elections, and are mandatory duties.

Id. at 133.

In Fugate v. Mayor and City Council of Town of City of Buffalo, 348 P.2d 76 (Wyo. 1959), twelve absentee ballot affidavit forms were attested to by an election official not in the presence of the affiants. Id. at 79. These votes were held to be illegal. Id. at 85. See also McCavitt v. Registrars of Voters of Brockton, 434 N.E.2d 620, 6289 (Mass. 1982) (ballots marked outside presence of notary held invalid).

The fact that the ballots in the present case were not cast in the presence of two non-official witnesses is due in part to the failure of the voter instructions on the voter oath form to state explicitly the requirement that the vote be cast in the presence of the witnesses. We have noted that errors "solely on the part of election officials" will not invalidate ballots. Willis v. Thomas, 600 P.2d 1079, 1087 (Alaska 1979) (registered voters' names not on voters' lists on election day). See also Fischer v. Stout, 741 P.2d at 223, 224. That observation, however, was not made where the official omission caused or contributed to a violation of a mandatory requirement, and we decline to extend it to such cases. A voter who has voted illegally has an interest in having his or her vote counted, and that interest stands on a high level where the source of the illegality lies with election officials. On the other hand, where the vote violates provisions designed to insure the integrity of the electoral process, the public has a supervening interest - that of fundamentally sound elections - which is protected by not counting illegal votes, regardless of the source of their illegality.

8. Ballots without postmarks
received after the election

Official Business

Four challenges were made under this category, all of
 Speaker of the House of Representatives

which were rejected by Judge Katz. We concur.



Alaska State Legislature

Pouch V
 State Capitol
 Juneau, Alaska 99811
 (907) 465-3720

9. Unregistered voter

The state has conceded that the absentee ballot of the unregistered voter in question should not have been counted. Judge Katz concurred and accepted the challenge. We concur as well.

10. Punchmark ballots

Involved here are challenges to fourteen votes for Bradley where the punchmarks were placed in the boxes for both Bradley and Finkelstein. Judge Katz accepted three of these challenges, namely to ballots 29, 20, and 30. Judge Katz was evidently under the impression that ballot 29 had been counted. We are advised by all counsel that in fact it was not counted and thus it should not be subtracted from Bradley's total. Ballots 20 and 30 were called by the Director for Bradley. Judge Katz, however, was of the view that the voters' intent could not be determined from the ballots. We disagree. In our view it is evident that the voting machine was voting low and that the voters in these cases intended to vote for Bradley.

A different situation exists with respect to ballot 27. Judge Katz recommended that this vote be attributed to Bradley. We disagree and accept Finkelstein's challenge. There is no consistent pattern on this ballot of the punchmarks being either high or low. The intent of the voter cannot be determined.

On all other ballots within this category we concur with the recommendations of Judge Katz which upheld the Director.

B. Intervenor's Challenges

1. Absentee ballots
lacking voter signatures

Bradley contends that fifteen absentee ballots which were not counted because they were not signed should have been included. Judge Katz held that the Division was correct in refusing to include these ballots. We concur.

2. Special overseas absentee ballots

Three voters submitted special absentee ballots and later mailed regular absentee ballots which for various reasons were held invalid. Bradley argues that under these circumstances the original special ballots of these voters should have been counted. The Division disagreed and Judge Katz recommended that the decision of the Division be upheld. We concur.

3. Proportionate Formula

In order to determine whether the errors in counting commingled ballots might have affected the election, a proportionate formula was employed. See Hammond v. Hickel, 588 P.2d 256, 260, cert. denied, 441 U.S. 907 (1979). Bradley contends that the formula was not strictly proportional because it failed to include ballots which were cast for write-in candidates or which were blank with respect to the

Finkelstein-Bradley race. We agree that the principle espoused by Bradley is correct. We are, however, uncertain as to what the precise ratio is which results from application of this principle. That should be determined by the Director on remand.

III. CONCLUSION

The Director certified that Bradley had defeated Finkelstein by nine votes, 3,563 to 3,554. We have accepted one challenge which reduces Bradley's total to 3,562 votes (part II.A.10. of this order, ballot 27). There were fifty-one illegal ballots which were counted and commingled. (Twenty-six found by the Director, twenty-three in accord with part II.A.7. of this order, and one each for parts II.A.4. and II.A.9.) In addition, there were nine illegal ballots which were counted but not commingled. (Part II.A.7.)

This case is REMANDED to the Director with the following instructions:


1. The nine segregated ballots should be deducted from the vote totals of the candidate for whom they were cast. A provisional prevailing candidate will then be apparent.

2. The appropriate proportional reduction formula should be applied to the fifty-one illegally counted commingled ballots.

3. If application of the proportional reduction formula does not change the provisional result noted in step 1, the Director should certify the prevailing candidate forthwith.

4. If application of the proportional reduction formula would change the provisional result achieved in step 1, a new election should be held promptly.

Entered at the direction of the court this 11th day of January, 1989.


DAVID A. LAMPEN
Clerk of the Supreme Court

RABINOWITZ, Justice, joined by MOORE, Justice, dissenting.

I dissent from the court's holding that the director improperly counted 32 absentee ballots which had been witnessed by lay persons on different dates. Thus, I would affirm the certification of the Director of the Division of Elections that W.E. "Brad" Bradley is the winner of the election for Seat A in House District 13.

This court's special master rejected the state's contention that the dating of lay witnesses signatures is only directory. Instead the special master ruled that it is a mandatory aspect of absentee voting that lay witnesses be present when the ballot is cast and the voter certificate is executed. AS 15.20.081(d). The special master further reasoned that normally the failure to comply with a mandatory provision which has as its purpose establishing "presence" should prove fatal to these ballots. Nevertheless the special master concluded that the director properly counted these disputed absentee ballots. In so doing the special master reasoned as follows:

However, once again, the Division has utilized procedures, in this case forms, that are seriously deficient. Option 2 under the witnessing affidavit provides in full:

If no authorized official is reasonably available, you may have the certificate witnessed by two persons over the age of 18.

Witness Signature _____ Date _____

Witness Signature _____ Date _____

at (City/State or Country) _____

Finkelstein Ex. 147, p. 1. Unlike the official executing an affidavit under Option 1, the lay witnesses are not told what it is that they are to "witness." They may reasonably believe that it is sufficient if a person they know to be the individual whose name appears on the oath brings the certificates to them to sign, after the fact. Such an interpretation would be consistent with the type of certification required on permanent fund dividend application forms.

While the witness' certificate is simply unclear, the instructions to the voter on the secrecy envelope are actually misleading. The voter is directed to take the certain steps. The first four are summarized below. The fifth step is quoted as it appears in the instructions.

[1. & 2. Mark the ballot.]

[3. Turn the ballot over and vote the other side.]

[4. After all choices have been marked, put the ballots in the secrecy envelope.]

5. Complete and sign the VOTER OATH on the back of the return mailing envelope. Also have your oath WITNESSED, using OPTION 1 or OPTION 2 described on the back of the return mailing envelope.

Two additional steps regarding mailing follow.

These instructions suggest that the voting process itself need not be witnessed. There is, furthermore, nothing said to inform the voter that his or her oath should be executed in the presence of the lay witnesses. To negate the votes of 35 individuals on the grounds that they did not meet requirements never made known to them or their witnesses would constitute disenfranchisement of a most

egregious sort. Under these circumstances, the ballots of these individuals were properly counted.

In my view the special master's analysis is in accord with this court's voting decisions. In Fischer v. Stout, 741 P.2d 217, 223, 224 (Alaska 1987) we said:

In Willis we upheld the decision of a master to count the votes of two voters whose names did not appear on the voters list because the registrars failed to send their registration applications to the Division of Elections. 600 P.2d at 1087. As in Willis, the error with regard to Ms. Munoz's application was 'solely on the part of the election officials.' Id. Her vote should have been counted.

An additional point in Fischer concerned whether the ballot of Daryl Wallace should have been counted. In attempting to correct an error in the address given on his voter registration card, the voter checked the box cancelling his registration. In regard to the issue we said:

Fischer argues that the voter registration card is confusing and that Mr. Wallace's ballot should have been counted. We agree . . . his vote should have been counted.^{1/}

Of additional significance is that portion of our decision in Fischer v. Stout where in connection with a name change issue it was observed that:

Accordingly, we will seek a construction of the phrase which avoids the wholesale disfranchisement of qualified electors. See

1. Fischer v. Stout, 741 P.2d 217, 224 (Alaska 1987).

Carr v. Thomas, 586 P.2d 622, 626 (Alaska 1978) (footnote omitted).^{2/}

The authorities alluded to above are reflective of this court's recognition that the right to vote is a fundamentally important right.³ Our own precedents are also in accord with the view that "Absentee voting regulation should not be construed in a manner that unduly interferes with the exercise of this right by those otherwise qualified to vote."⁴ In this regard the Supreme Court of Colorado further concluded that:

Nor should the exercise of the voting right be conditioned upon compliance with a degree of precision that in many cases may be a source of more confusion than enlightenment to interested voters. A rule of strict compliance, especially in the absence of any showing of fraud, undue influence, or intentional wrongdoing results in the needless disenfranchisement of absent voters for unintended and insubstantial irregularities without any demonstrable social benefit.^{5/}

2. Id. 741 P.2d at 225. In Carr this court noted:

Courts are reluctant to permit a wholesale disfranchisement of qualified electors through no fault of their own and '[where] any reasonable construction of the statute can be found which would avoid such a result, the courts should and will favor it.'

Carr v. Thomas, 586 P.2d 622, 626 (Alaska 1978).

3. Erickson v. Blair, 670 P.2d 749, 754 (Col. 1983).

4. Id. 670 P.2d at 754.

5. Id. 670 P.2d at 755.

(footnote continued)

Given the importance of the right to vote, and our decisions which have refused to disenfranchise voters due to mistakes of election officials, I conclude that the special master correctly upheld the director's decision to count these 32 disputed absentee ballots.⁶ As the special master noted the lay witnesses were given unclear instructions concerning the witness certificate. Additionally, the instructions to the absent voter were "actually misleading." In short, these inadequate directions failed to articulate the precise roles the voter and his or her witnesses were to play in the absentee voting process. Further, there is no indication in this record of fraud, voter coercion, intentional wrongdoing, or a pattern of similarity among the names of the witnesses who signed the witness certifications on these absentee ballots. In such circumstances I would not penalize the absentee voters for the failure of Alaska's election officials to furnish unambiguous instructions concerning the manner in which the absentee voter, and his or her

(footnote continued)

The Erickson court went on to reject the rule of strict compliance and in turn adopted a standard of substantial compliance concluding that such standard "is adequate to the task of both preventing fraud in the elections and preserving the absent voter's right of suffrage against unnecessary and technical restrictions."

6. Application of Moore, 154 A.2d 631, 637-38 (N.J. 1959).

two lay witnesses, were required to carryout their respective roles in the absentee voting process.⁷

7. Implicit in the resolution I would reach is my agreement with the state's contention that the requirements of AS 15.20.081(d) should be construed as directory, under AS 15.20.203(b)(2), for purposes of determining the consequences of any noncompliance on the part of lay witnesses in executing absentee voter certificates.



Alaska State Legislature

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Senate State Affairs Committee Members
FROM: Senator Pat Pourchot, Chairman *Pat*
RE: January 20 Committee Hearing
DATE: January 19, 1989

On Friday, January 20 at 1:30 p.m. in the Beltz Room, the Senate State Affairs Committee will be presented an overview of the state's election laws by the State Division of Elections. In addition, several individuals who have first hand experience with problems in existing law have been invited to participate.

In addition, testimony will be taken on SB 43, Relating to conduct and administration of elections by the director of elections. SB 43, which makes several clarifications to current election law, has passed the House twice before and is largely a technical "clean-up" bill. However, it is my intent to use SB 43 as the vehicle for additional amendments to election law that the committee may deem necessary following Friday's hearing.

As currently written, SB 43 addresses the following issues: a voter's name change, notification of changes in precinct boundaries or polling places, placement of judicial retention candidates on the ballot, receipt of absentee ballots, and the time period for withdrawal of a candidate's name from the ballot. Backup materials on SB 43 are attached.

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 1-20-89
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER JUD

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

DATE TURNED INTO OFFICE 2-6-89

1/9/89

Mr. President:

STATE AFFAIRS

Committee considered

SB 43

conduct and administration of elections by the director of elections;
efd

and recommended:

replace with CS SB 43 (St Aff) same title
 new title

attached amendment(s) and

_____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

FISCAL NOTE(S) attached zero
 appropriation no FN attached

fiscal impact
 Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Janis Smith
Tim Kelly

Paul Hej (no Rec)

Ed Townsend do pass
Chairman signature and recommendation

Committee backup attached

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 3, 1989

SUBJECT: Election issues
TO: Senator Pat Pourchot
FROM: Richard A. Bradley
Legislative Counsel

Jeannie has asked that I comment briefly on two issues.

The first is the use of party names: May the legislature prohibit a candidate or party from using a word in a nominating petition that is also used in the name of an existing political party in the state?

I am aware of the use of the phrase "Moderate Republican" by Ray Metcalfe and, I believe, of the phrase "Bull Moose Republican" by Tuckerman Babcock. Each was a candidate for the legislature.

I believe that the legislature may enact a law that would prohibit a candidate from using unmodified names when the individual is not a candidate of the party. Thus only those who go through the primary could be prohibited from using the phrase "Republican" or "Democratic."

But there may be more difficulty with predicting that the court will prevent candidates from calling themselves "Moderate Republicans" or "Social Democrats." There is an American political party known as, I believe, the Democratic Socialists of America, lead by Michael Harrington; they are too well established to be prevented from the use of the word "Democratic".

Everything that is affected with First Amendment rights is closely scrutinized by the courts and I believe that the answer might well be that the voters can tell real Democrats from hyphenated Democrats.

Senator Pat Pourchot
Page 2
February 3, 1989

But it is a close question and you should note that it has been the law of the state for a number of years that a "limited political party" [AS 15.30.025(b)] may not "assume a name which is so similar to an existing political party as to confuse or mislead the voters at an election." While restrictions on First Amendment freedoms are closely scrutinized, the legislature acts in the public interest when it requires parties to identify themselves fairly and without confusing or misleading the voters.

The second question that you asked that I comment on would be the choice of August 1 for the deadline for "no-party" candidates to file their nominating petitions.

The question arises under the Sigler opinion of the Superior Court, at Anchorage, Case No. JAN-88-8695-CI. The case arose out of the efforts of Libertarians to qualify for the ballot later than other candidates.

The Superior Court decision ordered the Division of Elections to admit the candidates to the ballot; the decision was issued in early September. While I understand that Tuckerman Babcock did not intervene in this litigation, he benefited from it and used the order of the court for his entry on the ballot.

I understand that the decision has been appealed and thus, the comments may need review on the decision by the Supreme Court.

But the Superior Court stated that the basis for third parties was the failure of the main-line parties to represent all interests. The court noted that this perceived disenchantment arises after the nomination of the main-line candidates. Its authority for this decision is Anderson v. Celebrezze, 460 U.S. 780 (1983), a case involving third party candidates for president. While the court thought the case was on point, it seems to me that the analogies between state legislative races and the presidential races offers little value. And it noted that the Anderson case required third party candidates to qualify earlier than main-line candidates.

Alaska does not require its third-party candidates to qualify earlier but at the same time as main-line candidates.

Senator Pat Pouchot
Page 3
February 3, 1989

The court also cited an Eighth Circuit case, McLain v. Meier, 637 F.2d 1159 (8th Cir., 1980). That case stated that since the third party candidates arise as a reaction to main-line candidates, it was unreasonable to require them to qualify before the primary results were available.

The trial court noted that a more recent case, Rainbow Coalition v. Oklahoma State Election Board, 844 F.2d 740 (10th Cir., 1988) was contra, but it declined to follow the more recent case.

I note that if the trial court decision is followed, an August 1 deadline for third party candidates is too early since it does occur before the primary election.

But I suggest that it is undesirable to rely too heavily on the trial court decision in preparing legislation. I would await the decision by the Supreme Court.

If I may be of further assistance, please advise.

RAE:lmb
L6/161

STEVE COWPER, GOVERNOR

REPLY TO:

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SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

January 30, 1989

Hon. Pat Pourchot
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Re: SB 43 -- conduct and administration of elections

Dear Senator Pourchot:

At your request, I have reviewed SB 43, relating to the conduct and administration of elections by the director of elections. Generally, the amendments proposed by this bill are beneficial and would greatly assist the division of elections (division) in the performance of its duties. However, the amendment to AS 15.25.056(a) set out in sec. 12 of the bill may need further clarification.

Under existing law, if an incumbent fails to remain in the race, a political party may petition to add another candidate. This right to replace a candidate applies only if the termination of candidacy occurs during a specific period of time. The period ends five days before the withdrawal deadline. This bill would lengthen the period to a date "which is more than 54 days" before the primary election. I interpret this to mean midnight of the 55th day before the primary election day. If that is not your intent, let me know and I will draft a conforming amendment.

Section 11 of the bill would change the withdrawal deadline to the 54th day before the primary election day. The amendments set out in secs. 11 and 12 would shorten the gap to 24 hours. I presume the time gap is intended to allow a political party enough time to convince a qualified candidate who has filed for another incompatible office to withdraw and replace the fallen incumbent by petition. I am unable to offer advice whether allowing more time for such a withdrawal is beneficial or harmful to the electoral process. I have observed that it is common for political decisions concerning candidacy to be left until the final minutes before a deadline expires. It seems to me that the wisdom of allowing a longer period is a policy call that is best left to the legislature.

I also suggest that you consider amending AS 15.20.203

Hon. Pat Pourchot
Alaska State Senate
Re: SB 43, conduct/admin. of elections

January 30, 1989
Page #2

and 15.20.207 to include express authority for a ballot counting procedure that has been used recently for elections where the post-election returns indicate that a recount will be performed by the division. These sections set out the procedures for counting questioned and absentee ballots at the district level. As you know, the candidates in a close race often appear before the district review board and challenge ballots for various reasons. The board then decides whether to count a challenged ballot. Often these challenges encompass legal issues that apply to identifiable pools of ballots. We have advised the director that she may segregate ballot pools relating to a single legal issue through the recount if ballot secrecy can be maintained. However, there is no express authority for this procedure in statute.

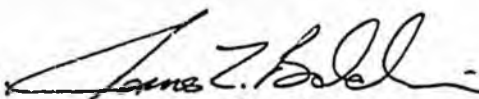
Under the procedure used, the ballots will be counted but not commingled with all ballots counted for a race. If the election is contested in court, there is a much higher likelihood that the court will not order a new election if this procedure is used. If the court disagrees with the decision of the director to either count or not count ballots in the pool, the official totals of the candidates can be ordered changed. If the ballots are commingled, then the only remedy left to the court is to use the proportional reduction test to determine if the improperly counted ballots affected the outcome of the election. We believe that the procedure used allows the court to decide the outcome of an election based on the votes cast. I would be pleased to prepare an amendment to this bill to provide express authority for the procedure described above.

I hope that you will find these comments useful.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By



James L. Baldwin
Assistant Attorney General

JLB/pjg

cc: Sandra Stout, Director
Division of Elections
Arthur H. Peterson
Assistant Attorney General
Department of Law
Bob Evans, Legislative Liaison
Office of the Governor

JB

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

(WILLIAM SIGLER, JOHN WARD,)
 STEPHEN PIDGEON,)
)
 Plaintiffs,)
)
 vs.)
)
 STATE OF ALASKA LIEUTENANT)
 GOVERNOR STEVEN McALPINE, in)
 his official capacity of)
 Director of Elections,)
)
 Defendant.)

Case No. 3AN-88-8695 CI

MEMORANDUM DECISION AND ORDER

In this ballot access case, plaintiffs William Sigler, John Ward and Stephen Pidgeon challenge the constitutionality of that portion of Alaska's Election Code, AS 15.25.150 and .170 (amended),¹ which requires third-party candidates to obtain nominations for state district-wide offices by filing, on or before June 1 of the election year, a petition for nomination containing voter signatures totaling at least one percent of the number of

1. AS 15.25.170 provides: Petitions for the nomination of candidates for the office of state senator or state representative shall be signed by qualified voters of the election or senate district in which the proposed nominee desires to be a candidate equal in number to at least one percent of the number of voters who cast ballots in the proposed nominee's respective election or senate district in the preceding general election. A nominating petition may not contain less than 50 signatures for any district.

voters who cast ballots in that district during the preceding general election. Plaintiffs argue that the foregoing election scheme, i.e. the allegedly "early" filing deadline, the one-percent signature requirement and the statutory prohibition against "write-in" candidates on the ballots, AS 15.25.070, violates the freedom of expression and association rights of plaintiffs and their supporting voters under the First and Fourteenth Amendments to the United States Constitution, and creates a constitutionally impermissible barrier to ballot access for third party candidates. Plaintiffs seek a declaration that the foregoing election scheme is unconstitutional along with an order requiring defendant to place plaintiffs' names on this year's general election ballot.

Factual Background

Plaintiffs Sigler, Pidgeon and Ward are members of Alaska's Libertarian Party who desired to run for state house seats in this year's general election.² Plaintiffs' petitions for nominations were, however, variously rejected by defendant election officials. More specifically, on June 1, 1988, prior to the 5:00 p.m. filing deadline, plaintiffs Sigler and Pidgeon filed petitions for nominations for state representatives for

2. The instant Memorandum of Decision will constitute this Court's findings of fact and conclusions of law on the issues adjudicated herein.

District 11, Seats B & A respectively. The petitions were reviewed and accepted by election coordinator, Jeri Dalton, with Ms. Dalton confirming that the filing documents, on their face, were in proper form. Sigler's petition contained 76 signatures and Pidgeon's petition contained 72 signatures. Elections officials determined that pursuant to AS 15.25.170, a minimum of 62 valid signatures was required for each candidate.

Following a staff check to verify the eligibility of subscribers to each of the nominating petitions, defendant election officials determined that only 54 of plaintiff Sigler's 76 subscribers and 51 of plaintiff Pidgeon's 72 subscribers were eligible. Both petitions were then deemed to be insufficient, and defendant sent plaintiffs Sigler and Pidgeon a letter on June 10, 1988 informing them that they had been disqualified. Some time following the receipt of their notice of disqualification, both plaintiffs collected additional signatures from voters which plaintiffs contend would make up the signature deficiencies found in their petitions. Apparently, such additional signatures were never presented to defendant and, in any event, would not have been accepted, according to Ms. Sandra Stout, Director of Alaska's Division of Elections. See Stout Affidavit, ¶ 15, dated September 2, 1988.

Both plaintiffs also testified that despite their receipt of the notices of disqualification, they believed they could still obtain access to the general election ballot through

"write-in" campaigns. Plaintiffs later learned that they were informed, however, when defendant's elections officials told that pursuant to AS 15.25.070,³ "write-in" votes are not officially counted in the primary or general elections.

Plaintiff Ward presents a somewhat different situation. Ward testified that it was not until a major party candidate switched party affiliation immediately before the primary election - in late August, 1988 - that he first became interested in running for the state representative for District 16, Seat A. Plaintiff Ward obtained some 200 signatures on his nominating petition. The petition was, according to Ward, tendered to and rejected by elections officials on August 29, 1988. Elections officials have no record or recollection of any such petition having been filed by plaintiff Ward on or after June 1.

The instant action was commenced on August 30, 1988. On the same day, this Court issued a temporary restraining order, enjoining defendant from printing election ballots until the Court could hold a hearing on plaintiffs' challenge to the third-party elections scheme.

3. AS 15.25.070 provides: Special provisions on counting ballots. No voter may vote for a person whose name is not on the ballot. Votes cast for a person whose name is not on the ballot shall not be counted, but writing in a candidate's name does not invalidate the entire ballot.

On September 6, 1988, this Court held a hearing on plaintiffs' motion for preliminary injunction, and defendant's oral cross-motion for summary judgment. Affidavits of the parties were considered by the Court along with testimony and exhibits from the plaintiffs as well as from other voters and/or supporters of plaintiffs.⁴ The testimony from such voters and supporters established that some individuals encountered difficulty in soliciting names for nominating petitions for third-party candidates, and that at least one Libertarian voter felt disenfranchised or disaffected as a result of having a ballot choice of only two major-party candidates and not being able to vote for a third-party alternative.

Following the hearing, defendant was afforded an opportunity to present any additional evidence pertaining to the State's interests and justifications for the requirements of the challenged elections scheme. Additional affidavits were submitted by defendant.

Discussion

I. One-percent Signature Requirement.

4. At this hearing, the Court also allowed plaintiffs to orally amend their complaint and join, as co-plaintiffs, several of their supporters and voters from their district.

As mentioned, plaintiffs challenge Alaska's ballot access scheme in its "totality."⁵ The State agrees that this approach is the proper analytical approach in considering the constitutionality of the third-party aspect of Alaska's Election Code. See McLain v. Meier, 637 F.2d 1159, 1164 (8th Cir. 1980).

Moreover, in analyzing the constitutionality of the foregoing elections procedures, defendant must show "compelling government interests" in order to justify the encroachment of such fundamental constitutional rights as the freedom of speech and association. Vogler v. Miller, 651 P.2d 1, 5 (Alaska 1982) ("Vogler I"). In assessing the State's justifications for such limitations, it is essential to inquire into "whether less restrictive alternatives will adequately protect [the government's] interests", since "only a regulation which impinges on the right to speak and associate to the least degree possible consistent with the achievement of the state's legitimate goals will pass constitutional muster." Id.

5. Citing Storer v. Brown, 415 US. 724, 737, 94 S.Ct. 1274, 1282 (1974), the 8th Circuit Court of Appeals in McLain v. Meier, supra, 637 at 1164 n. 11, addressed the applicability of the concept of "totality" in the following way: "The concept of 'totality' is applicable...in the sense that a number of facially valid provisions of election laws may operate in tandem to produce impermissible barriers to constitutional rights."

Turning to the one-percent signature requirement set forth in AS 15.25.170 (amended) and challenged by plaintiffs,⁶ the starting point of the constitutional analysis is Vogler I. In that case, the Alaska Supreme Court recognized the validity of a ballot restriction requiring a third party candidate to demonstrate a "significant modicum of support", even when expressed as a percentage of the state's voting population, but held that a three percent signature requirement was constitutionally too burdensome. Id. at 4, 6. In so holding, the Court impliedly approved a one-percent signature requirement as being within constitutional bounds. Id. at 5, 6, 6 n. 12. To the same effect is the Alaska Supreme Court's observation in DeNardo v. State, 741 P.2d 1197, 1199 (Alaska 1987), wherein the Court noted that "by implicitly approving a one percent voter signature requirement in Vogler I, we have already found the rule to be neither unreasonable nor arbitrary." In view of the Alaska Supreme Court's clear commentary in Vogler I and DeNardo, this Court concludes that the one percent signature requirement in AS 15.25.170 (amended) is,

6. Plaintiffs disagree between themselves over their challenge to the one percent signature requirements. Some plaintiffs concede that the one percent signature requirement is, by itself, not unconstitutional, but becomes constitutionally invalid when considered in connection with the prohibition on write-ins, AS 15.25.070 and the June 1 "early" filing deadline, AS 15.25.150. Other plaintiffs argue that the one-percent signature requirement--indeed, any signature requirement--is unconstitutional.

when considered by itself, a constitutional restriction to ballot access.⁷ See also Munro v. Socialist Workers Party, 479 U.S. ___, 107 S.Ct. ___, 93 L.Ed.2d 499 (1986) (upholding a Washington election law requiring minor party candidates to receive at least 1% of the total primary vote).⁸

II. June 1 Filing Deadline.

In the instant case, the thrust of plaintiffs' constitutional challenge to Alaska's election code is the allegedly "early" June 1 filing deadline for third-party candidates' petitions for nominations, AS 15.25.150. Plaintiffs contend that this filing deadline imposes an unfair burden on third-party candidates, deprives voters -- particularly voters disinterested in major party candidates -- of effective electoral alternatives, and violates the First and Fourteenth Amendment rights of such third-party candidates and their voters and supporters. The State maintains that the June 1 filing deadline is a constitutional restriction on ballot access, citing as justification therefor governmental interests of equal treatment

7. Subsequent to Vogler I, the Alaska legislature amended AS 15.25.170, to reduce the signature requirement from 3% to 1%. In DeNardo, the Alaska Supreme Court rejected a challenge to a one-percent signature requirement contained in an administrative regulation promulgated subsequent to Vogler I and prior to the amendment of AS 15.25.170.

8. The United States Supreme Court did not address, in Munro v. Socialist Workers Party, supra, the constitutionality of Washington's filing requirement for minor party candidates.

of all political candidates, the promotion of voter education, the reduction of voter confusion, the maintenance of political stability and various administrative concerns.

The lead ballot access case in analyzing constitutional challenges to "early" filing deadlines by independent or third-party candidates is Anderson v. Celebrezze, 460 U.S. 780, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983). In Anderson, an independent presidential candidate successfully challenged Ohio's late-March filing deadline as imposing an unconstitutional burden on such candidate's supporters and voters. In striking down the early filing deadline, the United States Supreme Court reasoned that the deadline deprived voters, who were dissatisfied with the candidates of the two major political parties, of electoral alternatives and imposed a heavy burden on the signature-gathering efforts of the third-party candidates and their supporters. Thus, noting that "An early filing deadline may have a substantial impact on independent minded voters," the Supreme Court explained that:

Ohio's filing deadline prevents persons who wish to be independent candidates from entering the significant political arena established in the State by a Presidential election campaign--and creating new political coalitions of Ohio voters--at any time after mid to late March. At this point developments in campaigns for the major-party nominations have only begun, and the major parties will not adopt their nominees and platforms for another five months. Candidates and supporters within the major parties thus have the political advantage of continued flexibility; for independents, the

inflexibility imposed by the March filing deadline is a correlative disadvantage because of the competitive nature of the electoral process.

If the State's filing deadline were later in the year, a newly emergent independent candidate could serve as the focal point for a grouping of Ohio voters who decide, after mid-March, that they are dissatisfied with the choices within the two major parties. As we recognized in *Williams v. Rhodes*, supra, at 33, 21 L.Ed. 2d 24, 89 S.Ct. 5, 45 Ohio Ops.2d 236, '[s]ince the principal policies of the major parties change to some extent from year to year, and since the identity of the likely major party nominees may not be known until shortly before the election, this disaffected 'group' will rarely if ever be a cohesive or identifiable group until a few months before the election.

Id. at 790-91. Elaborating upon the additional burdens imposed upon a third-party candidate's signature gathering efforts by an early filing deadline, the Court observed that

[The early filing deadline] also burdens the signature-gathering efforts of independents who decide to run in time to meet the deadline. When the primary campaigns are far in the future and the election itself is even more remote, the obstacles facing an independent candidate's organizing efforts are compounded. Volunteers are more difficult to recruit and retain, media publicity and campaign contributions are more difficult to secure, and voters are less interested in the campaign.

Id. at 792.

In Anderson, the United States Supreme Court considered, and rejected, three justifications advanced by Ohio in support of its late-March filing deadline: the promotion of voter education, equal treatment of all candidates and the

maintenance of political stability. Rejecting the voter education justification, the Court noted that modern communications capability and the literacy of the electorate made it "somewhat unrealistic to suggest that it takes more than seven months to inform the electorate about the qualifications of a particular candidate simply because he lacks a partisan label." Id. at 797.

Regarding the state's equal treatment rationale, the Court recognized the realistic differences in the nominating procedures for minor and major-party candidates, and observed that

It is true that a candidate participating in a primary election must declare his candidacy on the same date as an independent. But both the burdens and the benefits of the respective requirements are materially different, and the reasons for requiring early filing for a primary candidate are inapplicable to independent candidates in the general election.

The consequences of failing to meet the statutory deadline are entirely different for party primary participants and independents. The name of the nominees of the Democratic and Republican Parties will appear on the Ohio ballot in November even if they did not decide to run until after Ohio's March deadline had passed, but the independent is simply denied a position on the ballot if he waits too long. Thus, under Ohio's schema, the major parties may include all events preceding their national conventions in the calculus that produces their respective nominees and campaign platforms, but the independent's judgment must be based on a history that ends in March.

Id. at 799-800.

The Supreme Court further rejected administrative concerns as a justification for the early filing deadline, finding that elections officials did not require many months lead time to count or verify third-party petition signatures before the general election ballots were printed. Id. at 800.

Finally, the high court rejected the state's political stability rationale, concluding that

Ohio's asserted interest in political stability amounts to a desire to protect existing political parties from competition--competition for campaign workers, voter support, and other campaign resources--generated by independent candidates who have previously been affiliated with the party.

Id. at 801. The Anderson Court thus held that the voters' freedom of choice and association interests outweighed the Ohio's "minimal interest in imposing a March deadline". Accordingly, the Court struck down the March filing deadline and ultimately upheld the trial court's injunction requiring the addition of the third-party candidate's name to the general election ballot.⁹

To the same effect, the Eighth Circuit invalidated North Dakota's ballot access requirements for third-party

9. Nor was Ohio's election scheme saved by a procedure allowing "write-in" votes for independent candidates. The Court concluded that such procedure was "not an adequate substitute for having the candidate's name appear on the printed ballot." Anderson v. Calebrezze, supra, 460 U.S. at 799 n. 26. Compare AS 15.25.070 (prohibiting "write-ins").

candidates, including a 3.3% petition signature requirement and a June 1 filing deadline. McLain v. Meier, 637 F.2d 1159 (8th Cir. 1980). Regarding the early filing deadline, the Court of Appeals observed:

North Dakota's filing deadline of June 1, more than ninety days before the primary election and more than one hundred fifty days before the general election is particularly troublesome. While voters are not required to exercise their franchise or participate in the political process within the framework of organized political parties, most voters in fact look to third party alternatives only when they have become dissatisfied with the platforms and candidates put forward by the established political parties. This dissatisfaction often will not crystalize until party nominees are known... (citations omitted). Accordingly, it is important that voters be permitted to express their support for independent and new party candidates during the time of the major parties' campaigning and for some time after the selection of candidates by party primary.

Id. at 1164.¹⁰ But see Rainbow Coalition v. Oklahoma State Election Board, 844 F.2d 740 (10th Cir. 1988) (upholding a 5% signature requirement and a May 31 filing deadline for third-party candidates).¹¹

10. Compare Alaska's June 1 filing deadline, 84 days from the primary election and 160 days from the general election.

11. This Court declines to follow the holding in Rainbow Coalition v. Oklahoma State Election Board, supra, for two reasons. First, the Tenth Circuit in Rainbow Coalition rejected the "compelling state interest" analysis and adopted, instead, a "balancing test." Id. at 743. By contrast, the

(Footnote Continued)

The teaching of Anderson and McLain is that early filing deadlines for nominating petitions for independent or third-party candidates impose an unfair burden upon such candidates and their supporters. The courts in those cases realistically recognize the differences between minimally financed and supported minor party candidacies and the selection process by which major-party candidates emerge. The Anderson and McLain courts also recognize the political reality that voters may first begin to focus upon political candidates and policy choices after the major party candidates have been nominated at their parties' primary elections and/or during the campaigning activities which ensue. Thus, it is not until the period between the major party primaries and the general election that voters tend to become interested in candidates who present a fundamental alternative to the major-parties' representatives and the latter's stances on the important political issues. Any elections procedure, such as a filing deadline many months in

(Footnote Continued)

Alaska Supreme Court has adopted, in Vogler I, supra at 5, the "compelling government interest" test in considering ballot access cases involving such fundamental rights as freedom of speech and association.

Second, the Tenth Circuit in Rainbow Coalition attempted to distinguish Anderson on the grounds that that case concerned an independent candidate's bid for a national, rather than local, public office. Id. at 746 n. 9. This court finds such difference to be without legal significance and concludes that the policy and rationale of Anderson are equally applicable to ballot access barriers confronting third-party candidates seeking local or state-wide offices.

advance of the general election, which discourages the emergence of such third-party alternatives, infringes impermissibly upon the freedom of speech and association interests of such third-party candidates and their voters and supporters.

Applying the rationale and policy of Anderson and McLain to the instant case, this Court concludes that Alaska's June 1, filing deadline, the one-percent signature requirement and the statutory prohibition against "write-in" candidates, when considered in their totality, unconstitutionally deprive plaintiff third-party candidates and their supporters and voters of their fundamental rights of freedom of speech and association. Particularly troublesome to the Court is the effect the early filing deadline may have on voters who, at or after the primary election, may seek alternatives to the major party candidates, and on the third-party candidates' signature drives. Like the voters of Ohio and North Dakota in Anderson and McLain, supra, Alaska voters -- at least those voters in the House districts at issue in this litigation -- will be deprived of electoral alternatives, specifically the plaintiff-Libertarian Party candidates herein, should such voters become dissatisfied with the choices of the two major parties. As the Eighth Circuit emphasized, "[i]t is important that voters be permitted to express their support for independent and new party candidates ... for some time after the selection of candidates by party primaries." Id. at 1164 (emphasis added). By requiring third-party

candidates to file their nominating petitions some 84 days in advance of the primary election and 160 days before the general election, Alaska's early filing deadline, as the record indicates, tends to discourage such third-party candidates from filing and tends to deprive Alaska voters of electoral alternatives at the general election.

Further, as the record also establishes, Alaska's early filing deadline may compound the signature drive and organizing efforts of third-party candidates. As the United States Supreme Court observed in Anderson, "volunteers are more difficult to recruit and retain, media publicity and campaign contributions are more difficult to secure, and voters are less interested in the campaign" at a point in time so far in advance of the primary and general elections. 460 U.S. at 792. But see Stout Affidavit, ¶ 12, dated September 9, 1988 (listing some third-party candidates who have, between 1980-88, met the filing requirements and appeared on the ballot).

Equally troubling is the inability of third-party candidates in Alaska to secure access to the ballot through a traditional "write-in" procedure. AS 15.25.070 flatly prohibits "write-ins" on primary ballots, and instructs elections officials not to count any votes for candidates written in on the ballots. Indeed, assuming Alaska's election code contained such a write-in procedure, the Anderson Court found such procedure to be "not an adequate substitution for having the [third party] candidate's

name appear on the printed ballot." 460 U.S. at 799 n. 26. In the instant case, two plaintiff-candidates indicated that they were less concerned with the fact that their petitions had been rejected by elections officials because they erroneously assumed that they would still have ballot access through a traditional "write-in" procedure. Had they known that such a "write-in" procedure was prohibited in this jurisdiction, they may well have increased their early signature drive activities. In any event, the Court concludes that the absence of any "write-in" procedure in Alaska's election code further limits and discourages access to the ballot for third-party candidates and their supporters and voters.

Finally, the justifications advanced by the State in support of the ballot access restrictions challenged herein are neither "compelling" nor supported by the record in this case. Equality of treatment of all candidates is, in reality, not achieved by requiring third-party candidates to file for election by June 1 - months in advance of the primary and general elections. As the Anderson Court observed, "'equal treatment' of partisan and independent candidates simply is not achieved by imposing the [early] filing deadline on both." 460 U.S. at 801.

Similarly, the need to promote voter education is not necessitated by the filing of a third-party candidate's petition some five months in advance of the general election. In view of modern communications technology and the literacy of the

electorate, it is, as the Anderson Court observed, simply "unrealistic to suggest that it takes more than seven months to inform the electorate about the qualifications of a particular candidate...." Id. at 797.

Further, concerns regarding possible voter confusion, "laundry" list ballots, undue factionalism and party fragmentation are, as the state candidly concedes, largely theoretical and "reflect a perception of potential problems, rather than any actual experience in Alaska." Stout Affidavit, ¶ 4, dated September 9, 1988; see also Vogler I, supra, 651 P.2d at 5-6; but see Munro v. Socialist Workers Party, supra, 93 L.Ed.2d at 505-06 (a particularized evidentiary showing of voter confusion, ballot overcrowding, etc. is not required to sustain reasonable ballot access restrictions).

Lastly, the challenged ballot access restrictions are not compelled by administrative necessity. Like Ohio in Anderson, the State in this case does not suggest that the June 1 filing deadline for third-party candidates is necessary to allow petition verification and signature counting. 460 U.S. at 800. Plainly, as the State concedes, the election officials could conduct their petition and signature verification activities in substantially less time than five months. See Stout Affidavit, ¶ 10, dated September 9, 1988. Nor does the State require anything like five months of lead time in order to

prepare and print ballots and the official election pamphlet.¹² Accordingly, the June 1 filing deadline cannot be justified on administrative grounds.

The State's final response to plaintiffs' challenge to Alaska's election code provisions is the doctrine of laches. That is, the State contends that plaintiffs should have initiated their action sooner than August 30, 1988, and that as a result of such delay, plaintiffs should now, as a matter of equity, be barred from bringing their instant claims.

It is true that plaintiffs could have brought the present action earlier than August 30. Yet, defendant has made no showing of substantial prejudice to elections officials as a result of plaintiffs' delay, nor does the record reflect any such real prejudice. Further, the record establishes that any post-filing deadline submissions by plaintiffs to defendant elections officials would have been futile. See Stout Affidavit, ¶ 15, dated September 2, 1988. In view of the importance of the fundamental constitutional interests at stake in this action -- the freedom of association and speech interests of plaintiff third-party candidates and their supporters and voters -- and the

12. The record establishes that the printing of the general election ballots (and absentee ballots) is presently set for September 29, 1988. (A "Special Election Ballot", apparently sent to about 200 non-resident military personnel, was printed on or about September 7, 1988. Plaintiffs do not seek to have their names added to this "Special Elections Ballot.").

lack of any real prejudice to the State resulting from the 2-3 month delay in the initiation of this action, this Court declines to exercise its equity authority to bar plaintiffs' claims, pursuant to the doctrine of laches, from being adjudicated on their merits.

Conclusion

The importance of promoting effective political alternatives in the electoral process, and of encouraging all voters to participate in such process, cannot be overstated. As the Alaska Supreme Court stressed in Vogler I:

The range of political views in our society cannot be compressed into the platforms of only two parties. Even where minor parties do not actually place candidates in office, their presence on the ballot provides disaffected voters with a means of protesting the status quo or of embracing unorthodox ideas. ... (citations omitted). The ballot box is our established means of effecting change, and excessive restrictions on it may redirect the pressure for change into other, less legitimate channels.

Id. at 5.

Bearing these concerns in mind, this Court finds and concludes in the present case that the June 1 filing deadline, particularly when considered in combination with the one-percent signature requirement and the prohibition against "write-in" candidacies, impermissibly infringes upon the fundamental constitutional interests of freedom of association and speech of plaintiff-third-party candidates and their supporters and voters. The Court further finds and concludes that the State has, on this

record, failed to justify the filing deadline by "compelling interests", and that the State's concerns can be met with a less restrictive requirement, namely, a filing deadline for third-party candidates considerably closer to the general election.¹³ Accordingly, the Court hereby declares the June 1 filing deadline for third-party candidates to be unconstitutional under the First and Fourteenth Amendments to the United States Constitution, and issues the following order and injunctive relief:

ORDER

IT IS HEREBY ORDERED that:

1. Plaintiffs' Motion for Preliminary Injunction is granted, and
 - a. The names of plaintiffs Sigler, Pidgeon and Ward shall be added to the November, 1988 general election ballots as Libertarian Party candidates for state representatives

13. In so holding, the Court declines to opine whether Anderson and McLain adopt a "per se" rule, i.e., a rule holding that third-party candidates filing deadlines which precede the primary elections are "per se" unconstitutional. Nor is the Court inclined to suggest exactly when -- at, near or following the primary elections -- such a filing deadline should be set. All that the Court is holding in the instant case is that the existing filing deadline of June 1 fails to pass constitutional muster, for the reasons expressed herein.

for Seats B and A of District 11 and Seat A of District 16, respectively;¹⁴ and

b. That to the extent that it is still reasonably practicable to do so, appropriate texts regarding such candidates shall also be included in the Official Election Pamphlet;¹⁵ and

c. The temporary restraining order previously issued herein, enjoining the printing of general election ballots, is hereby vacated.

14. While plaintiff Ward presents a different factual circumstance than plaintiffs Sigler and Pidgeon, having attempted to file his nominating petition on or about August 29, 1988 (6 days following the August 23 primary election), Ward Affidavit, ¶ 2, dated August 30, 1988, the Court nevertheless concludes that granting plaintiff Ward access to the ballot is consistent with the policy and rationale of Anderson and McLain. See McLain v. Meier, supra, 637 F.2d at 1164 ("It is important that voters be permitted to express their support for independent and new party candidates during the time of the major parties' campaigning and for some time after the selection of candidates by party primary.").

15. The Court notes Ms. Stout's testimony that candidates must normally submit biographical information to defendant State for inclusion in the Official Election Pamphlet by July 15 of the election year, in order for the pamphlet to be published and distributed by early October. Stout Affidavit, ¶ 9, dated September 9, 1988. The record herein is unclear as to whether such pamphlet has already been printed, and/or, what administrative expense and difficulty would be encountered by the State as a result of including plaintiffs' biographical information therein at this time. To the extent that the pamphlet has not yet been printed, and the State can reasonably make the foregoing additions, it is ordered to do so. Defendant shall advise plaintiffs of this possibility, and plaintiffs shall immediately provide defendant with relevant biographical information about themselves.



Alaska State Legislature

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Senate State Affairs Committee Members
FROM: Senator Pat Pourchot, Chairman *Pat*
RE: January 20 Committee Hearing
DATE: January 19, 1989

On Friday, January 20 at 1:30 p.m. in the Beltz Room, the Senate State Affairs Committee will be presented an overview of the state's election laws by the State Division of Elections. In addition, several individuals who have first hand experience with problems in existing law have been invited to participate.

In addition, testimony will be taken on SB 43, Relating to conduct and administration of elections by the director of elections. SB 43, which makes several clarifications to current election law, has passed the House twice before and is largely a technical "clean-up" bill. However, it is my intent to use SB 43 as the vehicle for additional amendments to election law that the committee may deem necessary following Friday's hearing.

As currently written, SB 43 addresses the following issues: a voter's name change, notification of changes in precinct boundaries or polling places, placement of judicial retention candidates on the ballot, receipt of absentee ballots, and the time period for withdrawal of a candidate's name from the ballot. Backup materials on SB 43 are attached.

Date: January 16, 1989
TO: Sandra
fr: Jeanne
RE SB 43 - Elections

As currently written SB 43 would:

- 1) Remedy the deficiency in the current statutes which tends to disenfranchise voters who change their names just prior to an election by allowing them to vote under their old name or vote a questioned ballot under the new name. (Section 1)
- 2) Expand services to voters (1) by providing that voters impacted by polling place or precinct boundary changes will be sent notification of the changes before the election (Section 2); and (2) by removing the requirement that applications for absentee ballots must be postmarked 10 days prior to the election. New language would extend the application period by requiring, simply, that applications be received not later than 4 days prior to the election. (Section 5)
- 3) Reduce the complexity and expense of ballot printing (1) by removing the requirement that judicial retention candidates must appear on a "separate" ballot (Sections 3, and 17 through 20); and (2) by deleting confusing references to a "+" sign which appears in the punch boxes in computer type ballots (Section 10).
- 4) Ease the impact of late candidacy withdrawals by changing the deadline from 40 to 54 days prior to an election. The current 40 day deadline severely constricts the actual time frame in which ballots must be typeset, proofread, printed and distributed. In addition, the existing deadlines allow only 10 days for preparing camera ready sample ballots for inclusion in the Official Election Pamphlet which by law must be printed and in the mail to voters 30 days prior to the election. (Sections 11 and 14; Sections 12, 13, 15 and 16 technical amendments to bring sections into conformity)
- 5) Provide for the counting of absentee ballots received before the completion of a recount. (Sections 6 and 7; Sections 8 and 9 contain conforming amendments) **PAT WANTS THESE SECTIONS AMENDED SO THAT ABSENTEE BALLOTS ARE COUNTED ONLY IF RECEIVED WITHIN THE STATUTORY DEADLINES: 10 DAYS FOR ABSENTEE BALLOTS MAILED WITHIN THE U.S. AND 15 DAYS FOR THOSE MAILED OUTSIDE THE U.S.**
- 6) Eliminate the requirement to record the time an absentee ballot is provided and received - recording of date is sufficient. (Section 4)
- 7) Establish an immediate effective date. (Section 21)

1 IN THE HOUSE

BY BOUCHER, GRUEBERG,
DONLEY AND GOLL

2

HOUSE BILL NO. 93

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to voter registration."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 15.07.070 is amended by adding a new subsection to
9 read:

10 (g) The director shall provide voter registration forms prepared
11 under (b) of this section to the Department of Public Safety for
12 distribution to the public under AS 28.05.045.

13 * Sec. 2. AS 28.05 is amended by adding a new section to read:

14 Sec. 28.05.045. VOTER REGISTRATION. A person applying for a
15 driver's license, identification card issued under AS 18.65.310, or
16 vehicle registration under AS 28.10 in an office of the division of
17 motor vehicles who is 18 years of age or older, or who will be 18
18 years of age or older within 90 days, shall at the time of application
19 be advised by the department that the person may also register to
20 vote. The department shall use a form for voter registration pre-
21 pared by the division of elections and shall forward completed forms
22 to the division of elections. The department shall prominently dis-
23 play notice of the right to apply for voter registration at each place
24 that the public may apply for a driver's license, identification card,
25 or vehicle registration.

Sandra

Sen. Pat Fourchot
February 3, 1989

2-6-89

SUMMARY OF PROPOSED CHANGES IN COMMITTEE SUBSTITUTE
FOR SB 43 - RELATING TO CONDUCT AND ADMINISTRATION OF ELECTIONS

Amendments to existing bill sections:

- 1) Section 11 - relating to removal of name from primary ballot: Changes deadline for removal of a name from the primary ballot from 54 days (proposed in original bill) to 48 days. *current law 40 days*
- 2) Section 12, line 16 - relating to nomination by party petition where incumbent dies or is disqualified or incapacitated before the primary election: Changes period in which a candidate's place on the ballot may be filled by party petition from 54 days (proposed in original bill) to 50 days if vacancy occurs after June 1 of election year.

The number of days in Section 12, line 16 needs to be greater than in Sections 11, 13 and 14 to allow parties a few days leeway for selecting replacement candidates - in this case 2 days. Current statutes contain a 5 day leeway.

Section 12, line 24: Changes date petition must be received after death, disqualification or certification of incapacity of incumbent from 54 days (proposed in original bill) to 48 days - or within 14 days of event whichever is earlier.

Section 13 - Conforming date change.

- 3) Section 14 - relating to filling vacancies by party petition after the primary election: Conforming date change.

Note: The underlying reason for amending Sections 11 through 14 is because the current 40 day statutory deadline for removal or replacement of a candidate's name on the ballot severely constricts the time in which the Division has to prepare, print and distribute ballots across the state.

- 4) Section 21 - effective date clause: Delete immediate effective date clause to eliminate any possibility of impact on upcoming special election. *no 90 days after passage*

Additional amendments to statutes:

- 5) Amend AS 15.25.150 - relating to filing deadline for third party candidates: Would change filing deadline for third

Pat - picked date after primary 'cause
didn't want losers of primaries
to become 3rd party candidates.

Jim Baldwin
can't render opinion on legality
of setting deadline
before primary - need
to wait for Ct.
decision

Superior Ct.
ruled June 1st

party candidates from June 1 to August 1 for the general
election. denying 3rd party candidates' access to general election
under appeal

June 1 deadline has been found unconstitutional by Superior
Court. Legal opinion on constitutionality of August 1
deadline is included in your folder.

6) Amend AS 15.25.030 - relating to declaration of candidacy:

AS 15.25.030 (a) (2) - the full residence and mailing
address of the candidate, and the length of the candidate's
term of residence in Alaska and in the election district in
which the office is being sought;

This change would place in statute current requirements
for stating residency address and length of residency.

AS 15.25.030 (a) (8) - that the candidate meets [WILL MEET]
the specific residency requirements of the office for which
he is a candidate;

Current language is not in agreement with constitution
which requires that the candidate meet the residency
requirement at the time of filing. The statute implies
that candidate must meet residency requirement at some
future date.

AS 15.25.030 (a) (14) - that the candidate [HE] is not a
candidate for any other office to be voted on at the primary
or general election [AND THAT HE HAS NOT FILED ANOTHER
DECLARATION OF CANDIDACY OR NOMINATING PETITION FOR THE
OFFICE FOR WHICH THIS DECLARATION IS FILED];

Often candidates file for office quite early. If the
oath is taken literally, it would mean that no candi-
date would ever be able to withdraw his or her declara-
tion to resubmit a new one, or to make any changes in
his or her candidacy declaration (Faiks/Metcalf race)
(Menard race).

AS 15.25.030 (b) - A person filing a declaration of candida-
cy under this section shall, on the same date [SIMULTANEOUS-
LY] file a statement of income sources and business inter-
ests which complies with the requirements of AS 39.50.010 -
39.50.200.

Documents cannot be filed simultaneously because they
are filed at different locations.

7) Amend AS 15.07.070 - relating to procedures for voter
registration:

AS 15.07.070 (c) - The names of persons submitting completed
registration forms by mail which are received by the

because 1/3 postmarks illegible

director or election supervisor [POSTMARKED] at least 30 days before the next election shall be placed on the official registration list for that election. The name of a person submitting a completed registration form by mail which was not received by the director or election supervisor [POSTMARKED] before the 30 day requirement shall not be placed on the official registration list for the next election but shall be placed on the master register after that election.

The Division of Elections estimates that one-third of all first class mail received lacks a readable postmark.

AS 15.07.070 (f) - Incomplete or inaccurate registration forms may not be accepted and shall be reexecuted. The date of registration shall be the date of reexecution before a registration official, or the date the application is received by the director or election supervisor [POSTMARK DATE] if the application for registration is by mail.

Conforming amendment.

Additional considerations:

A legal opinion was requested regarding prohibiting the use of an official party name in another group or party's name.

A copy of the opinion is included in your folder.

6-0279H ✓
Bradley
2/6/89

new CS
p. 81 & 3
[48] 50

Original sponsor: Pourchot

1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 43 (State Affairs)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to conduct and administration of
7 elections by the director of elections."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 15.07.060(a) is amended to read:

New section

10 (a) Each applicant who requests registration or reregistration
11 shall supply the following information under oath:

12 (1) name and sex;

13 (2) address and other necessary information establishing
14 residence, including the term of residence in the state and in the
15 district, if requested;

16 (3) [REPEALED

17 (4) TERM OF RESIDENCE IN STATE AND IN ELECTION DISTRICT;

18 AND] whether the applicant has previously been registered to vote in
19 another jurisdiction, and, if so, the jurisdiction and the address of
20 the previous registration;

21 (4) [(5)] a declaration that the registrant will be 18
22 years of age or older within 90 days of the date of registration;

23 (5) [(6)] a declaration that the registrant is a citizen of
24 the United States;

25 (6) [(7)] date of application;

26 (7) [(8)] signature or mark.

27 * Sec. 2. AS 15.07.070(c) is amended to read:

New section

28 (c) The names of persons submitting completed registration forms
29 by mail that are received by the director or election supervisor

1 [WHICH ARE POSTMARKED] at least 30 days before the next election shall
2 be placed on the official registration list for that election. The
3 name of a person submitting a completed registration form by mail that
4 was not received by the director or election supervisor [WHICH WAS NOT
5 POSTMARKED] before the 30-day requirement may not be placed on the
6 official registration list for the next election but shall be placed
7 on the master register after that election.

8 * Sec. 3. AS 15.07.070(f) is amended to read:

9 *New Section*
10 (f) Incomplete or inaccurate registration forms may not be
11 accepted and shall be reexecuted. The date of registration shall be
12 the date of reexecution before a registration official or the [POST-
13 MARK] date the application is received by the director or election
14 supervisor if the application for registration is by mail.

14 * Sec. 4. AS 15.07.090(a) is amended to read:

15 *no change*
16 (a) A voter whose name is changed by marriage or court order may
17 vote under the previous name, but a [IF THE] voter who desires to use
18 a [THE] new name shall vote a questioned ballot [, THE VOTER SHALL
19 NOTIFY THE DIRECTOR NOT LATER THAN 30 DAYS PRECEDING AN ELECTION SO
20 THAT THE REGISTRATION MAY BE AMENDED TO REFLECT THE CHANGE].

20 * Sec. 5. AS 15.10.020 is amended by adding a new subsection to read:

21 *no change*
22 (b) Whenever possible, the director shall send written notice of
23 any change in a precinct boundary or polling place to each affected
24 registered voter in the precinct.

24 * Sec. 6. AS 15.15.030(10) is amended to read:

25 *no change*
26 (10) A [SEPARATE] nonpartisan [JUDICIAL] ballot shall be
27 designed for each judicial district in which a justice or judge is
28 seeking retention in office. The ballot shall be divided into four
29 parts and each part must [SHALL] bear a heading indicating the court
to which the candidate is seeking approval. Within each part the

1 question of whether the justice or judge shall be approved or rejected
 2 shall be set out in substantially the following manner: (A) "Shall . .
 3 be retained as justice of the supreme court for 10 years?";
 4 (B) "Shall be retained as judge of the court of
 5 appeals for eight years?"; (C) "Shall be retained as
 6 judge of the superior court for six years?"; or (D) "Shall
 7 . . be retained as judge of the district court for four years?" Pro-
 8 vision shall be made for marking each question "Yes" or "No."

9 * Sec. 7. AS 15.20.071(d) is amended to read:

10 *no change*

11 (d) Each election official shall keep a record of the name and
 12 signature of each personal representative requesting an absentee
 13 ballot and the name of the person on whose behalf the ballot is re-
 14 quested. The election official shall record the date [AND TIME] the
 15 absentee ballot is provided and the date [TIME] the ballot is returned
 16 to the election official.

16 * Sec. 8. AS 15.20.081(b) is amended to read:

17 *no change*

18 (b) An application for an absentee ballot by mail must be re-
 19 ceived by the division of elections [POSTMARKED] not less than four
 20 [TEN] days before the election for which the absentee ballot is
 21 sought. The absentee ballot application must [SHALL] permit the
 22 person to register to vote under AS 15.07.070 and to request an absen-
 23 tee ballot for each state election held within that calendar year for
 24 which the voter is eligible to vote.

24 * Sec. 9. AS 15.20.081(e) is amended to read:

25 *no change*

26 (e) An absentee ballot must be marked on or before the date of
 27 the election. Except as provided in (h) of this section, a voter who
 28 returns the ballot by mail shall use a mail service at least equal to
 29 first class and mail the ballot not later than the day of the election
 to the election supervisor for the election district in which the

1 voter seeks to vote. Except as provided in AS 15.20.480, the [THE]
2 ballot may not be counted unless it is received by the close of busi-
3 ness on the 10th day after the election. If the ballot is postmarked,
4 it must be postmarked on or before election day. After the day of the
5 election, no ballots shall be accepted unless received by mail.

6 * Sec. 10. AS 15.20.081(h) is amended to read:

7 *no change* (h) Except as provided in AS 15.20.480, an [AN] absentee ballot
8 returned by mail from outside the United States or from a military APO
9 or FPO address that has been marked and mailed not later than election
10 day may not be counted unless the ballot is received by the election
11 supervisor not later than the close of business on the 15th day fol-
12 lowing the election.

13 * Sec. 11. AS 15.20.220(b) is amended to read:

14 *no change* (b) The state review board shall review and count absentee
15 ballots under AS 15.20.081(e) and (h) and questioned ballots that have
16 been forwarded to the director and that have not been reviewed or
17 counted by a district counting board. [ABSENTEE AND QUESTIONED
18 BALLOTS NOT RECEIVED IN THE OFFICE OF THE DIRECTOR BY 4:00 P.M. ON THE
19 15TH DAY FOLLOWING THE ELECTION MAY NOT BE COUNTED IN THE REVIEW.]

20 * Sec. 12. AS 15.20.480 is amended to read:

21 *no change* Sec. 15.20.480. PROCEDURE FOR RECOUNT. In conducting the re-
22 count, the director shall review all ballots whether the ballots were
23 counted at the precinct or by computer or by the district absentee
24 counting board or the questioned ballot counting board to determine
25 which ballots, or part of ballots, were properly marked and which
26 ballots are to be counted in the recount, and shall check the accuracy
27 of the original count, the precinct certificate and the review. The
28 director shall check the number of ballots and questioned ballots cast
29 in a precinct against the registers and shall check absentee ballots

1 voted against absentee ballots distributed. The director shall count
2 absentee ballots received [AFTER CLOSE OF BUSINESS ON THE 15TH DAY
3 FOLLOWING THE ELECTION AND] before the completion of the recount. For
4 administrative purposes, the director may join and include two or more
5 applications in a single review and count of votes. The rules in
6 AS 15.15.360 governing the counting of hand-marked ballots and the
7 rules in AS 15.20.730 governing the counting of punch-card ballots
8 shall be followed in the recount. The ballots and other election
9 material must [SHALL] remain in the custody of the director during the
10 recount and the highest degree of care shall be exercised to protect
11 the ballots against alteration or mutilation. The recount shall be
12 completed within 10 days. The director may employ additional person-
13 nel necessary to assist in the recount.

14 * Sec. 13. AS 15.20.730(b) is amended to read:

15 *no change* (b) The computer shall be programmed to count ballots as fol-
16 lows:

17 (1) a vote may be counted only if the punch is clearly
18 spaced in the square [DESIGNATED BY A PLUS SIGN] following the name of
19 the candidate the voter desires to select;

20 (2) if there is only one [PLUS-MARKED] square marked for a
21 team whose names are on separate lines, such as president and vice-
22 president or governor and lieutenant governor, a punch in the square
23 or elsewhere in the rectangle following the names shall be counted for
24 that team;

25 (3) a failure to properly punch a ballot card as to one or
26 more candidates does not itself invalidate the entire ballot;

27 (4) if a voter punches fewer names than there are persons
28 to be elected to the office, a vote shall be counted for each candi-
29 date properly marked;

1 (5) if a voter punches more names than there are persons to
2 be elected to the office, the votes for candidates to that office may
3 not be counted;

4 (6) improper marks on the ballots may not be counted and do
5 not invalidate punches for candidates properly made;

6 (7) an erasure or correction invalidates only that section
7 of the ballot in which it appears;

8 (8) a vote marked for the candidate for President of the
9 United States is considered and counted as a vote for the election of
10 presidential electors.

11 * Sec. 14. AS 15.25.030 is amended to read:

12 *New Section* Sec. 15.25.030. DECLARATION OF CANDIDACY. (a) A member of a
13 political party who seeks to become a candidate of the party in the
14 primary election shall execute and file a declaration of candidacy.
15 The declaration shall be executed under oath before an officer au-
16 thorized to take acknowledgments and shall state in substance:

17 (1) the full name of the candidate;

18 (2) the full mailing address of the candidate;

19 (3) if the candidacy is for the office of state senator or
20 state representative, the election or senate district of which the
21 candidate is a resident;

22 (4) the office for which the candidate seeks nomination;

23 (5) the name of the political party of which the person is
24 a candidate for nomination;

25 (6) the full resident address of the candidate;

26 (7) the date of the primary election at which the candidate
27 seeks nomination;

28 (8) the length of residency in the state and in the dis-
29 trict of [THAT] the candidate [WILL MEET THE SPECIFIC RESIDENCY

REQUIREMENTS OF THE OFFICE FOR WHICH THE PERSON IS A CANDIDATE];

(9) that the candidate will meet the specific citizenship requirements of the office for which the person is a candidate;

(10) that the candidate is a qualified voter as required by law;

(11) that the candidate will meet the specific age requirements of the office for which the person is a candidate;

(12) that the candidate requests that the candidate's name be placed on the primary election ballot;

(13) that the required fee accompanies the declaration;

(14) that the person is not a candidate for any other office to be voted on at the primary or general election [AND THAT THE PERSON HAS NOT FILED ANOTHER DECLARATION OF CANDIDACY OR NOMINATING PETITION FOR THE OFFICE FOR WHICH THIS DECLARATION IS FILED];

(15) the manner in which the candidate wishes the candidate's name to appear on the ballot; and

(16) that the candidate is registered to vote as a member of the political party whose nomination is being sought.

(b) A person filing a declaration of candidacy under this section shall on the same date [SIMULTANEOUSLY] file a statement of income sources and business interests that [WHICH] complies with the requirements of AS 39.50.

* Sec. 15. AS 15.25.055 is amended to read:

Sec. 15.25.055. REMOVAL OF NAME FROM PRIMARY BALLOT. A candidate's name must appear on the primary election ballot unless notice of the withdrawal from the primary is received by the director at least 48 [40] days before the date of the primary election.

* Sec. 16. AS 15.25.056(a) is amended to read:

(a) If an unopposed incumbent candidate for renomination dies,

50

becomes disqualified from holding the office the candidate is seeking,
 or is certified as being incapacitated between June 1 of the election
 year and that date which is ^{NEEDS to be at least 50 days to} more than 48 [45] days before the date of
^{allow at least two days for selecting replacement} the primary election, the ~~candidate's~~ place on the ballot may be
 filled by party petition. The petition shall state that the political
 party requests the name of the proposed candidate replace that of the
 incumbent on the primary election ballot and shall be accompanied by a
 declaration of candidacy from the person named in the petition. The
 petition must be received by the director no later than 14 days after
 the death, disqualification or certification of incapacity of the
 incumbent or ^{54 days in original bill} 48 [40] days before the primary election date, whichever
 time is earlier.

Change

Change

* Sec. 17. AS 15.25.056(c) is amended to read:

(c) The death, disqualification or certification of incapacity
^{54 days in original bill} of the incumbent within 48 [40] days before or on the primary election
 date does not affect the counting and review of the ballots. If the
 result of the counting and review discloses that the candidate, if the
 candidate had lived, would have been nominated, the candidate shall be
 declared nominated. The vacancy may be filled by party petition as
 provided in AS 15.25.110 - 15.25.130.

Change

* Sec. 18. AS 15.25.110 is amended to read:

Sec. 15.25.110. FILLING VACANCIES BY PARTY PETITION. If a
 candidate nominated at the primary election dies, withdraws, resigns,
 becomes disqualified from holding the office for which the candidate
 is nominated, or is certified as being incapacitated in the manner
^{54 days in original bill} prescribed by this section ~~after~~ the primary election and 48 [40] days
 or more before the general election, the vacancy may be filled by
 party petition. The central committee of any political party or any
 party district committee may certify as being incapacitated any

Change

1 candidate nominated by their respective party by presenting to the
 2 director a sworn statement made by a panel of three licensed physi-
 3 cians, not more than two of whom may [SHALL] be of the same political
 4 party, that the candidate is physically or mentally incapacitated to
 5 an extent that would in the panel's judgment prevent the candidate
 6 from active service during the term of office if elected. The direc-
 7 tor shall place the name of the person nominated by party petition on
 8 the general election ballot. The name of a candidate disqualified
 9 under this section may not appear on the general election ballot.

10 * Sec. 19. AS 15.25.120 is amended to read:

11 Sec. 15.25.120. REQUIREMENTS FOR PARTY PETITION. Party peti-
 12 tions for the nomination of candidates shall state in substance that
 13 the political party desires and intends to support the named candidate
 14 for the named office and requests that the name of the proposed candi-
 15 date be placed on the general election ballot. The petition may be
 16 *Change* filed no later than ^{54 days in original bill} 48 [40] days before the date of the general
 17 election.

18 * Sec. 20. AS 15.25.150 is amended to read:

19 *new section* Sec. 15.25.150. DATE OF FILING PETITION. The petition is filed
 20 with the director by actual physical delivery in person at or before
 21 5:00 p.m., prevailing time, August 1 [JUNE 1] in the year in which a
 22 general election is held for the office, or by actual physical deliv-
 23 ery to the director by registered or certified mail return receipt
 24 requested which is postmarked at or before 5:00 p.m., prevailing time,
 25 August 1 [JUNE 1] in the year in which a general election is held for
 26 the office, and received not more than 15 days after that time. If
 27 the postmark is illegible, a dated receipt from the post office where
 28 dispatched shall be acceptable as evidence of mailing. If August 1
 29 [JUNE 1] is a Sunday or holiday, the deadlines for postmarking and

receipt of the petition shall be extended 24 hours in each instance.

* Sec. 21. AS 15.25.180 is amended to read:

Sec. 15.25.180. REQUIREMENTS FOR PETITION. The petition shall state in substance

new section

- (1) the full name of the candidate;
- (2) the full resident address of the candidate;
- (3) the full mailing address of the candidate;
- (4) the name of the political group supporting the candidate;

(5) if the candidacy is for the office of state senator or state representative, the election or senate district of which the candidate is a resident;

(6) the office for which the candidate is nominated;

(7) the date of the election at which the candidate seeks election;

(8) the length of residency in the state and in the district of [THAT] the candidate [MEETS, OR WILL MEET, AS REQUIRED BY LAW, THE SPECIFIC REQUIREMENTS OF THE OFFICE THE CANDIDATE IS SEEKING];

(9) that the subscribers are qualified voters of the state or election or senate district in which the candidate resides;

(10) [REPEALED

(11)] that the subscribers request that the candidate's name be placed on the ballot;

(11) [(12)] that the proposed candidate accepts the nomination and will serve if elected, with the statement signed by the proposed candidate;

(12) [(13)] if the candidacy is for the office of the governor, the name of the candidate for lieutenant governor running jointly

with the candidate for governor;

(13) [(14)] the name of the candidate as the candidate wishes it to appear on the ballot; and

(14) [(15)] that the candidate is not a candidate for any other office to be voted on at the primary or general election [AND THAT THE CANDIDATE HAS NOT FILED ANOTHER NOMINATING PETITION OR DECLARATION OF CANDIDACY FOR THE OFFICE FOR WHICH THIS PETITION IS FILED].

* Sec. 22. AS 15.25.200 is amended to read:

Sec. 15.25.200. WITHDRAWAL OF CANDIDATE'S NAME. If a candidate nominated by petition dies or withdraws after the petition has been filed and at least 48 days before the date of the general election [BEFORE SEPTEMBER 1 OF THE ELECTION YEAR], the director may not place the name of the candidate on the general election ballot.

change

54 days in original bill

* Sec. 23. AS 15.35.050 is amended to read:

Sec. 15.35.050. PLACING NAME OF SUPREME COURT JUSTICE ON BALLOT. The director shall place the name of a supreme court justice who has properly filed a declaration of candidacy for retention on the [JUDICIAL] ballot in each judicial district of the state for the general election at which approval is sought.

no change

* Sec. 24. AS 15.35.059 is amended to read:

Sec. 15.35.059. PLACING NAME OF JUDGE OF THE COURT OF APPEALS ON BALLOT. The director shall place the name of a judge of the court of appeals who has properly filed a declaration of candidacy for retention on the [JUDICIAL] ballot in each judicial district of the state for the general election at which approval is sought.

no change

* Sec. 25. AS 15.35.090 is amended to read:

Sec. 15.35.090. PLACING NAME OF SUPERIOR COURT JUDGE ON BALLOT. The director shall place the name of a superior court judge who has properly filed a declaration of candidacy for retention on the

no change

1 [JUDICIAL] ballot in the judicial district designated in the declara-
 2 tion of candidacy for the general election at which approval is
 3 sought.

4 * Sec. 26. AS 15.35.130 is amended to read:

5 *no change*

6 Sec. 15.35.130. PLACING NAME OF DISTRICT JUDGE ON BALLOT. The
 7 director shall place the name of a district judge who has properly
 8 filed a declaration of candidacy for retention on the [JUDICIAL]
 9 ballot in the judicial district designated in the declaration of
 10 candidacy for the general election at which approval is sought.

11 *Change - Deleted effective date of bill*