

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5856 HOUSE JUDICIARY

general election in the state or in the senate or election district of the official to be recalled.

(Sec. 9.77 ch 83 SLA 1960; am sec. 186 ch 100 SLA 1980)

Sec. 15.45.540. Review of application. The director shall review the application and shall either certify it or notify the recall committee of the grounds of refusal.

(Sec. 9.78 ch 83 SLA 1960; am sec. 187 ch 100 SLA 1980)

Sec. 15.45.550. Bases of denial of certification. The director shall deny certification if he determines that (1) the application is not substantially in the required form, (2) the application was filed during the first 120 days of the term of office of the official subject to recall or within less than 180 days of the termination of the term of office of any official subject to recall, (3) the person named in the application is not subject to recall, or (4) there is an insufficient number of qualified subscribers.

(Sec. 9.79 ch 83 SLA 1960; am sec. 188 ch 100 SLA 1980)

Sec. 15.45.560. Preparation of petition. If the director certifies the application, he shall prescribe the form of, and prepare, a petition containing (1) the name and office of the person to be recalled, (2) the statement of the grounds for recall included in the application, (3) the statement of warning required in AS 15.45.570, (4) sufficient space for signatures and addresses, and (5) other specifications prescribed by the director to assure proper handling and control. Petitions, for purposes of circulation, shall be prepared by the director in a number reasonably calculated to allow full circulation throughout the state or throughout the senate or election district of the official sought to be recalled. The director shall number each petition and shall keep a record of the petitions delivered to each sponsor.

(Sec. 9.80 ch 83 SLA 1960; am sec. 189 ch 100 SLA 1980)

Sec. 15.45.570. Statement of warning. Each petition and duplicate copy shall include a statement of warning that a person who signs a name other than his own to the petition, or who knowingly signs his name more than once for the same proposition at one election, or who signs the petition knowing he is not a qualified voter, is guilty of a class B misdemeanor.

(Sec. 9.81 ch 83 SLA 1960; am sec. 190 ch 100 SLA 1980)

Sec. 15.45.580. Circulation by sponsor. The petitions may be circulated only by a sponsor and only in person throughout the state or senate or election district represented by the official sought to be recalled.

(Sec. 9.82 ch 83 SLA 1960)

Sec. 15.45.590. Manner of signing and withdrawing name from petition. Any qualified voter may subscribe to the petition by signing his name and address. A person who has signed the petition may withdraw his name only by giving written notice to the director before the date the petition is filed.

(Sec. 9.83 ch 83 SLA 1960; am sec. 191 ch 100 SLA 1980)

Sec. 15.45.600. Certification of sponsor. Before being filed, each petition shall be certified by an affidavit by the sponsor who personally circulated the petition. The affidavit shall state in substance that (1) the person signing the affidavit is a sponsor, (2) the person is the only circulator of that petition or copy, (3) the signatures were made in his actual presence, and (4) to the best of his knowledge, the signatures are those of the persons whose names they purport to be. In determining the sufficiency of the petition, the director shall not count subscriptions on petitions not properly certified.

(Sec. 9.84 ch 83 SLA 1960; am sec. 192 ch 100 SLA 1980)

Sec. 15.45.610. Filing of petition. No petition may be filed within less than 180 days of the termination of the term of office of a state public official subject to recall. The sponsor may file the petition only if signed by qualified voters equal in number to 25 per cent of those who voted in the preceding general election in the state or in the senate or election district of the official sought to be recalled.

(Sec. 9.85 ch 83 SLA 1960)

Sec. 15.45.620. Review of petition. Within 30 days of the date of filing, the director shall review the petition and shall notify the recall committee and the person subject to recall whether the petition was properly or improperly filed.

(Sec. 9.86 ch 83 SLA 1960; am sec. 193 ch 100 SLA 1980)

Sec. 15.45.630. Bases for determining the petition was improperly filed. The director shall notify the committee that the petition was improperly filed if he determines that (1) there is an insufficient number of qualified subscribers, or (2) the petition was filed within less than 180 days of the termination of the term of office of the official subject to recall.

(Sec. 9.87 ch 83 SLA 1960; am sec. 194 ch 100 SLA 1980)

Sec. 15.45.640. Submission of supplementary petition. Upon receipt of notice that the filing of the petition was improper, the committee may amend and correct the petition by circulating and filing a supplementary petition within 20 days of the date that notice was given, if filed within less than 180 days of the termination of the term of office of the person subject to recall.

(Sec. 9.88 ch 83 SLA 1960)

Sec. 15.45.650. Calling special election. If the director determines the petition is properly filed and if the office is not vacant, he shall prepare the ballot and shall call a special election to be held on a date not less than 60, nor more than 90, days after the date that notification is given that the petition was properly filed. If a primary or general election is to be held not less than 60, nor more than 90, days after the date that notification is given that the petition was properly filed, the special election shall be held on the date of the primary or general election.

(Sec. 9.89 ch 83 SLA 1960; am sec. 37 ch 69 SLA 1970; am sec. 195 ch 100 SLA 1980)

Sec. 15.45.660. Preparation of ballot. The ballot shall be designed with the question of whether the public official shall be recalled, placed on the ballot in the following manner: "Shall (name of official) be recalled from the office of?". Provision shall be made for marking the question "Yes" or "No."

(Sec. 9.90 ch 83 SLA 1960)

Sec. 15.45.670. Conduct of special election. Unless specifically provided otherwise, all provisions regarding the conduct of a general election shall govern the conduct of a special election for the recall of the state public official, including but not limited to, provisions concerning voter qualification; provisions regarding duties, powers, rights and obligations of the director, of other election officials, and of cities and organized boroughs; provision for notification of the election; provision for the payment of election expenses; provisions regarding employees being allowed time from work to vote; provisions for counting, reviewing, and certification of returns; provision for the determination of votes and of recount contests and court appeal; and provisions for absentee voting.

(Sec. 9.91 ch 83 SLA 1960; am sec. 196 ch 100 SLA 1980)

Sec. 15.45.680. Display of bases for and against recall. The director shall provide each election board in the state or in the senate or election district of the person subject to recall with 10 copies of the statement of the grounds for recall included in the application and 10 copies of the statement of not more than 200 words made by the official subject to recall in justification of his conduct in office. The person subject to recall may provide the director with his statement within 10 days after the date the director gave notification that the petition was properly filed. The election board shall post three copies of the statements for and against recall in three conspicuous places in the polling place.

(Sec. 9.92 ch 83 SLA 1960; am sec. 197 ch 100 SLA 1980)

Sec. 15.45.690. Certification of election results. If a majority of the votes cast on the question of recall favor the removal of the official, the director shall so certify and the office is vacant on the day after the date of certification.

(Sec. 9.93 ch 83 SLA 1960; am sec. 198 ch 100 SLA 1980)

Sec. 15.45.700. Filling vacancy. A vacancy caused by a recall is filled as a vacancy caused by any other means is filled.

(Sec. 9.94 ch 83 SLA 1960)

Sec. 15.45.710. Insufficiency of grounds, application, or petition. No recall submitted to the voters shall be held void because of the insufficiency of the grounds, application, or petition by which the submission was procured.

(Sec. 9.95 ch 83 SLA 1960)

Sec. 15.45.720. Judicial review. Any person aggrieved by a determination made by the director under AS 15.45.470 - 15.45.710 may bring an action in the superior court to have the determination reviewed within 30 days of the date on which notice of determination was given.

(Sec. 9.96 ch 83 SLA 1960; am sec. 199 ch 100 SLA 1980)

Chapter 50. Constitutional Amendments and Conventions.

Article 1. Constitutional Amendments.

Sec. 15.50.010. Preparation of proposition for constitutional amendment. The lieutenant governor shall prepare a proposed ballot title and proposition for each amendment to the state constitution proposed by the legislature or by a constitutional convention. Each amendment shall be confined to one subject. Within 30 days of the date of adjournment of a legislative session or of the date of adjournment of a constitutional convention, the lieutenant governor shall provide one copy of the proposed ballot title and proposition for each amendment to each member of the legislature and shall make copies available to the public.

(Sec. 10.01 ch 83 SLA 1960; am sec. 1 ch 99 SLA 1978)

Sec. 15.50.020. Description of ballot title and proposition. The ballot title shall, in not more than six words, indicate the general subject of the act. The proposition shall, in not more than 100 words, give a true and impartial summary of the amendment proposed.

(Sec. 10.02 ch 83 SLA 1960)

Sec. 15.50.025. Objection to proposed ballot title and proposition. A qualified voter, or the Legislature of the State of Alaska acting directly or through the Legislative

Council, who believes that the proposed ballot title and proposition prepared by the lieutenant governor under AS 15.50.010 does not provide a true and impartial summary of the amendment proposed may, within 15 days of the date of mailing of the proposed ballot title and proposition to the members of the legislature, submit to the lieutenant governor a statement of objection to the proposed ballot title and proposition, giving his reasons for objection, and suggesting alternative language revising the wording of the title or proposition. The lieutenant governor shall consider any objection received before directing that the ballot containing the proposition be prepared by the director. Not more than 10 days after the deadline for receipt of objections, he shall advise any person who submitted a statement of objection to the proposed ballot title and proposition of his final decision.

(Sec. 2 ch 99 SLA 1978; am sec. 200 ch 100 SLA 1980)

Sec. 15.50.027. Judicial review. A qualified voter, or the Legislature of the State of Alaska acting directly or through the Legislative Council, who has filed with the lieutenant governor a statement of objection to a proposed ballot title and proposition as provided in AS 15.50.025 and who believes that the ballot title and proposition as finally prepared does not provide a true and impartial summary of the amendment proposed may bring an action in the superior court to have the determination reviewed. An action shall be commenced within 45 days of the date of mailing of the proposed ballot title and proposition to members of the legislature as provided in AS 15.50.010.

(Sec. 2 ch 99 SLA 1978)

Sec. 15.50.030. Placing proposition on ballot. The lieutenant governor shall direct the director to place the ballot title and proposition on the ballot for the next statewide general election held after the amendment proposed by the legislature or held 120 days after the amendment proposed by a constitutional convention. If there is insufficient time to permit the proposition to be placed on the regular ballot by the director, the lieutenant governor shall direct the director to prepare a separate ballot for the proposition.

(Sec. 10.03 ch 83 SLA 1960; am sec. 201 ch 100 SLA 1980)

Sec. 15.50.040. Display of resolution. The director shall provide each election board with 10 copies of the resolution proposing the constitutional amendment by the legislature or by the convention, and the election board shall display three copies of the resolution in a conspicuous place in the room where the election is held.

(Sec. 10.04 ch 83 SLA 1960; am sec. 202 ch 100 SLA 1980)

Sec. 15.50.050. Certification of vote. If a majority of the votes cast on the proposition favor the amendment, the

constitutional amendment is adopted, and the lieutenant governor shall so certify.

(Sec. 10.05 ch 83 SLA 1960)

Sec. 15.50.060. Effective date. Unless otherwise provided in the amendment, it becomes effective 30 days after certification.

(Sec. 10.06 ch 83 SLA 1960)

Article 2. Constitutional Conventions.

Sec. 15.50.070. Placing question of constitutional convention on ballot. If during any 10-year period a constitutional convention has not yet been held, and the question of holding a constitutional convention has not been placed before the voters, the lieutenant governor shall direct the director to place the question on the ballot for the next regular statewide general or primary election.

(Sec. 10.51 ch 83 SLA 1960; am sec. 203 ch 100 SLA 1980)

Sec. 15.50.080. Certification of vote. If a majority of votes cast on the question are in the affirmative, the lieutenant governor shall so certify and shall issue the call for the convention.

(Sec. 10.52 ch 83 SLA 1960)

Sec. 15.50.090. Time and manner of selecting delegates. Delegates to the convention shall be elected at the next statewide general election in the number and manner prescribed in the call for the convention by the lieutenant governor or as provided by law.

(Sec. 10.53 ch 83 SLA 1960)

Sec. 15.50.100. Certification of constitutional amendment by convention. The president of the constitutional convention shall certify to the lieutenant governor each proposed amendment to the constitution adopted by the constitutional convention.

(Sec. 10.54 ch 83 SLA 1960)

Article 3. Delegation by Lieutenant Governor.

Sec. 15.50.110. Delegation by lieutenant governor. The lieutenant governor may delegate the duties imposed on him by AS 15.50.010 - 15.50.100 to the director.

(Sec. 204 ch 100 SLA 1980)

Chapter 55. Election Offenses, Corrupt Practices and Penalties.

Sec. 15.55.010 - 15.55.250. Repealed. Repealed by sec. 231 ch 100 SLA 1980.

Chapter 56. Election Offenses, Corrupt Practices, and Penalties.

Sec. 15.56.010. Campaign misconduct in the first degree.

(a) A person commits the crime of campaign misconduct in the first degree if he (1) knowingly circulates or has written, printed or circulated a letter, circular, or publication relating to an election, to a candidate at an election, or an election proposition or question without the name and address of the author appearing on its face; (2) knowingly prints or publishes an advertisement, billboard, placard, poster, handbill, paid-for television or radio announcement or other communication intended to influence the election of a candidate or outcome of a ballot proposition or question without the words "paid for by" followed by the name and address of the candidate, group or individual paying for the advertising or communication and, if a candidate or group, with the name of the campaign chairman; or (3) knowingly writes or prints and circulates, or has written, printed and circulated, a letter, circular, bill, placard, poster or advertisement in a newspaper, on radio or television (A) containing false factual information relating to a candidate for an election; (B) which he knows to be false; and (C) which would provoke a reasonable person under the circumstances to a breach of the peace or damages the candidate's reputation for honesty, integrity, or his qualifications to serve if elected to office. (b) Violation of this section is a corrupt practice. (c) Campaign misconduct in the first degree is a class A misdemeanor.

(Sec. 205 ch 100 SLA 1980)

Sec. 15.56.020. Campaign misconduct in the second degree.

(a) A person commits the crime of campaign misconduct in the second degree if, during the hours the polls are open, he intentionally is within 200 feet of an entrance to a polling place, and (1) attempts to persuade a person to vote for or against a candidate, proposition, or question; or (2) circulates cards, handbills, or marked ballots, or posts political signs or posters relating to a candidate at an election or election proposition or question. (b) Election judges shall post warning notices at the required distance in the form and manner prescribed by the director or the chief municipal elections official in a local election. (c) Campaign misconduct in the second degree is a class B misdemeanor.

(Sec. 205 ch 100 SLA 1980)

Sec. 15.56.030. Unlawful interference with voting in the first degree.

(a) A person commits the crime of unlawful interference with voting in the first degree if he (1) uses, threatens to use, or causes to be used force, coercion, violence, or restraint; or if he inflicts, threatens to inflict, or causes to be inflicted damage, harm or loss upon or against a person to induce or compel the person to vote or refrain from voting for a candidate in an

election or for any election proposition or question; (2) gives, promises to give, offers, or causes to be given or offered money or other valuable thing to a person with the intent to induce the person to vote for or refrain from voting for a candidate at an election or for an election proposition or question; or (3) solicits, accepts, or agrees to accept money or other valuable thing with the intent to vote for or refrain from voting for a candidate at an election or for an election proposition or question. (b) Violation of this section is a corrupt practice. (c) Unlawful interference with voting in the first degree is a class C felony.

(Sec. 205 ch 100 SLA 1980)

Sec. 15.56.035. Unlawful interference with voting in the second degree. (a) A person commits the crime of unlawful interference with voting in the second degree if he (1) has an official ballot in his possession outside of the voting room unless he is an election official or other person authorized by law or local ordinance, or by the director or chief municipal elections official in a local election; (2) makes, or knowingly has in his possession, a counterfeit of an official election ballot; (3) knowingly solicits or encourages, directly or indirectly, a registered voter who is no longer qualified to vote under AS 15.05.010, to vote in an election; or (4) as a registration official (A) knowingly refuses to register a person who is entitled to register under AS 15.07.030; or (B) accepts a fee from an applicant applying for registration. (b) Violation of (a)(3) of this section is a corrupt practice. (c) Unlawful interference with voting in the second degree is a class A misdemeanor.

(Sec. 205 ch 100 SLA 1980)

Sec. 15.56.040. Voter misconduct in the first degree. (a) A person commits the crime of voter misconduct in the first degree if he (1) votes or attempts to vote in the name of another person or in a name other than his own; (2) votes or attempts to vote more than once at the same election with the intent that his vote be counted more than once; (3) intentionally makes a false affidavit, swears falsely or falsely affirms under an oath required by the Alaska Election Code (AS 15.05 - AS 15.60); (4) knowingly votes or solicits a person to vote after the polls are closed with the intent that his vote be counted. (b) Voter misconduct in the first degree is a class C felony.

(Sec. 205 ch 100 SLA 1980)

Sec. 15.56.050. Voter misconduct in the second degree. (a) A person commits the crime of voter misconduct in the second degree if he (1) registers to vote when he is not entitled to register under AS 15.07.030; (2) knowingly makes a material false statement while applying for voter registration or reregistration; or (3) votes or attempts to vote in an election after being disqualified under AS

15.05.030. (b) Voter misconduct in the second degree is a class A misdemeanor.

(Sec. 205 ch 100 SLA 1980)

Sec. 15.56.060. Unlawful interference with an election. (a) A person commits the crime of unlawful interference with an election if he (1) induces or attempts to induce an election official to fail in his duty by force, threat, intimidation or offers of reward; (2) intentionally changes, attempts to change, or causes to be changed an official election document including ballots, tallies and returns; (3) intentionally delays, attempts to delay, or causes to be delayed the sending of the certificate, register, ballots, or other materials whether original or duplicate, required to be sent by AS 15.15.370; or (4) is contracted or employed by the state to print or reproduce in any manner an official ballot, and he knowingly (A) appropriates to himself, or gives or delivers to, or permits to be taken by anyone other than a person authorized by the director, official ballots; or (B) prints or reproduces or has printed or reproduced official ballots in a form or with a content other than that prescribed by law or as directed by the director. (b) Unlawful interference with an election is a class C felony.

(Sec. 205 ch 100 SLA 1980)

Sec. 15.56.070. Election official misconduct in the first degree. (a) A person commits the crime of election official misconduct in the first degree if he is an election official, and he (1) intentionally fails to perform an election duty or knowingly does an unauthorized act with the intent to affect an election or its results; (2) knowingly permits or makes or attempts to make a false count of election returns; or (3) intentionally conceals, withholds, destroys, or attempts to conceal, withhold or destroy election returns. (b) Election official misconduct in the first degree is a class C felony.

(Sec. 205 ch 100 SLA 1980)

Sec. 15.56.080. Election official misconduct in the second degree. (a) A person commits the crime of election official misconduct in the second degree if he is an election official, and while the polls are open, he (1) opens a ballot received from a voter at an election, unless permitted by ordinance in a local election; (2) marks a ballot by folding or otherwise so as to be able to recognize it; (3) otherwise attempts to learn how a voter marked his ballot; or (4) shows a person to do one of the acts prescribed in (1), (2), or (3) of this subsection. (b) Election official misconduct in the second degree is a class A misdemeanor.

(Sec. 205 ch 100 SLA 1980)

Sec. 15.56.090. Improper subscription to petition. (a) A person commits the crime of improper subscription to

petition if he (1) signs a name other than his own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for state or local office; (2) knowingly signs his name more than once for the same proposition, question, or candidate at one election; or (3) signs a petition proposing an initiative, referendum, recall, or nomination of a candidate for state or local office, knowing he is not a qualified voter. (b) Improper subscription to petition is a class B misdemeanor.

(Sec. 205 ch 100 SLA 1980)

Sec. 15.56.100. Refusal to allow employees time off. (a) An employer commits the offense of refusal to allow employees time off if he refuses to allow an employee time off for the purpose of voting, or if he, after allowing the time off, deducts the time from the wages of the employee, except as provided in (b) of this section. (b) An employee who has two consecutive hours in which to vote, either between the opening of the polls and the beginning of his regular working shift, or between the end of his regular working shift and the close of the polls, is considered to have sufficient time outside of his working hours within which to vote. (c) Refusal to allow employees time off to vote is a violation.

(Sec. 205 ch 100 SLA 1980)

Sec. 15.56.110. Effect of certain convictions. (a) The election of a candidate to the state legislature or to municipal office who knowingly commits a corrupt practice or whose campaign treasurer or deputy campaign treasurer knowingly commits a corrupt practice is voidable under this section. (b) If a successful candidate or the campaign treasurer or the deputy campaign treasurer of a successful candidate for the state legislature or for a seat on a city council or borough assembly or for borough or city mayor is convicted of a felony or misdemeanor described in this chapter as a corrupt practice, the eligibility of the successful candidate to hold the office to which elected shall be determined as to (1) a member of the legislature under art. II, sec. 12 of the state constitution; (2) a member of the borough assembly under AS 29.20.170(6); (3) a borough mayor under AS 29.20.280(6); (4) a member of the city council under AS 29.20.170(6); (5) a city mayor under AS 29.20.280(6).

(Sec. 205 ch 100 SLA 1980; am secs. 37 - 40 ch 74 SLA 1985)

Sec. 15.56.115. Disposition of cases involving corrupt practice. When a candidate or a nominee or the campaign treasurer of a candidate or a nominee is charged with a felony or misdemeanor described in this chapter as a corrupt practice, the case shall be promptly tried and the case shall be accorded a preferred status by the courts to ensure a speedy disposition of the matter.

(Sec. 205 ch 100 SLA 1980)

CORRECTION

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(Sec. 205 ch 100 SLA 1980)

Sec. 15.56.120. Election defined. For purposes of this chapter, "election" includes a local election as defined in AS 15.60.010(13) in addition to a state election.

(Sec. 205 ch 100 SLA 1980)

Sec. 15.56.130. Time limitation. A prosecution for an offense described in the Alaska Election Code (AS 15.05 - 15.60) may not be maintained unless it is begun within one year after the date of the election in connection with which the offense is alleged to have been committed.

(Sec. 205 ch 100 SLA 1980)

Chapter 57 Election Pamphlet

Sec. 15.57.010 - 15.57.060. Repealed.
Repealed by sec. 232 ch 100 SLA 1980.

Chapter 58 Election Pamphlet

Sec. 15.58.010. Election pamphlet.

Before each state general election, the lieutenant governor shall prepare, publish and mail at least one election pamphlet to each household identified from the official registration list. The pamphlet shall be prepared on a regional basis as determined by the lieutenant governor.

(Sec. 206 ch 100 SLA 1980; am sec. 38 ch 85 SLA 1986)

Sec. 15.58.020. Contents of pamphlet. Each election pamphlet shall contain (1) photographs and campaign statements submitted by eligible candidates for elective office in the region; (2) information and recommendations filed under AS 15.58.050 on judicial officers subject to a retention election in the region; (3) a map of the election district or districts of the region; (4) sample ballots for election districts of the region; (5) an absentee ballot application; (6) for each ballot proposition submitted to the voters by initiative or referendum petition or by the legislature, (A) the full text of the proposition specifying constitutional or statutory provisions proposed to be affected; (B) the ballot title and the summary of the proposition prepared by the director or by the lieutenant governor; (C) a neutral summary of the proposition prepared by the Legislative Affairs Agency; (D) statements submitted which advocate voter approval or rejection of the proposition not to exceed 500 words; (7) for each bond question, a statement of the scope of each project as it appears in the Bond Authorization Act; (8) a maximum of two pages of material submitted by each political party; (9) additional information on voting procedures that the lieutenant governor considers necessary; (10) for the question whether a constitutional convention shall be called, (A) a full statement of the question placed on the ballot; (B) statements not to exceed 500 words that advocate voter approval or rejection of the question.

(Sec. 206 ch 100 SLA 1980; am sec. 1 ch 33 SLA 1983)

Sec. 15.58.030. Material to be filed by candidate.

(a) No later than July 15 of a presidential election year, candidates for the offices of the United States President and Vice-President may file with the lieutenant governor photographs and statements advocating their candidacy. (b) No later than July 15 of a year in which a state general election will be held, a candidate for the office of United States senator, United States representative, governor, lieutenant governor, state senator, or state representative may file with the lieutenant governor a photograph and a statement advocating the candidacy. (c) Each candidate for an office designated under (a) or (b) of this section is allowed one page of space in the pamphlet for a photograph and statement. (d) Pages on which candidate's photographs or statements appear must be clearly identified with the words "paid for by the candidate." (e) A candidate's statement must be typewritten and is limited to a position statement of 250 words or less and a biographical statement of 150 words or less. (f) A candidate's photograph must be a 5" x 7" black and white glossy print taken within the past five years. The photograph must be limited to the head, neck and shoulders of the candidate. (g) No later than August 7 of the year in which the state general election will be held, a person seeking retention in office as a justice or judge may file with the lieutenant governor a photograph and a statement advocating the candidacy.

(Sec. 206 ch 100 SLA 1980; am secs. 39 - 41 ch 85 SLA 1986)

Sec. 15.58.040. Material to be filed by political parties.

(a) No later than July 15 of a year in which a state general election will be held, a political party may file with the lieutenant governor a maximum of two pages of material. (b) Each page purchased must be clearly identified with the words "paid for by" followed by the name of the political party, the name of the state chairman of the party, and the name of the party treasurer.

(Sec. 206 ch 100 SLA 1980; am sec. 42 ch 85 SLA 1986)

Sec. 15.58.050. Information and recommendations on judicial officers. No later than August 7 of the year in which the state general election will be held, the judicial council shall file with the lieutenant governor a statement including information about each supreme court justice, court of appeals judge, superior court judge, and district court judge who will be subject to a retention election. The statement shall reflect the evaluation of each justice or judge conducted by the judicial council according to law. A statement may not exceed 600 words.

(Sec. 206 ch 100 SLA 1980; am sec. 43 ch 85 SLA 1986)

Sec. 15.58.060. Charges for space in pamphlet. (a) Each general election candidate shall pay to the lieutenant governor at the time of filing material under this chapter the following: (1) President or Vice-President of the United States, United States senator, United States

representative, governor, lieutenant governor, supreme court justice and court of appeals judge, \$150 each; (2) superior court judge, district court judge, \$75 each; (3) state senator, and state representative, \$50 each. (b) The state chairman or executive committee of a political party shall pay to the lieutenant governor at the time of filing material under this chapter \$200 for each page purchased. (c) There is no charge for statements and recommendations submitted by the judicial council or for statements advocating approval or rejection of a proposition submitted to the voters for approval.

(Sec. 206 ch 100 SLA 1980)

Sec. 15.58.070. Organization of material. Material in the election pamphlet shall be organized to the extent possible in the same manner and form in which it will appear on the ballot. The decision of the lieutenant governor on the form of material is final.

(Sec. 206 ch 100 SLA 1980)

Sec. 15.58.080. Distribution. (a) Not less than 30 days before the general election, the lieutenant governor shall mail to every registered voter one copy of the pamphlet prepared for the region in which the voter resides. Additional pamphlets may be obtained from the director, the office of the lieutenant governor, and the area election offices. (b) The state library shall make a recording of the appropriate regional pamphlet available to a blind voter without cost. The lieutenant governor shall assist with the preparation of recording each regional pamphlet.

(Sec. 206 ch 100 SLA 1980)

Sec. 15.58.090. Delegation by lieutenant governor. The lieutenant governor may delegate the duties imposed on him by this chapter to the director.

(Sec. 206 ch 100 SLA 1980)

Chapter 60. General Provisions.

Sec. 15.60.010. Definitions. In this title, unless the context otherwise requires, (1) "absentee voting official" means a person appointed to serve as an absentee voting official in accordance with AS 15.20.045; (2) "ballot" means a hand-marked ballot and a punch-card ballot; (3) "director" means the director of elections who is the chief elections officer of the state appointed in accordance with AS 15.10.105(a); (4) "election board" means the local precinct board composed of the three election judges; (5) "election district" means one of the districts described in art. XIV, sec. 3, of the state constitution, as may be modified under art. VI of the state constitution; (6) "election official" means election judges, clerks, counters, members of counting or review boards, employees of the division of elections and absentee voting officials; (7) "federal election" means a general, special, or primary election held solely or in part for the purpose of

selecting, nominating or electing a candidate for the office of President, Vice-President, presidential elector, United States senator or United States representative; (8) "felony involving moral turpitude" includes those crimes which are immoral or wrong in themselves such as murder, sexual assault, robbery, kidnapping, incest, arson, burglary, theft, and forgery; (9) "general election" means the election held on the Tuesday after the first Monday in November of even-numbered years; (10) "hand-marked ballot" means a ballot designated to be marked by hand with a pen or pencil; (11) "Lieutenant governor" includes an appointed lieutenant governor, governor, or acting governor if a vacancy has occurred in the office of lieutenant governor or governor; (12) "limited political party" means a political group which organizes for the purpose of selecting candidates for electors for President and Vice-President; (13) "local election" means a regular or special election held by a borough, city, school district, or regional educational attendance area; (14) "master register" means the list of all registered voters in the state which is maintained by the director of elections; (15) "member of a political party" means a person who supports the political program of a party; (16) "oath" includes affirmation; "sworn" includes affirmed; (17) "official registration list" means the list of all voters qualified to vote at a particular election compiled in accordance with AS 15.07.125; (18) "party district committee" means the political party committee that performs the executive function for a region representing an area larger than a precinct and smaller than the state; (19) "political group" means a group of organized voters which represents a political program and which does not qualify as a political party; (20) "political party" means an organized group of voters that represents a political program and that nominated a candidate for governor who received at least three percent of the total votes cast at the preceding general election for governor. (21) "precinct" means the territory within which resident voters may cast votes at one polling place; (22) "presidential election year" means a year in which the presidential electors are elected; (23) "proposition" means an initiative, referendum, or constitutional amendment submitted at an election to the public for vote; (24) "punch-card ballot" means a ballot designed to be punched by a machine and counted by automatic data processing equipment; (25) "qualified voter" means a person who has the qualification of a voter and is not disqualified as provided by art. V, sec. 2, of the state constitution and AS 15.05.030; (26) "question" means an issue placed on the ballot to determine whether a judge or justice shall be accepted or rejected, whether a constitutional convention shall be called, whether a state debt shall be contracted, or whether a state official shall be recalled; (27) "registration official" includes an employee of the division of elections when performing the task of voter registration and a person appointed to serve as a registration official in accordance with AS 15.07.081 or 15.07.100; (28) "senate district" means the territory included in the election districts as designated in art.

XIV, sec. 2, of the state constitution, as may be modified under art. VI of the state constitution; (29) "signature" or "subscription" includes a mark intended as a signature or subscription; (30) "special election" means an election held at a time other than when the general or primary election is held and an election called to be held with, and at the time of, the general or primary election; (31) "state chairman" means the party official elected as the highest ranking statewide party executive; (32) "unconditional discharge" means that a person is released from all disability arising under a conviction and sentence, including probation and parole; (33) "vacancy" exists in an office when the person elected or appointed to the office resigns, retires, dies, is recalled, is rejected by majority vote on the question at an election, is convicted of a corrupt practice, is removed by impeachment, or is expelled; (34) "voter" means a person who presents himself for the purpose of voting either in person or by absentee ballot.

(Sec. 12.01 ch 83 SLA 1960; am sec. 11 ch 71 SLA 1972; am sec. 13 ch 38 SLA 1974; am sec. 29 ch 197 SLA 1975; am sec. 9 ch 208 SLA 1975; am sec. 207 ch 100 SLA 1980; am sec. 64 ch 6 SLA 1984; am sec. 44 ch 85 SLA 1986)

Sec. 15.60.020. Short title. AS 15.05.010 - 15.60.020 may be cited as the Alaska Election Code.
(Sec. 12.02 ch 83 SLA 1960)

Chapter 62. Miscellaneous Provisions.

Sec. 15.62.010. Application of election code recall provisions to party representatives. Repealed by sec. 26 ch 80 SLA 1963.

Chapter 65. Rights of Voter and Prohibitions.

Sec. 15.65.010 - 15.65.050. Prohibitions; rights of voters. Repealed by sec. 231 ch 100 SLA 1980.

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 misinformed, however, when defendant's elections officials told them 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 scheme, 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. Celebrezze, 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

- 17 -

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.

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
AFFILIATE COURTS of the
STATE OF ALASKA

JUL 5 1989

CLERK

By _____ Deputy

SPECIAL MASTER'S REPORT

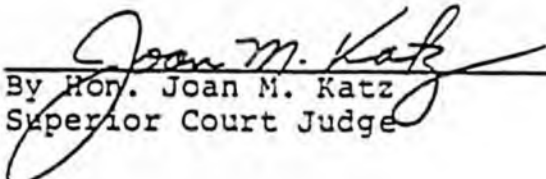

By Hon. Joan M. Katz
Superior Court Judge

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 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 (1) 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, 337 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. 24-53, 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 numbers 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. Sculware 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.

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., Fouché v. Racland, 424 S.2d 559, 561 (Miss. 1982); Wynn 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 21 (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,

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

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.

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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.

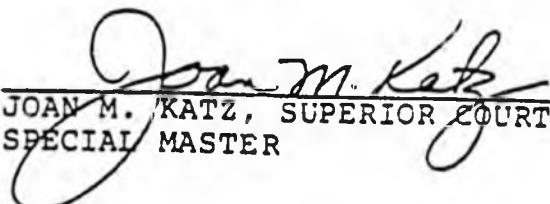
III. CONCLUSION

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 E
 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 7 in-person	0	B: -.6183 F: -.3817	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 | |