ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6314 SENATE JUDICIARY

7/8

VOTER OATH

I, _____ declare that I am a
(Print Name)

citizen of the United States, and have been a resident of Alaska for at least 30 days. I have not requested a ballot from any other state and am not voting in any other manner in this election. I have not claimed to be a resident of any other state for any purpose during the last 30 days. If I had this oath attested to by witnesses other than an authorized official, it is because no official empowered to administer an oath was available. I swear under penalty of perjury that the foregoing is true.

1. My permanent Alaskan Residence Address is:

_____ , AK _____
Zip Code

(DO NOT use RO. Box, Rural Route #. You must use street address, plat #, legal description, or other physical location description.)

2. Provide at least one of the following for identification purposes:

Voter # _____ Birthdate _____

Social Security # _____.

X _____
(Voter Signature)

IMPORTANT: THIS CERTIFICATE MUST BE PROPERLY WITNESSED. USE **OPTION 1** OR **OPTION 2** AT THE RIGHT. UNLESS PROPERLY WITNESSED, YOUR BALLOTS MAY NOT BE COUNTED.

WITNESSING AFFIDAVIT

OPTION 1

This certificate may be executed before an official qualified to administer oaths. The following persons are qualified: Notary Public; U.S. Postmaster or authorized postal clerk; Commissioned Officer of the Armed Services; Judge; Justice; Magistrate; Clerk of the Court; employees of the Alaska Division of Elections or designated absentee voting official.

Subscribed and sworn to before me this ____ ____ day of _____ ,
19 _____, Time _____, at (City/State or Country) _____
_____

Attesting Witness _____

Title _____

(If Alaska Notary, affix seal.)

OPTION 2

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) _____

REVIEW BOARD USE

- ☐ Purged (Date) _____
- ☐ Deleted (Date) _____
- ☐ Count Full
- ☐ No Count _____
  Reject Codes

- ☐ Federal Only
- ☐ SW Only
- ☐ SW/S/J
- ☐ SW/S
- ☐ SW/J
- ☐ All but DC

Comments/Initials:

_____

_____

_____

Ballot Sequence#

GENERAL INSTRUCTIONS
FOR VOTING BY MAIL
APRIL 4, 1989

HOUSE DISTRICT 13
SPECIAL ELECTIONS

Your ballot for this election must be voted, witnessed and mailed not later than **April 4, 1989.** If you mail your ballot on the last day, remind your postal clerk that the envelope must be postmarked not later than April 4, 1989.

VOTING YOUR BALLOT

1. Choose your candidate, and with a pen, mark an "X" in the box to the right of the name.
2. After you have marked your ballot, put it in the SECRECY ENVELOPE before placing it in the return mailer.
3. **THE LAW REQUIRES THAT YOU FILL OUT THE INFORMATION ASKED FOR ON THE RETURN MAILER. IF IT IS NOT COMPLETE, YOUR BALLOT WILL NOT BE COUNTED.**

VOTER OATH

1. To vote in this election, you must be a registered voter **AND** an Alaska resident. You are asked to give your physical residence address **WITHIN THE STATE OF ALASKA.** This means:

   - give your street address, highway name, milepost, trailer park and space number, tract or plat number. **DO NOT use a P.O. Box, PSC Number, Star or Rural Route Number as a "residence" address.**

(Instructions continued on reverse side)

NOTE: If the address you give is different than that on your current voter record, it will be treated as a change of address. The new address you give will be used to decide if you are still eligible to vote in this election.

2. You must give at least one: Voter Number, Social Security Number or Birthdate.
3. **READ AND SIGN THE VOTER OATH IN THE PRESENCE OF YOUR WITNESS(ES).**

WITNESSING AFFIDAVIT

1. You **MUST** have your Voter Oath properly witnessed. Choose Option I, or Option II described on the return mailer. Your witness(es) are attesting that you are the person you claim to be, and that you signed your Voter Oath in their presence.

IMPORTANT!
Your ballot will not be counted if you:

1. fail to give your residence address **WITHIN THE STATE OF ALASKA:**
2. fail to give your voter number, or social security number, or birthdate;
3. fail to sign your Voter Oath in the presence of your witness(es);
4. fail to have your ballot properly witnessed; or
5. fail to vote and mail your ballot on or before April 4, 1989.

Alaska State Legislature

SENATE

Official Business

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

MEMORANDUM

DATE: February 7, 1989

TO: Senate Judiciary Committee
Senator Jan Faiks, Chair
Senator Mike Szymanski, Vice Chair
Senator Rick Halford
Senator Drue Pearce
Senator Pat Rodey

FROM: Senator Pat Pourchot

RE: CS SB 43 (State Affairs) - "An Act relating to conduct and administration of elections by the director of elections."

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

As currently written CS SB 43 (SA) would:

1) Amend the statutes relating to "required registration information" so that the term of residence in Alaska and in the election district need only be provided if requested. **(Section 1)**

2) Require that the completed voter registration form be received (rather than postmarked) by the director at least 30 days before the next election. **(Section 2; conforming amendment in Section 3)**

3) Allow voters who change their name just prior to an election to vote under their old name or vote a questioned ballot under the new name. **(Section 4)**

4) Provide for written notice of a change in a precinct boundary or polling place to be sent to affected voters prior to the election. **(Section 5)**

5) Remove the requirement that judicial retention candidates be printed on a separate nonpartisan judicial ballot. **(Sections 6, and 23 through 26)**

6) Eliminate the unnecessary requirement to record the time an absentee ballot is provided and received - recording of date is sufficient. **(Section 7)**

7) Extend the application period for absentee ballots by requiring that applications be received not later than 4 days prior to the election (rather than postmarked 10 days prior to election). **(Section 8)**

8) Remove conflict in existing statutes governing counting of absentee ballots. AS 15.20.081 (e) and (h) are in conflict with the section governing the procedure for recounts (AS 15.20.480). The amendments remove the conflict in accordance with provisions established under AS 15.20.480. **(Sections 9 through 12)**

9) Delete unnecessary requirement for "+" signs on computer type ballots. **(Section 13)**

10) Place in statute current requirements for stating residency address and length of residency on declaration of candidacy forms. **(Section 14)**

11) Delete provision that requires candidate to state that he/she has not filed another declaration of candidacy for the office for which this declaration is filed. **(Section 14)**

Taken literally, the current oath means that no candidate can withdraw his/her declaration, resubmit a new one, or make any changes in his/her candidacy declaration.

12) Amend statute to allow declaration of candidacy forms and conflict of interest forms to be filed <u>on same date</u> (rather than simultaneously) because they are filed at separate locations. **(Section 14)**

13) Change deadline for removal of a name from the primary ballot from 40 days to 48 days. **(Section 15; Sections 16 through 19 and Section 22 contain conforming amendments.)**

14) Change period in which a candidate's place on the ballot may be filled by party petition from 45 days to 50 days if vacancy occurs after June 1 of election year. **(Section 16)**

15) Change filing deadline for third party candidates from June 1 to August 1 for the general election - Superior Court has held June 1 deadline to be unconstitutional. **(Section 20)**

16) Place in statute current requirement for stating residency address and length of residency on nominating petition and delete provision that requires candidate to state that he/she has not filed another nominating petition to conform to language in Section 14. **(Section 21)**

17) The State Affairs CS deleted the effective date clause to eliminate any possible impact on upcoming special election.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

M E M O R A N D U M February 9, 1989

SUBJECT: The conduct and administration of elections by the director of elections [CSSB 42 (State Affairs)]

TO: Senator Pat Pourchot

FROM: Richard A. Bradley
Legislative Counsel

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

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

Section 1 of the bill amends AS 15.07.060(a) (required voter registration information). It moves from paragraph (a)(4) (required information) to paragraph (a)(2) (optional information, "if requested") the requirement that information be provided on the term of residence in the state and in the district. For most voting registration purposes, the length of residence, either in the state or in the district, is irrelevant. See, in this connection, the amendments to secs. 2 - 3 of the bill.

Section 2 of the bill amends AS 15.07.070(c)(procedure for registration). The amendment requires that a voter registering by mail make certain that the registration forms be received (and not postmarked) 30 days before the election. The experience of the division of elections is that 30 percent of registrations received by mail are not postmarked and thus it is impossible in those cases to determine whether the registration is proper.

Section 3 amends AS 15.07.070(f). The section deals with incomplete registrations and achieves the same goal as sec. 2 of the bill.

Section 4 of the bill amends AS 15.07.090(a) to alter the procedure under which a voter whose name is changed (by court order or by marriage) may vote. Existing law requires that the voter notify the division of election 30 days before the election or vote under the old name. Under the amendment, the voter may vote a questioned ballot.

Section 5 of the bill amends AS 15.10.020 by adding a new subsection (b). The section provides that "whenever possible," the director shall send written notice of a change in a precinct boundary or polling place to affected voters.

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

Note in this connection the conforming amendments later in the bill at secs. 23 - 26 of the bill.

Section 7 of the bill amends AS 15.20.071(d). The law relates to absentee voting by personal representative. It amends out the existing requirement that the election official record the "time" that the absentee ballot is provided and returned; it continues the requirement that the date be recorded when the ballot is provided and adds the requirement that the date when the ballot is returned be recorded.

Section 8 of the bill amends AS 15.20.081(b). It substitutes a requirement that an absentee ballot application be "received by the division not less than four days before the election" in place of the former "postmarked not less than ten days before the election".

Section 9 amends AS 15.20.081(e). The existing provisions of AS 15.20.081(e) establish the policy that an absentee ballot from within the United States not be counted unless it is received by the election supervisor by the close of business on the tenth day after the election. As amended,

the bill establishes the policy that if received after the tenth day but before the completion of a recount, the ballot would be counted. See also the amendment to AS 15.20.480.

Section 10 amends AS 15.20.081(h). The existing provisions of AS 15.20.081(h) establish the policy that an absentee ballot from outside the United States or from a military APO or FPO address not be counted unless it is received by the election supervisor by the close of business on the 15th day after the election. As amended, the bill establishes the policy that if received after the 15th day but before the completion of a recount, the ballot would be counted. See also the amendment to AS 15.20.480.

Section 11 of the bill amends AS 15.20.220(b). The amendment conforms the section to changes made to AS 15.20.081(e) and (h) several years ago regarding the times within which absentee ballots must be received after an election.

Section 12 of the bill amends AS 15.20.480. The section is, I believe, a section that was omitted from an earlier revision of the election recount procedure dates. With the amendment of this section, the general law on the counting of absentee ballots received after an election is now controlled by AS 15.20.081(e) and (h) unless there is a recount. In that case, AS 15.20.480 controls.

Section 13 of the bill amends AS 15.20.730(b). The elimination of the references to "plus signs" is designed to remedy a confusion: The existing law talks about "punches" and "plus signs" and the question has been which controlled.

Section 14 of the bill amends AS 15.25.030. The first amendment, to AS 15.25.030(a)(8) clarifies the intent of the paragraph. Under present law, the candidate is not required to state the length of residency in the state and in the district, but rather only that the candidate "will meet" the residency requirements. This test fails to comply with the requirements of the Alaska Constitution (art. II, sec. 2) that the candidate qualify "immediately preceding his filing for office." The provision as amended points up the qualifications required.

The second amendment, to AS 15.25.030(14), deletes the requirement that the candidate not have "filed" a declaration previously; what is intended is that the candidate not have

another declaration "on file" and, as amended, the section achieves this goal.

The third amendment, to AS 15.25.030(b), conforms the language of the section to the practical reality that a candidate cannot do two separate things "simultaneously."

Section 15 of the bill amends AS 15.25.055. It requires a candidate in the primary election to give notice of a withdrawal from the primary election 48 days before the election. The earlier notice is for the better management of the primary election and the preparation of the ballots.

Section 16 of the bill amends AS 15.25.056(a) (filling vacancy for primary after death, etc., of unopposed incumbent primary candidate). The amendment conforms the section to changes made earlier in section 15 of the bill; unlike the other sections that establish the 48 day threshold, however, this gives the political party two extra days to qualify.

Section 17 of the bill amends AS 15.25.056(c) (filling vacancy for primary after death, etc. of unopposed incumbent primary candidate). The amendment conforms this section to the changes made earlier in bill section 15.

Section 18 of the bill amends AS 15.25.110 (filling a vacancy after party nomination). The amendment conforms this section to the changes made earlier in bill section 15.

Section 19 of the bill amends AS 15.25.120 (filling a vacancy after the primary nomination). The amendment conforms this section to the changes made earlier in bill section 15.

Section 20 of the bill amends AS 15.25.150. Section 20 delays until August 1 the date for filing nominating petitions by "no- party" candidates responsive to the decision of the Superior Court in Anchorage in the Sigler case.

Section 21 of the bill amends AS 15.25.180. The section amends the requirements of "no-party" petitions consistently with the first two amendments to section 14, above.

Section 22 of the bill amends AS 15.25.200 (withdrawal of candidate's name on general election ballot). The amendment conforms this section to the changes made earlier in bill section 15.

Section 23 of the bill amends AS 15.35.050. It eliminates the requirement that the retention election for supreme court justices be on a judicial ballot; as suggested earlier, there is still a requirement that the ballot be nonpartisan.

Section 24 of the bill amends AS 15.35.059. It eliminates the requirement that the retention election for court of appeals judges be on a judicial ballot; as suggested earlier, there is still a requirement that the ballot be nonpartisan.

Section 25 of the bill amends AS 15.35.090. It eliminates the requirement that the retention election for superior court judges be on a judicial ballot; as suggested earlier, there is still a requirement that the ballot be nonpartisan.

Section 26 of the bill amends AS 15.35.130. It eliminates the requirement that the retention election for district court judges be on a judicial ballot; as suggested earlier, there is still a requirement that the ballot be nonpartisan.

If I may be of further assistance, please advise.

RAB:gc
WKG7/004

CS SB 43 (SA)
"An Act relating to conduct and administration of elections by the director of elections."

The amendments contained in CS SB 43 (SA) will affect the following:

1) VOTER REGISTRATION:

Section 1 (required registration information)
Section 2 (procedures for registration)
Section 3 (" " ")
Section 4 (procedures for reregistration and amendment and transfer of registration)

2) PRECINCT BOUNDARIES AND POLLING PLACES

Section 5 (precinct boundaries and polling places modified by director)

3) PREPARATION OF BALLOTS AS IT RELATES TO JUDICIAL RETENTION CANDIDATES

Section 6 (preparation of official ballots
Section 23 (placing name of supreme court justice on ballot)
Section 24 (placing name of judge on the court of appeals on ballot)
Section 25 (placing name of superior court judge on ballot)
Section 26 (placing name of district judge on ballot)

4) ABSENTEE VOTING

Section 7 (absentee voting by personal representative)
Section 8 (absentee voting by mail)
Section 9 (" " ")
Section 10 (" " ")
Section 11 (procedure for state review)
Section 12 (procedure for recount)

5) PUNCH-CARD BALLOTS

Section 13 (rules for counting punch-card ballots)

6) INFORMATION REQUIRED ON DECLARATION OF CANDIDACY FORMS AND NOMINATING PETITIONS

Section 14 (declaration of candidacy)
Section 21 (requirements for petition)

Sen. Pat Pourchot
February 9, 1989

SUMMARY

CS SB 43 (SA)
"An Act relating to conduct and administration of elections by the director of elections."

Section 1. Existing statutes require each applicant who registers to vote to provide information on the length of residency in the state and the election district. However, the official absentee voter registration application and absentee ballot application provided by the federal government for overseas and military voters does not specifically request this information. If the required information is not included on the federal form the Division must contact the applicant and request the person to reapply in accordance with existing law.

Section 1 amends the statutes so that the term of residence in Alaska and in the election district need only be provided if requested.

The amendment would have no effect on persons living within Alaska since the 30 day cutoff for registration is the controlling element with regard to their eligibility to vote in a specific election. The Division would still retain the option of requesting the information in cases where it was deemed necessary to establish voter eligibility - whether for overseas or instate voters.

Section 2. Current statute requires that registration forms received through the mail must be postmarked 30 days before the next election. Because mail often lacks a postmark or the postmark is unreadable, the amendment would delete the reference to the postmark and require that the completed voter registration form be received by the director of elections 30 days prior to the next election.

Section 3. Amends statutes relating to incomplete or inaccurate registration forms to conform to language in Section 2.

Section 4. Current law states that a voter who has changed one's name but wishes to vote under the new name must reregister 30 days prior to the next election.

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

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

Section 5. This new subsection directs the director of elections, whenever possible, to send written notice of any change in a precinct boundary or polling place to each affected registered voter to mitigate any inconvenience caused a voter because of a change in polling place.

Sections 6, and 23 through 26. These sections remove the requirement that judicial retention candidates be printed on a separate nonpartisan judicial ballot.

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

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

Section 7. Current law requires that an election official record the date and time an absentee ballot is provided and received. This amendment eliminates the unnecessary requirement to record the time - which serves no useful purpose.

Section 8. This amendment would extend the application period for absentee ballots by requiring that applications be received not later than 4 days prior to the election, rather than postmarked 10 day prior to the elections. (See explanation in Section 2.)

Sections 9 through 12. Statutes governing "absentee voting by mail" require the counting of absentee ballots mailed from within the U.S. if received by the 10th day after the election. If mailed outside the U.S. or from a military APO/FPO address they must be counted if received by the 15th day after the election.

However, under the statutes governing "procedures for recount" absentee ballots received 15 days following an election but before the completion of the recount must be counted - no provision is made for the counting of absentee ballots that are mailed from within the U.S. but are received between the 10th and 15th day following an election.

The proposed amendments would remove this conflict by allowing, in a recount, the counting of absentee ballots received after the statutory deadline but before the completion of the recount.

Section 13. This amendment is "housekeeping" in nature. The section proposes the deletion of references to language "designated by a plus sign" when describing the square box in which the voter punches the ballot. The plus sign serves no purpose.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

CS SB 43 (SA)
"An Act relating to conduct and administration of elections by the director of elections."

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Section 3 (" " ")
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2) PRECINCT BOUNDARIES AND POLLING PLACES

Section 5 (precinct boundaries and polling places modified by director)

3) PREPARATION OF BALLOTS AS IT RELATES TO JUDICIAL RETENTION CANDIDATES

Section 6 (preparation of official ballots
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Section 7 (absentee voting by personal representative)
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5) PUNCH-CARD BALLOTS

Section 13 (rules for counting punch-card ballots)

6) INFORMATION REQUIRED ON DECLARATION OF CANDIDACY FORMS AND NOMINATING PETITIONS

Section 14 (declaration of candidacy)
Section 21 (requirements for petition)

7) REPLACEMENT OF CANDIDATES

Section 15 (removal of name from primary ballot)
Section 16 (nomination by party petition where incumbent dies or is disqualified or incapacitated)
Section 17 (" " " " ")
Section 18 (filling vacancies by party petition)
Section 19 (requirements for party petition)
Section 22 (withdrawal of candidate's name)

8) FILING DEADLINE FOR THIRD PARTY CANDIDATES

Section 20 (date of filing petition)

Sen. Pat Pourchot
February 9, 1989

SUMMARY

CS SB 43 (SA)
"An Act relating to conduct and administration of elections by the director of elections."

Section 1. Existing statutes require each applicant who registers to vote to provide information on the length of residency in the state and the election district. However, the official absentee voter registration application and absentee ballot application provided by the federal government for overseas and military voters does not specifically request this information. If the required information is not included on the federal form the Division must contact the applicant and request the person to reapply in accordance with existing law.

Section 1 amends the statutes so that the term of residence in Alaska and in the election district need only be provided if requested.

The amendment would have no effect on persons living within Alaska since the 30 day cutoff for registration is the controlling element with regard to their eligibility to vote in a specific election. The Division would still retain the option of requesting the information in cases where it was deemed necessary to establish voter eligibility - whether for overseas or instate voters.

Section 2. Current statute requires that registration forms received through the mail must be postmarked 30 days before the next election. Because mail often lacks a postmark or the postmark is unreadable, the amendment would delete the reference to the postmark and require that the completed voter registration form be received by the director of elections 30 days prior to the next election.

Section 3. Amends statutes relating to incomplete or inaccurate registration forms to conform to language in Section 2.

Section 4. Current law states that a voter who has changed one's name but wishes to vote under the new name must reregister 30 days prior to the next election.

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

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

Section 5. This new subsection directs the director of elections, whenever possible, to send written notice of any change in a precinct boundary or polling place to each affected registered voter to mitigate any inconvenience caused a voter because of a change in polling place.

Sections 6, and 23 through 26. These sections remove the requirement that judicial retention candidates be printed on a separate nonpartisan judicial ballot.

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

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

Section 7. Current law requires that an election official record the date and time an absentee ballot is provided and received. This amendment eliminates the unnecessary requirement to record the time - which serves no useful purpose.

Section 8. This amendment would extend the application period for absentee ballots by requiring that applications be received not later than 4 days prior to the election, rather than postmarked 10 day prior to the elections. (See explanation in Section 2.)

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However, under the statutes governing "procedures for recount" absentee ballots received 15 days following an election but before the completion of the recount must be counted - no provision is made for the counting of absentee ballots that are mailed from within the U.S. but are received between the 10th and 15th day following an election.

The proposed amendments would remove this conflict by allowing, in a recount, the counting of absentee ballots received after the statutory deadline but before the completion of the recount.

Section 13. This amendment is "housekeeping" in nature. The section proposes the deletion of references to language "designated by a plus sign" when describing the square box in which the voter punches the ballot. The plus sign serves no purpose.

Statutory citations regarding handmarked ballots contain no such descriptive language and no other sections of the election law contain any reference to this "plus sign."

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

Section 14. These amendments would (1) place in statute current requirements for stating residency address and length of residency on declaration of candidacy forms; (2) delete the requirement that candidate not have "filed" a previous declaration (what is intended is that the candidate not have another declaration "on file"); and (3) allow declaration of candidacy forms and conflict of interest forms to be filed on same date (rather than simultaneously) because they are filed at separate locations.

Section 15. Current statutes set the deadline for withdrawal of a candidate's name from the ballot or the replacement of a name on the ballot 40 days prior to the election.

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

The amendment proposes to change the deadline from 40 to 48 days. This would significantly improve the Division of Elections' ability to meet their statutory deadlines which are dependent on completion of ballot printing.

Section 16. The first amendment would change the period in which a candidate's place on the ballot may be filled by party petition from 45 days to 50 days if the vacancy occurs after June 1 of election year. This is to allow parties a few days leeway to select replacement candidates. The second is an amendment to conform to language in Section 15.

Sections 17 through 19 and Section 22. Amends statutes to conform to language in Section 15.

Section 20. The current filing deadline for the general election for third party candidates is June 1. A recent Superior Court decision has held this deadline unconstitutional. This amendment would change the filing deadline from June 1 to August 1.

Section 21. This amendment would place in statute the current requirement for stating residency address and length of residency on nominating petition and would delete the provision that requires candidate to state that he/she has not filed another nominating petition (see explanation in Section 14).

COMMENTS IN SUPPORT OF
CSSB 43 (SA) AM

Prepared by
The Division of Elections
February 9, 1989

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

SPONSOR: The Honorable Pat Pourchot
Alaska State Senator

Senate Bill 43 is primarily a housekeeping bill which outlines technical amendments to the Alaska Election Code to clarify procedures related to the administration of elections. The Division of Elections has reviewed Senate Bill 43 and supports its provisions.

Section 1:

This section clarifies the statutory provisions about the "length of Alaska and district residency" information which is provided by voters at the time they register to vote. Its provisions authorize the Division to continue to request information about length of residence, but does not make failure to provide the information automatic grounds for rejecting the application for registration.

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

As a practical matter, under the Uniformed and Overseas Citizens Absentee Voting Act, the federal government prescribes an official post card form which contains both absentee voter registration application and an absentee ballot application. The form used by overseas and military voters does not specifically request length of residency.

Nearly 4,000 Federal Post Card Applications were received this year, and approximately 75% had to be rejected simply because the voter did not include his or her length of residency. Each of these voters had to be written a letter requesting them to complete new forms which included the length of residency information. As we get closer to an election a large group of voters may be disenfranchised

under the current law because there is insufficient time for mail turnaround.

Sections 2 and 3:

These sections are conforming amendments related to the acceptance of registration forms which are submitted by mail. The current statutes provide that the effective date of a registration application sent by mail is the date of the postmark. Experience shows that nearly 30 percent of mail received by the Division has no readable postmark. The amendment provides that the person's registration takes effect on the date the application is received by the Division of Elections. This measure will also allow for an absolute 30 day cutoff for preparation of the precinct registers.

Additionally, voters frequently return by mail registrations and updates in an envelope. Requirement that the postmark date be the date of registration for by mail registrants adds a cumbersome and costly administrative burden to the division because it requires retention of envelopes with the applications, and/or microfilming of both sides of each application form to maintain a permanent record of the postmark, if one is affixed.

Section 4:

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

Section 5:

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

Sections 6, 23, 23, 25 and 26:

These sections relate to the current requirement that judicial retention candidates be placed on a separate ballot. Often there is adequate space on other ballot cards

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

Section 7:

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

Section 8:

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

Sections 9, 10, 11 and 12:

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

It should be noted that concern has been expressed on a number of occasions that including late ballots in recounts

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

Section 13:

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

Sections 14 and 21:

The amendments in this section relate to candidates and their filings of Declarations of Candidacy or Nomination Petitions.

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

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

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

The second difficulty with the current statutes is in subsection 14 of AS 15.25.030 which requires that the candidate, under oath, state in substance that "he is not a candidate for any other office to be voted on at the primary or general election, and that he has not filed another declaration of candidacy or

nominating petition for the office for which this declaration is filed." As indicated above, perhaps the second part of the statement should be deleted from the statutes. As you know, it is not uncommon for a candidate to file for office quite early. If the oath is to be taken literally, it would mean that no candidate would ever be able withdraw his or her declaration to resubmit a new one, or to make any change his or her candidacy declaration. This may not be practical.

Sections 15, 16, 17, 18, and 19:

These sections suggest conforming amendments to the deadline for withdrawal of a candidate's name from the ballot, or replacement of a name on the ballot prior to an election. The amendments change the deadline from 40 days to 48 days prior to the election. The Division supports this change. The 40 day deadline severely constricts the actual time frame in which ballots must be typeset, proofread, printed and distributed. For example, for general elections, the existing deadline allows only 10 days for preparing camera ready samples of each finalized ballot for inclusion in the Official Election Pamphlet which, by statute must be mailed to voters 30 days prior to the election.

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

Section 16 provides a 2 day window for the replacement of a candidate by party petition if the candidate withdraws, dies or becomes incapacitated 50 days prior to the primary elections.

Section 20:

This amendment responds to the Superior Court's decision in Sigler et al. vs. State of Alaska in which the June 1 filing deadline for no-party and independent candidates was found to be unconstitutional. While the State has appealed the

ruling to the Supreme Court, no opinion has been rendered. Therefore, there is no enforceable deadline provided for in law at this time. The amendment seeks to remedy this critical deficiency by setting the filing deadline for these candidates at August 1.

January 9, 1989
Date

Sandra J. Stout
Director

STATE OF ALASKA

OFFICE OF THE GOVERNOR

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

January 5, 1989

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

Dear Senator Pourchot:

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

AS 15.07.060. Required Registration Information

(2) address and other necessary information establishing residence <u>and term of residence in Alaska and in election district</u> if requested;

(4) [TERM OF RESIDENCE IN STATE AND IN ELECTION DISTRICT AND] whether the applicant has previously been registered to vote in another jurisdiction, and, if so, the jurisdiction and address of the previous registration;

<u>Explanation:</u> A voter may register to vote at any time. The criteria for voting in a specific election is that they must be properly registered 30 days prior to the election. The 30 day cut off for registration is the controlling element with regard to their eligibility to vote in a specific election.
As a practical matter, under the Uniformed and Overseas Citizens Absentee Voting Act, the federal government prescribes an official post card form which contains both absentee voter registration application and an absentee ballot application. The form used by overseas and military voters does not specifically request length of residency. Nearly 4,000 Federal Post Card Applications were received this year, and approximately 75% had

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

(See suggestions regarding AS 15.25.030.)

AS 15.07.070. Procedure for Registration

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

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

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

AS 15.25.030. Declaration of Candidacy

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

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

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

(b) A person filing a declaration of candidacy under this section shall, on the same date [SIMULTANEOUSLY] file a statement of income sources and business interests which complies with the requirements of AS 39.50.010 - 39.50.200.

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

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

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

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

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

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

AS 15.25.030. New Section

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

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

Sincerely,

Linda Edgeworth

Linda Edgeworth
Information Officer

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB 43 (SA) AM
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 2/7/89
Title: An Act relating to the administration of elections by the director.
Sponsor: Pourchot
Requestor: Pourchot

Agency Affected: Office of the Governor
BRU: Elections
Components: 1 - Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

SEE ATTACHED

Prepared by: Linda Edgeworth
Division: Division of Elections
Phone: 465-4611
Date: 2/9/89

Approved by Commissioner: Linda Stout
Agency: Division of Elections
Date: 2/9/89

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

CONTINUATION OF FISCAL NOTE

CSSB 43 (SA) AM

Division of Elections

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

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

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

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

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

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

1984	(14.8)
1986	(18.1)

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM February 3, 1989

SUBJECT: Election issues

TO: Senator Pat Pourchot

FROM: Richard A. Bradley
Legislative Counsel

Jeannie has asked that I comment briefly on two issues.

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

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

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

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

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

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

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

The question arises under the Sigler opinion of the Superior Court, at Anchorage, Case No. 3AN-88-8695-CI. The case arose out of the efforts of Libertarians to qualify for the ballot later than other candidates.

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

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

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

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

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

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

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

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

If I may be of further assistance, please advise.

RAB:lmb
L6/161

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

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FAIRBANKS, ALASKA 99701-4679

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PHONE: (907) 465-3600

January 30, 1989

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

Re: SB 43 -- conduct and administration of elections

Dear Senator Pourchot:

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

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

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

I also suggest that you consider amending AS 15.20.203

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

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

I hope that you will find these comments useful.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: James L. Baldwin
James L. Baldwin
Assistant Attorney General

JLB/pjg

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

JB

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

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

Case No. 3AN-88-8695 CI

MEMORANDUM DECISION AND ORDER

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

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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

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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.

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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.

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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 constitutionally 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.

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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: ""he concept of 'totality' is applicable...in the sense that a numb[illegible] 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,

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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

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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

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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]

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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 latters' stances on the important political issues. Any elections procedure, such as a filing deadline many months in

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(Footnote Continued)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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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

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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.

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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.

Provisions

Section 12 — Sets deadline for receipt of voted absentee ballots mailed from inside U.S. to 10 days after election rather than 15.

Section 13 — Sets same deadline for APO/FPO/overseas.

Advantages

1. Closes potential window for fraud by tightening the deadline. Current 15 day deadline offers opportunity to "work" absentee list following announcements of election night returns to encourage unvoted ballots to be voted and sent in after election day.

2. Tighter deadline will allow earlier certification which is critical after primary.

3. All counting will be done at regional level so that State Review Board can audit final numbers. Under current statutes, audit begins before deadline is reached and counting is still being completed at Director's level.

Supporting Evidence

1. Only 6 states allow receipt of ballots after close of polls. Those only allow two or three days. At 10 days Alaska would still be the most liberal state.

2. Reviewed 1857 absentee ballots from 1984 general.

   a. 85 - 90% voted absentees arrive by election day.
   b. 1/3 of returned ballots had no readable postmark.
   c. 30% were not returned at all and could be "worked" after election night returns are announced.
   d. Of postmarked ballots, 98% took 5 or fewer days to be received.
   e. 98.5% posted from APO/FPO and Overseas addresses arrived within less than 10 days of postmark.
   f. 10 day extension was deemed adequate by court in Colorado case, with regard to military and overseas ballots.

Part of floor Amendment to SB 354

Conforming Sections

HB 204

The following sections of the bill are conforming amendments:

(9) (OK) 12 13 OK

Sections 14, 15, 17, 18 relate to counting and review schedule based on the 10 day deadline.

VOTED ABSENTEE BY MAIL BALLOT DEADLINES
(And Conforming Sections)

THE FOLLOWING DOCUMENT HAS

NOT BEEN FILMED BUT IS

AVAILABLE IN THE ORIGINAL

FILE

ALASKA ELECTION LAWS

Reprinted From the Alaska Statutes, Title 15

As of January 1, 1987

Division of Elections

State of Alaska

S B

52

Alaska State Legislature

SENATOR JIM DUNCAN

P.O. BOX V JUNEAU, ALASKA 99811-3100

(907) 465-4766

COMMITTEES:
FINANCE
VICE CHAIR – HEALTH EDUCATION & SOCIAL SERVICES
BUDGET & AUDIT
BANKING & ECONOMIC DEVELOPMENT

MEMORANDUM

FEBRUARY 16, 1989

TO: SENATOR JAN FAIKS, CHAIR
SENATE JUDICIARY COMMITTEE

FROM: SENATOR JIM DUNCAN

SUBJECT: SENATE BILL 52, AN ACT RELATING TO THE USE OF INTERPRETERS IN CRIMINAL PROCEEDINGS AND IN OFFICIAL PROCEEDINGS OF STATE AGENCIES; AND AMENDING RULE 604 OF THE ALASKA RULES OF EVIDENCE.

I REQUEST THAT YOU SCHEDULE SB 52, RELATING TO USE OF INTERPRETERS IN CRIMINAL PROCEEDINGS AND IN OFFICIAL PROCEEDINGS OF STATE AGENCIES, FOR A HEARING BY THE SENATE JUDICIARY COMMITTEE AS SOON AS POSSIBLE.

SENATE BILL 52 WILL FORMALIZE AND CLARIFY THE RIGHT TO AN INTERPRETER IN OFFICIAL PROCEEDINGS FOR PERSONS WHO CANNOT READILY UNDERSTAND OR COMMUNICATE IN SPOKEN ENGLISH. PRESENTLY NON-ENGLISH SPEAKING PERSONS ARE ENTITLED TO AN INTERPRETER IN COURT PROCEEDINGS; HOWEVER, IT CAME TO MY ATTENTION IN 1988 THAT SOMETIMES OUR COURT RULES ALLOWED HIRING OF POTENTIALLY BIASED INTERPRETERS. IN ONE LOCAL CASE A PERSON WAS RETAINED BY THE COURT SYSTEM AS AN INTERPRETER FOR A RELATIVE, AND IT WAS LATER FOUND THAT THE INTERPRETER HAD A STAKE IN A NEGATIVE OUTCOME FOR THE DEFENDANT.

IN ADDITION TO CRIMINAL PROCEEDINGS, SENATE BILL 52 WILL ESTABLISH THE RIGHT OF NON-ENGLISH SPEAKING PERSONS TO INTERPRETERS IN ADMINISTRATIVE HEARINGS BEFORE STATE AGENCIES. THIS MEANS THAT IF A PERSON WHO IS ENGLISH IMPAIRED OR DEAF IS REQUIRED TO APPEAR BY A STATE AGENCY THAT AGENCY MUST PROVIDE AN INTERPRETER IF DESIRED BY THE IMPAIRED PERSON. IN THE SAME CASE I MENTIONED ABOVE, THE NON-ENGLISH SPEAKING PERSON GAVE UP THE RIGHT TO A PAROLE HEARING WITHOUT KNOWING WHAT HE WAS GIVING UP.

THE COURT SYSTEM HAS BEEN VERY HELPFUL IN WORK ON THIS BILL AND AS A RESULT HAS PROPOSED CHANGES TO THE COURT RULE WHICH WILL ADDRESS THE USE OF INTERPRETERS IN THE COURT ROOM. I HAVE ATTACHED A PROPOSED COMMITTEE SUBSTITUTE WHICH INCORPORATES CHANGES RECOMMENDED BY THE COURT SYSTEM.

ATTACHMENTS

state with the words "Seal of the District Court of the State of Alaska" and a designation of the district surrounding the vignette.

(d) **Seal of the Consolidated Trial Courts.** In those court locations where the superior and district courts have been consolidated for administration and when ordered by the presiding judge of the district, the seal for the superior and district courts is a vignette of the official flag of the state with the words "Seal of the Trial Courts of the State of Alaska" and a designation of the district surrounding the vignette.

(e) **Possession of Seals.** The clerk of the court, or if there is no clerk, the judge or magistrate, shall keep possession of the seal of the court.

(Amended by SCO 443 effective November 13, 1980)

Rule 5. Disposal of Money Paid to or Deposited With the Court.

(a) The administrative director shall designate, in accordance with written procedures established by him, the banking institutions to serve as depositories for all monies paid to, or deposited with, the courts. Certain accounts in the designated banks shall be the depositories for trust funds held by the various courts. Monies may be withdrawn from the accounts in accordance with procedures established by the administrative director.

(b) The proceeds of all fees, forfeitures, penalties and all other monies (except trust funds) collected by or deposited with the courts shall be deposited in the appropriate bank account for transfer to the general fund of the state in accordance with procedures established by the administrative director.

✳ Rule 6. Fees of Interpreters and Translators.

(a) **Amount.** The fee for an interpreter or translator for attendance in any court or at a coroner's inquest shall be set by that court. The fee shall be subject to the following limitations:

(1) For time spent in actual performance of interpreter or translator services during the proceedings, the fee shall not exceed $30.00 per hour; and

(2) For standby time during which the interpreter or translator is required by the court to be in attendance at the court facility, the fee shall not exceed $15.00 per hour.

The court shall not authorize the maximum hourly rate unless the interpreter or translator has had formal training in court interpreting or has demonstrated specialized language skills beyond mere bilingual ability.

(b) **Payment.** Interpreters and translators must be approved by the court pursuant to Evidence Rule 604. Interpreters and translators will be provided and their fees paid:

(1) by the court in coroner's inquests and presumptive death hearings;

(2) in civil and criminal cases, by the party who requires translation or interpretation to understand the proceedings or who calls a witness whose testimony must be translated or interpreted. These costs may be taxed and collected in civil cases as other costs, except as provided in subparagraph (3) below; and

(3) in civil and criminal cases where a party is deaf, mute, or otherwise unable to effectively communicate because of a physical disability, the fee for necessary in-court services of an interpreter or translator shall be paid by the court, subject to the limitations of paragraph (a) of this rule; however, if the court in a civil case finds that a party has made a frivolous claim or defense, or otherwise litigated in bad faith, the court shall order that party to pay the fees of any interpreter or translator required by any party to the case.

(Amended by SCO 469 effective June 1, 1981; and by SCO 816 effective August 1, 1987)

Annotations

Cases

(b), (d) Accounting Instructions, Superior Courts, 1959, Office of Admin. Director.

(b) Supreme Court OrderNo. 11 (Clerk of Supreme Court to Establish Bank Accounts)

(c), (d) Accounting Instructions, District and Deputy Magistrates, 1959, Office of Admin. Director.

Admin. Director Instruction 60-1 (Supplementary Instructions, Trust Funds)

(d) Admin. Director Instruction 60-12 (Unearned Docket or Filing Fees); 60-13 (Fines Levied Before Transition— Collected After Transition); 60-4 (Accounting Instru. ons for Payment of Jurors and Witness Fees, and Expenses by State of Alaska Field Warrants.

Admin. Office Bulletin 62-1 (Examination of Accounting Records and Proceedings)

Rule 7. Witness Fees.

(a) **Amount.** A witness attending before any court, referee, master, grand jury or coroner's jury or upon a deposition in a discovery proceeding, whose testimony is necessary and material to the action, shall receive a witness fee of $12.50 if such attendance, including the time necessarily occupied in traveling from his residence to the place of his attendance and returning from that place, requires not more than three consecutive hours. If such attendance requires more than three consecutive hours, the witness shall receive a witness fee of $25.00 for each day of attendance. Any witness who attends at a

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 959

Amending Evidence Rule 604 concerning interpreters.

IT IS ORDERED:

Evidence Rule 604 is amended to provide:

> An interpreter is subject to the provisions of these rules relating to qualifications as an expert and to the administration of an oath or affirmation that the interpreter will make a true translation of all communications to and from the person for whom the interpretation is made. In determining whether an interpreter is qualified and impartial, the court shall inquire into and consider the interpreter's education, certification and experience in interpreting relevant languages; the interpreter's understanding of and experience in the proceedings in which the interpreter is to participate; and the interpreter's impartiality. Parties to the proceedings may also question the interpreter concerning the interpreter's qualifications and impartiality.

DATED: March 30, 1989

EFFECTIVE DATE: July 15, 1989

Chief Justice Matthews

Justice Rabinowitz

Justice Burke

Justice Compton

Justice Moore

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 959

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DATED: March 30, 1989

EFFECTIVE DATE: July 15, 1989

Chief Justice Matthews

Justice Rabinowitz

Justice Burke

Justice Compton

Justice Moore

PROPOSED AMENDMENT TO EVIDENCE RULE 604
CONCERNING INTERPRETERS
(New language underlined
Deleted language capitalized and in brackets)

Rule 604. Interpreters.

An interpreter is subject to the provisions of these rules relating to qualifications as an expert and to the administration of an oath or affirmation that the interpreter [HE] will make a true translation of all communications to and from the impaired person. In determining whether an interpreter is qualified and impartial, the court shall inquire into and consider the interpreter's education, certification and experience in interpreting relevant languages; the interpreter's understanding of and experience in the proceedings in which the interpreter is to participate; and the interpreter's impartiality. Parties to the proceedings may also question the interpreter concerning the interpreter's qualifications and impartiality.

(3) the people of this state do not yield their sovereignty to the agencies which serve them;

(4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created;

(6) the use of teleconferencing under this chapter is for the convenience of the parties, the public, and the governmental units conducting the meetings.

(b) AS 44.62.310(c)(1) shall be construed narrowly in order to effectuate the policy stated in (a) of this section and avoid unnecessary executive sessions. (§ 3 ch 98 SLA 1972; am § 4 ch 54 SLA 1985)

Effect of amendments. — The 1985 amendment added paragraph (6) of subsection (a).

NOTES TO DECISIONS

Quoted in Brookwood Area Homeowners Ass'n v. Municipality of Anchorage, Sup. Ct. Op. No. 2953 (File Nos. S-575, S-629), 702 P.2d 1317 (1985).

Article 7. Legislative Review of Rules.

Sec. 44.62.320. Legislative annulment of regulations and review.

Editor's notes. — The Alaska Const., art. II, § 22 amendment proposal that was mentioned in the notes to decisions was defeated in the November, 1984 election.

Article 8. Administrative Adjudication.

Sec. 44.62.330. Application of AS 44.62.330 — 44.62.630.

(a) The procedure of the state boards, commissions, and officers listed in this subsection or of their successors by reorganization under the constitution shall be conducted under AS 44.62.330 — 44.62.630. This procedure, including, but not limited to, accusations and statements of issues, service, notice and time and place of hearing, subpoenas, depositions, matters concerning evidence and decisions, conduct of hearing, judicial review and scope of judicial review, continuances, reconsideration, reinstatement or reduction of penalty, contempt, mail vote, oaths, impartiality, and similar matters shall be governed by this chapter, notwithstanding similar provisions in the statutes dealing with the state boards, commissions, and officers listed. Where indi-

cated, the procedure that shall be conducted under AS 44.62.330 — 44.62.630 is limited to named functions of the agency.

(1) *[Repealed, § 5 ch 159 SLA 1980.]*

(2) Board of Chiropractic Examiners

(3) Board of Dental Examiners

(4) State Board of Registration for Architects, Engineers and Land Surveyors

(5) *[Repealed, § 13 ch 218 SLA 1976.]*

(6) Board of Examiners in Optometry

(7) *[Repealed, § 5 ch 159 SLA 1980.]*

(8) State Medical Board

(9) Division of Lands under Alaska Land Act where applicable

(10) Board of Nursing

(11) Board of Pharmacy

(12) Board of Public Accountancy

(13) Department of Labor as to functions relating to employment security only as provided in (c) of this section

(14) Real Estate Commission

(15) Alaska Workers' Compensation Board, where procedures are not otherwise expressly provided by the Alaska Workers' Compensation Act

(16) Department of Transportation and Public Facilities, as to functions relating to aeronautics and communications

(17) *[Repealed, § 12 ch 131 SLA 1980.]*

(18) *[Repealed, § 49 ch 94 SLA 1980.]*

(19) *[Repealed, § 54 ch 169 SLA 1978.]*

(20) *[Repealed, § 16 ch 82 SLA 1982.]*

(21) *[Repealed, § 54 ch 169 SLA 1978.]*

(22) *[Repealed, § 11 ch 181 SLA 1976.]*

(23) Department of Public Safety, as to suspension or revocation of a security guard's license under AS 18.65.400 — 18.65.490

(24) Department of Health and Social Services, under AS 47.35, relating to boarding and foster homes for children

(25) *[Repealed, § 60 ch 98 SLA 1966.]*

(26) *[Repealed, § 4 ch 120 SLA 1971.]*

(27) Department of Health and Social Services and Department of Environmental Conservation under Alaska Food, Drug, and Cosmetic Act (AS 17.20), and Department of Commerce and Economic Development in connection with the licensing of embalmers and funeral directors under AS 08.42.

(28) Department of Health and Social Services and the Hospital Advisory Council, under AS 18.20.010 — 18.20.130

(29) *[Repealed, § 4 ch 120 SLA 1971.]*

(30) Department of Environmental Conservation, under AS 18.35.010 — 18.35.090, concerning the regulation of tourist and trailer camps, motor courts, and motels

(31) *[Repealed, § 40 ch 206 SLA 1975.]*

(32) *[Repealed, § 4 ch 106 SLA 1970.]*

(33) Board of Marine Pilots

(34) Alaska Police Standards Council

(35) Guide Licensing and Control Board

(36) Board of Dispensing Opticians

(37) *[Repealed, § 20 ch 110 SLA 1981.]*

(38) *[Expired pursuant to § 3 ch 128 SLA 1974; am § 7 ch 108 SLA 1975.]*

(39) Alaska Public Offices Commission

(40) Board of Fisheries

(41) Board of Game

(42) the Department of Education and the Professional Teaching Practices Commission with regard to proceedings to revoke or suspend a teacher's certificate under AS 14.20.030 — 14.20.040 and AS 14.20.470(a)(4)

(43) Alaska Commission on Postsecondary Education under AS 14.48 as to denial of applications and revocation of authorizations and permits

(44) Department of Environmental Conservation, except to the extent that AS 44.62.360 — 44.62.400 are inconsistent with the manner in which proceedings are initiated under the provisions of AS 46.03

(45) University of Alaska, except to the extent that its inclusion is inconsistent with the provisions of AS 14.40

(46) *[Repealed, § 77 ch 14 SLA 1987.]*

(47) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010)

(48) the Department of Fish and Game as to functions relating to the protection of fish and game under AS 16.05.870

(49) Board of Veterinary Examiners (AS 08.98.010)

(50) Board of Nursing Home Administrators (AS 08.70.010)

(51) Board of Barbers and Hairdressers (AS 08.13.010)

(52) Department of Natural Resources concerning the Alaska grain reserve program (AS 03.12).

(53) Department of Commerce and Economic Development concerning the licensing and regulation of audiologists (AS 08.11);

(54) Department of Commerce and Economic Development concerning the licensing and regulation of hearing aid dealers (AS 08.55).

(b) The procedure of an agency not listed in (a) of this section shall be conducted under AS 44.62.330 — 44.62.630 only as to those functions to which AS 44.62.330 — 44.62.630 are made applicable by the statutes relating to that agency.

(c) Judicial review and scope of judicial review of all final decisions of the commissioner of labor on an appeal relating to employment security shall be in accord with AS 44.62.010 — 44.62.650 notwithstanding anything to the contrary in the Alaska Employment Secu-

rity Act (AS 23.20). All other procedures of the Department of Labor relating to employment security shall be as provided in the Alaska Employment Security Act and the regulations under the Alaska Employment Security Act.

(d) Except in a case of reinstatement or reduction of penalty, the provisions of this chapter do not affect statutory provisions concerning

(1) civil or criminal penalties;

(2) additional relief by injunction or restraining order;

(3) penalty provisions relating to suspension, revocation, reissuance, and other similar matters of licenses, permits, leases, concessions, and other similar matters;

(4) related matters which in their context do not relate to procedure. (§ 2 (ch 2) ch 143 SLA 1959; am § 14 ch 2 SLA 1964; am § 60 ch 98 SLA 1966; am § 2 ch 120 SLA 1966; am § 1 ch 58 SLA 1967; am § 18 ch 143 SLA 1968; am § 2 ch 83 SLA 1969; am § 2 ch 118 SLA 1969; am §§ 3, 4 ch 106 SLA 1970; am § 6 ch 104 SLA 1971; am § 4 ch 120 SLA 1971; am § 2 ch 178 SLA 1972; am § 5 ch 179 SLA 1972; am § 2 ch 17 SLA 1973; am § 3 ch 45 SLA 1973; am § 2 ch 82 SLA 1973; am § 2 ch 7 FSSLA 1973; am § 5 ch 76 SLA 1974; am § 2 ch 128 SLA 1974; am § 6 ch 9 SLA 1975; am § 25 ch 25 SLA 1975; am §§ 39, 40 ch 206 SLA 1975; am § 4 ch 25 SLA 1976; am § 2 ch 59 SLA 1976; am § 11 ch 181 SLA 1976; am §§ 13, 106 ch 218 SLA 1976; am § 18 ch 220 SLA 1976; am § 9 ch 46 SLA 1977; am § 3 ch 140 SLA 1977; am § 54 ch 169 SLA 1978; am § 10 ch 59 SLA 1979; am § 23 ch 58 SLA 1980; am § 3 ch 84 SLA 1980; am §§ 49, 60 ch 94 SLA 1980; am § 15 ch 130 SLA 1980; am § 12 ch 131 SLA 1980; am § 15 ch 141 SLA 1980; am §§ 4, 5 ch 159 SLA 1980; am § 20 ch 110 SLA 1981; am E.O. No. 51, §§ 38, 39 (1981); am § 16 ch 82 SLA 1982; am § 2 ch 100 SLA 1983; am § 124 ch 6 SLA 1984; am § 11 ch 131 SLA 1986; am § 77 ch 14 SLA 1987)

Effect of amendments. — The 1986 amendment added paragraphs (53) and (54) of subsection (a).

The 1987 amendment repealed subsection (a)(46), which read "Department of Commerce and Economic Development concerning the fishery enhancement loan program (AS 16.10.500 — 16.10.620)."

NOTES TO DECISIONS

Cited in Kenai Peninsula Borough v. State, Dep't of Community & Regional Affairs, Sup. Ct. Op. No. 3277 (File No. S-1785), P.2d (1988).

Sec. 44.62.410. Time and place of hearing. (a) The agency shall determine the time and place of hearing. The hearing shall be held in Juneau or Ketchikan, whichever is closer to the place where the transaction occurred or where the respondent resides, if the transaction occurred in or the respondent resides in the Southeastern Senate District; in Anchorage if the transaction occurred or the respondent

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM March 2, 1989

SUBJECT: CSSB 52 ( ) - sectional analysis

TO: Senator Jim Duncan

FROM: Jack Chenoweth
Legislative Counsel

This memorandum accompanies the blank-sponsor CSSB 52 ( ), relating to provision of interpreters during criminal and administrative proceedings. Section 1 of the bill treats with criminal proceedings in the judicial branch; section 2 addresses administrative proceedings in the executive branch.

*

Proposed AS 12.80.060(a) defines a person's right to an interpreter in criminal proceedings. The threshold requires that the defendant "not readily understand or communicate" spoken English. It establishes that person's right to claim the services of an interpreter in his or her defense throughout the proceedings and in the preparation and completion of any related documents.

Proposed AS 12.80.060(b) prescribes the manner in which the person who may qualify under (a) of this section may assert the right to an interpreter, and directs the court to appoint a qualified interpreter to assist the person.

Subsection (c) of proposed AS 12.80.060 extends a comparable right to an interpreter to a person who is a witness in a criminal proceeding.

Proposed AS 12.80.060(d) establishes the circumstances under which a defendant qualifying for interpreter services under (a) of the section may waive that right; all three circumstances--a written waiver, consent of counsel, and court confirmation of the waiver--must be met.

Proposed AS 12.80.060(e) assigns the costs of interpreter services to the Alaska Court System.

Subsection (f) of proposed AS 12.80.060 establishes privileges against questioning the interpreter as to communication or information obtained by the interpreter during provision of interpreter services.

*

Proposed AS 44.99.020 adds substantially similar provisions for administrative proceedings or, in the language of the statute, "official proceedings."

Subsection (a) of that section defines the right to an interpreter for "a person who is a party or witness in an official proceeding." The threshold requirement is that the person "not readily understand or communicate the spoken English language." The scope of the right is similar to that provided to defendants in criminal proceedings.

Proposed AS 44.99.020(b) defines the manner in which the person who may qualify as a party under (a) may assert the right to an interpreter, and directs the presiding officer responsible for the official proceeding to appoint a qualified interpreter to assist the person throughout the proceeding.

Proposed AS 44.99.020(c) defines the manner in which the person who may qualify as a witness under (a) may assert the right to an interpreter, and directs how interpreter services are to be provided to these persons under alternative situations.

Subsection (d) of proposed AS 44.99.020 prescribes the factors which the presiding officer is to apply to determine whether the prospective interpreter has the essential qualifications to provide the service.

Proposed AS 44.99.020(e) authorizes the presiding officer to question the prospective interpreter about that person's qualifications and impartiality.

Proposed AS 44.99.020(f) identifies persons who may not serve as interpreters.

Proposed AS 44.99.020(g) authorizes the giving of an oath to an interpreter in official proceedings that are conducted under oath.

Subsection (h) of proposed AS 44.99.020 establishes the circumstances under which a person qualifying for interpreter services under subsection (a) may waive the right.

Proposed AS 44.99.020(i) prescribes the burden of payment for interpreter services. The state is to pay the cost of services required by (b) of this section, while the party calling the witness who may claim the right under (c) of this section is to pay the cost of that service.

Finally, pertinent definitions for key terms used in the section are set out in proposed AS 44.99.020(j).

JBC:kb
wkk2/084

Enclosure

Alaska Court System
State of Alaska
OFFICE OF ADMINISTRATIVE DIRECTOR

January 27, 1989

JANALEE R. STRANDBERG
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

Roxanne Stewart
Senator Duncan's Aide
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: SB 52

Dear Roxanne:

In reviewing the most recent draft of SB 52, Bill Cotton, our court rules attorney, found two problems with section 2 of the bill. First, section (a) states that a person has a right to an interpreter throughout an official proceeding. However, the right is not limited to parties or even to witnesses. It probably was not intended to apply to spectators, but could be so construed.

Second, an interpreter will be appointed for any party who needs one in an administrative proceeding involving a state agency. Thus, a plaintiff who sues a state agency and who needs an interpreter would not have to get the interpreter him or herself. Rather, the presiding official would do this. Paragraph (i) requires the cost to be borne by the state even if the party has adequate financial resources. This cost could be substantial because interpreters often must be flown in and paragraph (i) requires compensation for 'standby time" and travel expenses.

I hope these comments will be helpful. Please call me if you have any questions.

Sincerely,

Janalee R. Strandberg
Staff Counsel

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M February 6, 1989

SUBJECT: Senate Bill 52: Alaska Court System comments

TO: Senator Jim Duncan
ATTN: Roxanne Stewart

FROM: Jack Chenoweth
Legislative Counsel

Court System Staff Counsel Janalee Strandberg has offered comments with reference to section 2 of the Senate Bill 52, relating to interpreters in certain proceedings. Section 2 is, as her letter notes, applicable to proceedings involving executive branch agencies rather than the court system itself. Both objections are pre-eminently policy decisions.

If you agree with the first objection, we could narrow the applicability of the right that may be exercised. You may consider replacing "A person . . ." (page 2, line 20) with "A person who is a party or a witness in an official proceeding . . . " or comparable language.

As to the second objection, I have trouble understanding the assertion that this would cover "a plaintiff who sues a state agency." Litigation is a judicial matter, not covered under bill section 2. Still the sense of the objection--that a person who brings a proceeding against the state ought to carry the expense of an interpreter--deserves some further thought. I'm not sure that citizen initiation of an administrative proceeding against the state occurs very often, so distinguishing those situations and not extending the right to an interpreter to them may not be a significant loss. If you agree that the right to an interpreter should run only as to persons who are party-defendants in administrative proceedings initiated by the state (as distinguished from party-plaintiffs or party-petitioners in proceedings initiated against the state), we could, of course, narrow this section's applicability by making that distinction. Alternatively, we could limit the applicability of the provision to proceedings brought under the Admin-

istrative Procedure Act, though that would probably eliminate application of this section's provisions in welfare- and other human services-related proceedings--often conducted outside the Administrative Procedure Act--where use of interpreters would be more critical.

I would be reluctant to make the expense of the use of a interpreter in conjunction with a witness in an administrative proceeding. In virtually all situations, it seems to me, the state, not the party-opponent, is in a better position to bear the cost. Until there is some evidence of abuse of the right to an interpreter, I'd be inclined to spread the burden over all state taxpayers rather than require the party to bear the burden.

JC:gc
WKG6/089

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M November 23, 1987

SUBJECT: Defendant's right to an interpreter in a criminal proceeding (Work Order 15-1452)

TO: Senator Jim Duncan
ATTN: Roxanne Stewart

FROM: Jack Chenoweth
Legislative Counsel

I

There is no explicit constitutional right by which a person accused of a crime is guaranteed the services of an interpreter or translator in the course of criminal proceedings, either under the federal or Alaska constitutions. In a small number of jurisdictions, however, the right is specifically provided for in a state's constitution.

That is not to say that an accused in a criminal proceeding is so unfamiliar with the English language that he or she cannot communicate statements or testimony, or cannot understand statements or testimony of others involved in the proceedings, is entirely without rights. Case decisions in other jurisdictions that have considered the question have concluded that an accused is entitled, as a matter of right, to be furnished the assistance of an interpreter in these circumstances. The accused's right to the services of an interpreter or translator in these circumstances has been grounded either on constitutional provisions of due process (that is, the right to participate effectively in the course of criminal proceedings by means of an interpreter) or, alternatively, the right of confrontation.

Since, in virtually all jurisdictions except those noted below, there is no absolute right to have court proceedings interpreted, and the constitutional right to confrontation may be met when the accused's legal counsel understands the testimony, either in the language used by witnesses or by translation into English, appointment of an interpreter or

translator for a person accused is a matter resting in the discretion of the trial court. As a general rule, appellate courts will look to determine whether the trial court made an informed determination as to the necessity of appointing an interpreter for the accused. That review will almost always focus, first, on whether the accused has made a timely request for the services of an interpreter and, then, on whether or not the accused was sufficiently conversant with English to understand and be understood in the course of the proceedings. An accused is not entitled to the services of an interpreter simply because he or she is not fluent in English, so long as the accused can understand and be understood in the language.

Finally, the same principle is applicable to the testimony of witnesses who speak imperfect English. The rule, generally, is that, if the witness can be understood, the accused is not entitled to have the witnesses's testimony given through or with the aid of an interpreter.

II

The law in Alaska follows the summary set out above. In Alaska, a trial judge has discretion to determine the circumstances in which an interpreter's services must be provided. In the only Alaska Supreme Court providing guidance on the subject, a 1963 matter decided before the current court administrative and evidence rules took effect, the court determined that a defendant was not entitled to the services of an interpreter to assist him to understand the responses to questions by the complaining witness:

> We hold that no error was committed [in not requiring an interpreter]. No request was made by appellant that an interpreter be provided nor did he object to the testimony. That [the complaining witness], a Korean of three years' residence in the United States, spoke broken English is evident from the transcript. Yet it is also quite evident from the transcript . . . that she understood the questions and gave intelligent responsive answers.

Qualls v. City of Anchorage, 378 P.2d 405, 406 (1963).

In Alaska, a party's right to an interpreter or translator is further defined by court rule. Current court rules allow a party to use a qualified interpreter or translator in situa-

tions as may be warranted. However, the party dependent on the interpreter or translator must bear the cost of the service. Rule 6(b) of the Rules of Administration applicable in all state courts provides, in pertinent part:

> PAYMENT. Interpreters and translators must be approved by the court pursuant to Evidence Rule 604 [prescribing requirements of qualification of an interpreter as an expert and use of an interpreter's services under oath]. Interpreters and translators will be provided and their fees paid:
> (1) by the court in coroner's inquests and presumptive death hearings;
> (2) in civil and criminal cases, by the party who requires translation or interpretation to understand the proceedings or who calls a witness whose testimony must be translated or interpreted.
> . . .
> (3) in civil and criminal cases where a party is deaf, mute, or otherwise unable to effectively communicate because of a physical disability, the fee for necessary in-court services of an interpreter or translator shall be paid by the court,
> . . . .

There appears, in the Evidence Rules Commentary to Evidence Rule 604, a remark suggesting that

> [a]ppointment of an interpreter for the indigent defendant is probably constitutionally required if the defendant's understanding of the proceedings against him depends on it.

While this is a reasonable conclusion based on the commentator's review of judicial decisions, this statement should be understood to be the commentator's conclusion and is not a restatement of definitive state law.

III

California and New Mexico--two states with sizeable Spanish-speaking minorities--have explicit state constitutional provisions that guarantee the availability of interpreter and translator services.

The New Mexico provision, an element of article II, section 14 of that state's constitution, is the older, dating from a

revision of that state's constitution in 1924. It reads, in pertinent part:

> In all criminal prosecutions, the accused shall have the right to appear and defend himself in person, and by counsel; to demand the nature and cause of the accusation; to be confronted with the witnesses against him; to have the charge and testimony interpreted to him in a language that he understands; to have compulsory process to compel the attendance of necessary witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed. [Emphasis added.]

Limited as it is to procedures involving the reading of the criminal charge and presentation of the testimony, it appears to operate somewhat more narrowly than the California provision.

The California provision, part of article I, section 14 of that state's constitution, apparently dates from a 1974 revision of the state constitution. It reads in pertinent part:

> A person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings.

There are case decisions in these two states interpreting and applying the respective provisions, and I would be pleased to summarize either or both for you if you want that degree of detail.

JC:mkr
m13/088

Louise Rude Center for Blind and Deaf Adults

CENTER FOR BLIND ADULTS
3903 Taft Drive
Anchorage, Alaska 99503
(907) 248-7770

CENTER FOR DEAF ADULTS
1020 E. 4th Avenue
Anchorage, Alaska 99501
(907) 276-3456

March 1, 1989

The Honorable Jim Duncan
Alaska State Senate
Attn: Roxanne Stewart
P.O. Box V
Juneau, Alaska 99811

Dear Senator Duncan:

I have reviewed Senate Bill 52 and strongly support its passage. All members of the Judiciary Committee will be informed of this either by faxed letters or Public Opinion Messages (POMs).

This piece of legislation will impact persons who have been disenfranchised in our legal system. Use of qualified, impartial interpreters will enable non-English speakers and the courts to communicate. It will also clarify the issue of privileged communication involving the interpreter.

As you know, I am always interested in laws which affect deaf persons, especially those who use American Sign Language as their primary language. This law will assure them that their rights to be listened to in courts and other legal proceedings are being protected.

Thank you for introducing this bill along with Senators Sturgulewski and Kerttula. You have always been a strong advocate for the rights of deaf persons. Again, thanks for the time you and Roxanne Stewart shared with me last week. I appreciate the support you have given to the Louise Rude Center programs.

Sincerely,

Carolynn J. Whitcher

Carolynn J. Whitcher
Director

CJW:cp

Louise Rude Center for Blind and Deaf Adults

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March 1, 1989

The Honorable Jan Faiks
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

Dear Senator Faiks:

As Executive Director of the Louise Rude Center for Blind and Deaf Adults, I am very involved in and aware of interpreting issues affecting deaf people in the State of Alaska. One of our programs is the Interpreter Referral Line, through which we refer interpreters to facilitate communication in courts throughout the state.

Senate Bill 52 will be coming before you as chair of the Senate Judiciary Committee on Thursday, March 4, 1989. I am writing to request your support of this bill. S.B. 52 amends Alaska Statute 12.80 in several important ways. First, it reinforces the right of non-English speaking (including deaf) persons to have an interpreter in court when accused of a crime. It clarifies the role of an interpreter within court proceedings and deals with the issue of privileged communication involving the interpreter.

The bill also effectively delineates what information should be obtained from an interpreter when the court is seeking to establish an interpreter's qualifications and impartiality. These two conditions are necessary to insure that a deaf person fully understands and can participate in his or her own court proceedings.

I am in support of this bill and would like to point out that no revenues are attached to this bill. (I had the opportunity to discuss this bill with your aide, Mark Riehle, while in Juneau last week.) Feel free to contact me concerning this bill. I would be glad to address any questions you may have.

Sincerely,

Carolynn J. Whitcher

Carolynn J. Whitcher
Director

CJW:cp

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB57
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: March 6, 1989
Title: An act relating to the use of interpreters
Sponsor: Senator Duncan
Requestor: Senate Judiciary

Agency Affected: Military & Veterans Affairs
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

There will be no fiscal impact on DMVA as a result of enactment of this bill.

Prepared by: Jeff Morrison, Director
Division: Administrative & Support Services, DMVA
Phone: 465-4600
Date: March 6, 1989

Approved by Commissioner: for MG John Schaeffer
Agency: Department of Military & Veterans Affairs
Date: March 6, 1989

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

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 52
PUBLISH DATE: 1/9/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to use of interpreters
Sponsor: Senator Duncan
Requestor: Senate Finance

Agency Affected: DEC
BRU: All
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS: None

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Current agency policy would call for interpreters in the circumstances described in the bill. No fiscal impact.

Prepared by: Amy D. Kyle
Division: Commissioner's Office
Phone: 465-2600
Date: 6 March 89

Approved by Commissioner: [signature]
Date: March 7 1989
Agency: Department of Environmental Conservation

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

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB No. 52
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Use of interpreters in criminal and official proceedings.
Sponsor: Duncan, Sturgulewski, Kerttula
Requestor: _____

Agency Affected: Public Assistance
BRU: Public Assistance Administration
Components: Eligibility Determination

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: (Attach a separate page if necessary)

Prepared by: John R. Taber, Director — Phone: 465-3347
Division: Public Assistance — Date: 3/6/89

Approved by Commissioner: _____ — Date: 3/7/89
Agency: Department of Health & Social Services

Distribution (by preparer):
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STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 52
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Regarding use of interpreters in criminal and official proceedings
Sponsor: Duncan, et al.
Requester: Senate Judiciary Committee

Agency Affected: Commerce & Economic Dev.
BRU: _____
Components: _____

EXPENDITURES / REVENUES : (Thousands of Dollars)

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

FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached

Prepared by: Linda Wild, Special Assistant Phone: 465-2500
Division: Commissioner's Office Date: _____

Approved by Commissioner: Larry Merculieff /WLL for Phone: 465-2500
Agency: Department of Commerce & Economic Development Date: 3/7/89

Distribution (by preparer):
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Office of Management and Budget
Impacted Agency(ies)

3495D-1/030789a

ANALYSIS:

Although the department does conduct certain hearings which fall under the provisions of this legislation (for example, admission and discipline hearings of the Division of Occupational Licensing, or public hearings of the Alaska Industrial Development and Export Authority), it would be speculative at this time to attempt to attach a cost for such proceedings. If enactment of this legislation should result in increased costs to the department in the future, the department would seek additional funding through the standard budget process.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 52
PUBLISH DATE: FEB 10 1989

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act relating to interpreters in criminal...official proceedings..."
Sponsor: Senator Duncan
Requestor: Senator Duncan

Agency Affected: Department of Law
BRU: Prosecution, Legal Services

Components: Prosecution - All
Legal Services - Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Please see the attached analysis.

Richard L. Pegues

Prepared by: Richard I. Pegues, Director — Phone: 465-3672
Division: Administrative Services — Date: February 10, 1989

Richard L. Pegues /FOR/

Approved by Commissioner: Grace Berg Schaible, Atty. Gen. — Date: February 10, 1989
Agency: Department of Law

Distribution (by preparer):
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