

SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

**Arctic Village Council, League of
Women Voters of Alaska, Joyce M.
Anderson, and Edward H. Toal, IV,**

Plaintiffs

No. 3AN-22-07766 CI

v.

Michaela Thompson, in her official
capacity as the Acting Director of the
Alaska Division of Elections; **Nancy
Dahlstrom**, in her official capacity as
the Lieutenant Governor of the State of
Alaska; and **Alaska Division of
Elections**,

Defendants.

**AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs Arctic Village Council, League of Women Voters of Alaska, Joyce M. Anderson, and Edward H. Toal, IV, file this Complaint for Declaratory and Injunctive Relief against Defendants Michaela Thompson, in her official capacity as the Acting Director of the Alaska Division of Elections; Nancy Dahlstrom, in her official capacity as the Lieutenant Governor of Alaska; and the Alaska Division of Elections. Defendants have unduly burdened Plaintiffs' right to vote and violated their right to procedural due process as guaranteed by the Alaska

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Constitution, Article V, Section 1, and Article I, Section 7, respectively, by failing to provide voters with timely notice of and an opportunity to cure deficient ballot envelopes before rejecting the ballots they contain. Defendants will continue to violate voters' rights if not enjoined by this Court from doing so.¹

NATURE OF THE CASE

1. The right to vote “is fundamental to our concept of democratic government” and “is key to participatory democracy.”² Alaskans exercise this fundamental right by voting in person or absentee by mail. Any Alaska voter may vote absentee for any reason.³

2. Every election, Alaska election officials reject mail-in ballots that are lawfully cast by Alaska voters because of simple mistakes on voters' ballot envelopes. These include the voter: (1) forgetting to sign the ballot

¹ To note, some of the attorneys for some of the Plaintiffs were involved in a similar lawsuit challenging the lack of timely notice and cure in advance of the 2020 general election, but were unable to proceed with that litigation after the 2020 general election for logistical reasons protected by the attorney-client privilege. No decision on the merits was ever reached in that suit.

² *Miller v. Treadwell*, 245 P.3d 867, 868-69 (Alaska 2010) (cleaned up).

³ AS 15.20.010.

envelope;⁴ (2) forgetting to provide a Voter Identifier or mistakenly providing a Voter Identifier that does not match the State’s records;⁵ or (3) forgetting to have a witness sign or notarize the ballot envelope⁶ (collectively, “common mistakes”). The Division of Elections rejects such ballots outright and does not provide these voters any opportunity to fix these common mistakes. These voters are not even notified that the Division rejected their ballots—and their votes were never counted—until *after* election results are finalized.

3. The ease with which such common mistakes occur was made clear this past June. In Alaska’s 2022 special primary election for the U.S. House of Representatives, more than 5,400 ballots—roughly 3% of all ballots submitted—were rejected for these common mistakes, which easily could have been cured if the voter had been timely notified by state election officials and given an opportunity to fix the mistake.⁷ Though

⁴ AS 15.20.203(b)(1) (“Voter Signature Requirement”).

⁵ 6 AAC 25.510.580 (“Voter Identifier Requirement”).

⁶ AS 15.20.203(b)(2) (“Witness Requirement”).

⁷ State of Alaska – Division of Elections, Absentee Review Board Report Details (dated Jun. 22, 2022), available at https://www.alaskapublic.org/wp-content/uploads/2022/06/Absentee-Review-Board-Details_SW-6.21.2022-1.pdf (hereinafter “June 2022 Absentee Review Board Report”).

the number of rejected ballots was atypically high in the June 2022 special primary because that election was conducted almost exclusively by mail, the Division has rejected absentee ballots for similar reasons in every recent election for which statistics are available. In the November 2022 General Election, the rejection rate for the common mistakes at issue here was 0.75% statewide.⁸ The June 2022 statistics highlight the importance of Plaintiffs’ requested relief, since it is entirely possible that some event or situation—extreme weather, another pandemic, lack of poll workers—could prevent voters from feeling comfortable or being able to vote in person in the future.

4. In areas of the state with greater percentages of Alaska Native voters, rejection rates have historically been much higher than the statewide average. For example, in House District 38, encompassing the Bethel and the Lower Kuskokwim areas—in which, according to the 2020 Census, Alaska Native and American Indian individuals comprise approximately 83% of the district’s population—the rejection rate for the common mistakes at issue here was well over 16% in the June 2022

⁸ State of Alaska – Division of Elections, Absentee Review Board Report Details (dated Jan. 20, 2022) (hereinafter “November 2022 Absentee Review Board Report”).

Special Election—over five times the statewide average.⁹ In the November 2022 General Election, regions with substantial Alaska Native populations likewise saw rejection rates that were double and sometimes triple the statewide average.

5. Instead of notifying voters of these common mistakes when there is still time to cure them—before vote counts are finalized—the Division of Elections only notifies voters of rejected ballots after certifying elections, even when the Division discovers the common mistakes well before vote counts are finalized. This timeline renders the notification meaningless for purposes of any current election. Affected voters’ votes are never counted because they are never given an opportunity to cure these common mistakes.

6. It is virtually certain that many future absentee voters will be denied their right to have their vote count because of these common mistakes that are easily curable with timely notice.

7. Simple procedures could provide timely notice of and an opportunity to cure common mistakes discovered on ballot envelopes before vote counts are finalized and thus ensure that voters are not unlawfully deprived of their right to have their vote counted. The

⁹ June 2022 Absentee Review Board Report at 7.

opportunity to cure ballot envelope errors is already offered by the Municipalities of Anchorage and Juneau during municipal elections, and is likewise provided by 22 other states.¹⁰

8. The Alaska Constitution requires Defendants to implement procedures to provide voters a timely and meaningful opportunity to correct curable common mistakes before vote count deadlines. Alaskans deserve to vote with confidence, with the knowledge that an inadvertent, common mistake on their ballot envelope will not render their vote meaningless and that their fundamental right to vote and their procedural due process rights will be protected—particularly in rural communities where in-person voting is often unavailable and residents have no choice but to vote by mail.

JURISDICTION AND VENUE

9. This Court has jurisdiction to award declaratory and injunctive relief under AS 22.10.020(a) through (c) and (g).

¹⁰ See Nat'l Conf. of State Legislatures, *States with Signature Cure Processes* (Jan. 18, 2022), <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-15-states-that-permit-voters-to-correct-signature-discrepancies.aspx>.

10. Venue is proper here under Alaska Rule of Civil Procedure 3 and AS 22.10.030 because one or more Defendants has offices in this district, and because one or more Plaintiffs' claims arise in this district.

PARTIES

A. Plaintiffs

11. Arctic Village Council (the "Tribe") is a federally recognized Tribal government. Arctic Village is situated on the southern boundary of the Arctic National Wildlife Refuge, along the east fork of the Chandalar River and about 100 miles north of Fort Yukon, Alaska. The Tribe exercises powers of self-governance and jurisdiction over its Neets'ąjį Gwich'in Tribal citizens living in Arctic Village. The Tribe is responsible for the health, safety, and welfare of its citizens. The Tribe sues in a representational capacity *parens patriae* on behalf of the affected Tribal citizens it represents, who include U.S. citizens 18 years of age and older who are registered to vote or eligible to register to vote in Alaska. Voting is important for the Arctic Village community because it allows members to exercise their voices in the democracy—and voting by mail is particularly important because, in some years, the Tribe's citizens do not have access to in-person voting. Arctic Village Council has therefore diverted significant resources to educating its citizens about

absentee voting requirements to try to limit the number of ballots from its community that are rejected for easily fixable errors. Without the due process of timely notice of and a meaningful opportunity to correct rejected absentee ballots, many Tribal citizens have not had their votes count, and additional Tribal citizens likely will not have their votes count in elections to come.

12. The League of Women Voters of Alaska (“LWV”) is a nonpartisan political organization that works to encourage informed and active participation in government and to influence public policy through education and advocacy. LWV is an affiliate of the League of Women Voters of the United States. LWV has approximately 400 members throughout Alaska, the majority of whom are citizens 18 years of age and older who are registered to vote or eligible to register to vote in Alaska. Many of LWV’s members have voted absentee in past elections and plan to vote absentee in elections to come. In the past, some LWV members have had their absentee ballots rejected for the common mistakes that are the subject of this suit. LWV members are at a risk of not having their votes count in the future by the lack of timely notice of and a meaningful opportunity to cure those common mistakes. LWV has diverted and will need to continue to divert resources from its voter registration, voter education, and voter mobilization activities toward *Arctic Village v. Thompson*

educating voters about the ballot envelope requirements that are the subject of this suit because LWV realizes that, without an opportunity to cure ballot envelope deficiencies, voters may be denied the right to have their vote count merely because they made an easily correctable mistake. If cure procedures were available, the LWV could devote fewer of its resources to trying to educate voters to prevent common, fixable errors and could instead spend more of its limited resources on other important LWV projects, like voter registration drives, public information campaigns about updating voter registrations, and candidate forums.

13. Joyce M. Anderson is an Anchorage resident who is registered to vote in Alaska. Ms. Anderson was Director of Elections and Voter Registration for the City of Minneapolis, Minnesota, for 15 years. After moving to Anchorage in 1999, she was appointed to serve on the Municipality of Anchorage Election Commission from 2012 to 2021, which she chaired for six years. Ms. Anderson voted by mail in the special primary election for the U.S. House of Representatives, held in June 2022. Despite Ms. Anderson's ample elections background she made a simple, inadvertent mistake when filling out her ballot envelope certificate: intending to use the last four digits of her social security number as her voter identifier, she actually wrote down four digits from an old phone number that was quite similar. Because of this mistake,

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Ms. Anderson's ballot was rejected, and her vote was not counted. She did not realize her error until after the election was already certified, when the Division of Elections finally notified her that her ballot had been rejected. If someone who has worked as an elections official for 24 years can make an accidental error on their mail ballot, anyone can. Ms. Anderson intends to vote by absentee mail-in ballot in future elections. She is concerned that, should she make an inadvertent mistake on her absentee mail-in ballot, it will be rejected, even though she did not intend to make a mistake and the mistake would be likely curable. Ms. Anderson would be confident that her vote would count if the Division of Elections provided for a cure process for correctable ballot errors, and she would take prompt steps to correct any errors if they were brought to her attention. Having a say as a voter is important to her.

14. Edward H. Toal, IV, is an Anchorage resident who is registered to vote in Alaska. He has voted in almost every statewide election in Alaska since 1999. Mr. Toal voted by mail in the special primary election for the U.S. House of Representatives, held in June 2022. When Mr. Toal completed his ballot in the special primary election, he recalled that the Witness Signature Requirement had been suspended by court order, and mistakenly believed that he did not need a witness to sign his June 2022 mail ballot. He sent in his mail ballot weeks ahead of the June deadline.

Days after sending his ballot, he was chatting with friends about the election and learned that in fact he did need to have a witness sign his 2022 ballot envelope for his vote to count. He immediately reached out to the Division by email, on May 11, 2022, explaining his omission and asking how he could fix it. The very next day, on May 12, 2022, the Division replied and told him there was nothing he could do and that his ballot would be rejected. Weeks later, on June 30, 2022, well after the election results were certified, the Division mailed him an official notice of his ballot rejection. Mr. Toal intends to vote by absentee mail-in ballot in future elections. He is concerned that, should he inadvertently make a mistake on his absentee mail-in ballot, it will be rejected even though he does not intend to make a mistake and the mistake would be likely curable. Mr. Toal would be confident that his vote would count if the Division of Elections provided for a cure process for correctable ballot errors, and Mr. Toal would take prompt steps to correct any errors if they were brought to his attention. Having a say as a voter is important to him.

B. Defendants

15. Defendant Michaela Thompson is the Acting Director of the Alaska Division of Elections, and she is sued in her official capacity.

Under AS 15.15.010, Ms. Thompson is the chief elections official for the *Arctic Village v. Thompson*

State and is responsible for “the general administrative supervision over the conduct of state elections, and may adopt regulations under AS 44.62 (Administrative Procedure Act) necessary for the administration of state elections.” She is responsible for the supervision of regional election offices and all matters related to the training and employment of election personnel. AS 15.10.105(a).

16. Defendant Nancy Dahlstrom is the Lieutenant Governor of Alaska, and she is sued in her official capacity. She is responsible for the control and supervision of the Alaska Division of Elections, including the appointment of the Director of the Alaska Division of Elections. AS 44.19.020.

17. Defendant the State of Alaska, Division of Elections, is an executive branch agency responsible for the administration of Alaska’s elections and enforcement of Alaska’s election laws.

FACTUAL ALLEGATIONS

A. Absentee voting and the Voter Signature, Voter Identifier, and Witness Requirements.

18. Any Alaska voter may request an absentee ballot to vote by mail for any reason.¹¹ The Division of Elections then mails the voter a package

¹¹ AS 15.20.010. Voters can apply for absentee ballots beginning on January 1 of each year, and their application must be received by ten

that includes an instruction sheet, ballot, secrecy sleeve, and return envelope that has blank lines for the Voter Signature, Voter Identifier, and Witness Signature.

19. The Voter Identifier allows the voter to enter either their “Voter No.,” “AK Driver’s License No.,” “Date of Birth,” or “Last 4 of SSN.” By signing the “Voter Certificate,” voters attest that they (1) are a citizen of the United States, (2) have been a resident of Alaska for at least 30 days, (3) have not requested a ballot from any other state, and (4) are not voting in any other manner in this election.

20. Because the Voter Signature, Voter Identifier, and Witness Signature are visible from the outside of the envelope, they can be reviewed without opening the ballot envelope. If a voter makes a mistake on any of these items, the Division will automatically reject the ballot and not count the voter’s vote.¹²

B. Defendants’ historic notice practice and the impacts to voters—particularly in Alaska Native communities.

21. Alaska election law requires the Division to notify each absentee voter if their ballot is rejected due to errors on the ballot

days before Election Day. Alaska Division of Elections, *By-Mail Ballot Delivery*, <https://www.elections.alaska.gov/Core/votingbymail.php>.

¹² See AS 15.20.203(b)(1)-(2); 6 AAC 25.570; 6 AAC 25.580(7)-(9).

envelope, but this notice need not be sent until after the election.¹³ Notice must be mailed “*not later than* (1) 10 days after completion of the review of ballots by the state review board for a primary election or a special primary election . . . , and (2) 60 days after certification of the results of a general election or special election. . . .”¹⁴ The statute sets a deadline, not a starting date, and thus does not prohibit earlier notice.

22. Despite this, even if an error is noticed early in the ballot review process, the Division waits until after the election is certified to notify voters that their ballot was rejected and their vote was not counted. And if voters themselves realize after mailing their ballot that they made an error, the Division currently refuses to allow voters to correct those errors, as happened to Plaintiff Ed Toal.

23. As noted earlier, in the June 2022 special primary election, over 5,400 mail ballots were rejected for the common mistakes at issue here, representing nearly 3% of all ballots cast.¹⁵ Other past Alaska elections also saw votes go uncounted due to these common mistakes, too. In the 2022 General Election, the Division rejected 0.75% of mail ballots for the

¹³ AS 15.20.203(h).

¹⁴ AS 15.20.203(i) (emphasis added).

¹⁵ June 2022 Absentee Review Board Report at 18.

common mistakes at issue here. In 2018, that figure was 1.65%.¹⁶ In 2016, it was 2.23%.¹⁷ In 2014, it was 2.86%.¹⁸ And in 2012, it was 2.75%.¹⁹

24. Predominantly Alaska Native communities bear the brunt of negative impacts from the lack of timely notice and an opportunity to cure. For example, in the Bristol Bay/Aleutians/Dillingham/Unalaska region, which made up then-House District 37, the rejection rate in June 2022 for the common errors at issue in this suit was more than 10%.²⁰ In the November 2022 General Election, it was more than double the statewide average rejection rate, at 1.75%.²¹

¹⁶ U.S. Election Assistance Comm’n, *Election Administration and Voting Survey*, <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys> (last visited Sept. 6, 2022).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* The 2020 rejection rate was 0.14% for the common mistakes at issue here, which skews lower than other years because the Witness Signature Requirement was temporarily lifted that year by court order, and because official elections data for that year did not report on how many ballots were rejected for incorrect or missing voter identifier information. See U.S. Election Assistance Comm’n, *2020 Election Administration and Voting Survey*, <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys> (last visited Sept. 6, 2022).

²⁰ June 2022 Absentee Review Board Report at 7. Election district boundaries have recently changed, though the changes do not appear to be dramatic for the districts highlighted here.

²¹ November 2022 Absentee Review Board Report.

25. In the Bethel and Lower Kuskokwim region, which made up then-House District 38, the rejection rate in June 2022 for the common mistakes at issue in this suit was a staggering 16.5%.²² It was 0.82% in the November 2022 General Election.²³

26. In the Bering Straits/Nome/Yukon Delta region that made up former House District 39, the rejection rate in June 2022 for the common mistakes at issue in this suit was over 14%.²⁴ It was almost double the statewide rejection rate in the November 2022 General Election, at 1.29%.²⁵

27. And for the Arctic/Utqiagvik/Kotzebue region in former House District 40, the rejection rate was in June 2022 for the common mistakes at issue in this suit almost 12%.²⁶ It was over three and half times the statewide rejection rate in the November 2022 General Election, at 2.73%.²⁷

²² *Id.*

²³ November 2022 Absentee Review Board Report.

²⁴ *Id.* at 8.

²⁵ November 2022 Absentee Review Board Report.

²⁶ *Id.*

²⁷ November 2022 Absentee Review Board Report.

28. Each of these districts has a voting age population that is over 43% Alaska Native or American Indian, with Districts 38 and 39 exceeding 85%.²⁸

29. Absent relief from this Court, thousands of Alaska voters in future elections—including disproportionately high numbers of Alaska Native voters—likely will not have their votes count due to easily fixable common mistakes on their absentee ballot envelopes that can be detected and cured before vote counts are finalized.

C. The Alaska election calendar.

30. Alaska’s election calendar includes ample time in which the Division of Elections could provide voters with notice of and an opportunity to cure missing signatures or missing or incorrect identification information before all ballots must be counted and election results must be certified. The Division begins mailing absentee ballots to the general public “approximately 25 days” before Election Day.²⁹

²⁸ Alaska Redistricting Board, *Alaska Redistricting Board Proclamation 2021* and *Appendices*, at 77, https://www.akredistrict.org/files/3616/3658/2734/2021_Proclamation_and_Appendices.pdf (last accessed January 30, 2022).

²⁹ See <https://www.elections.alaska.gov/Core/votingbymail.php>.

31. When the Division receives completed absentee ballots in one of its four regional offices—often well before Election Day—Division employees preliminarily review and log them on arrival, making note on the logs of any apparent error. As the Division’s Absentee Review Procedures describes, ballots “received in regional offices are organized in district order by date of receipt.” “In district and date order, division staff logs each ballot to the applicable voter registration record for the voter who voted, ascertains the initial accept or reject determination and records the sequence number assigned by the Voter Registration and Election Management System (VREMS) on the ballot envelope,” which includes a unique rejection code for each of the common mistakes at issue in this suit.³⁰

32. During this first-level review the Division identifies the common mistakes at issue in this suit. At any time after this point (until vote counts are finalized) the Division could give voters notice and an opportunity to correct any errors so that their vote will count.

33. After this first-level review, a non-partisan Absentee Review Board then conducts a formal second-level review. The Board may begin

³⁰ State of Alaska, Division of Elections, Absentee Review Board Review Procedures for Absentee Ballots and Ballot Logging Procedures) (dated May 4, 2022) (“Absentee Review Procedures”) at 7.

its formal review at any time after ballots are received, but must start no later than seven days *before* Election Day.³¹ The Division provides the Board with a “details report” that includes the accept or reject code that a Division regional office worker assigned to each absentee ballot, among other information.³² The Board then reviews each ballot envelope to “[d]etermine if the proper accept or reject code was applied to the ballot envelope and that it matches the code listed on the details report.”³³ This is the second opportunity for the Division to identify the common mistakes at issue here, and to give voters notice and an opportunity to cure them. All of this can be done without opening the ballot envelope.

34. The review process continues as additional ballots are received, until “the 15th day following the day of the election,” at which time the Board must certify the absentee ballot review.³⁴ The absentee ballots that the Board has approved are opened and counted after Election Day in a sequence directed by the election supervisor.³⁵

³¹ AS 15.20.201(a).

³² Absentee Review Procedures at 7.

³³ *Id.* at 8.

³⁴ AS 15.20.201(c).

³⁵ Absentee Review Procedures at 10.

35. Thus, Alaska’s election calendar provides *at least* seven days before Election Day plus fifteen days after during which Defendants could provide voters with notice of and an opportunity to cure the common mistakes on ballot envelopes at issue here. Further, it bears repeating that the Division and Board may begin reviewing ballot envelopes for common errors *earlier* than seven days before Election Day.

D. Implementing a notice and cure process statewide.

36. The Alaska Statutes do not prohibit timely notice of and an opportunity to cure the common mistakes on absentee ballot envelopes that are at issue here. Under existing Alaska law, election officials could immediately notify voters of any ballot envelope error they detect, as detailed above. To accomplish timely notice, Defendants could utilize their access to voters’ contact information as available through other State forums. For example, Defendants almost certainly have access to most voters’ phone numbers and email addresses through the Department of Motor Vehicle database under the National Voter Registration Act or “Motor Voter Act.”³⁶ Indeed, the Absentee Review

³⁶ See Alaska Division of Elections, *Locations Where to Register*, <https://www.elections.alaska.gov/Core/wheretoregister.php> (indicating that Alaskans can register to vote at all Division of Motor Vehicles Offices); see also State of Alaska Division of Motor Vehicles, *Application*

Procedures direct reviewers to “[v]erify in DMV” voter identifier numbers, among other information.³⁷ And, for voters who registered to vote through the Permanent Fund Dividend (PFD) Automatic Voter Registration process, the Division also likely has access to the voter’s phone number and email address, as those are utilized in the PFD registration process.

37. And as for cure, election officials could allow voters to fill out a cure certificate supplying the missing information and return it before the deadline for counting ballots. Because “[r]ejected ballots are organized in sequential order together,”³⁸ Division employees could readily pull from that sequence the ballot envelope for any voter who properly completes a cure certificate, and then add that voter’s ballot to the pile of ballots still to be counted.

38. As a result, implementing a timely notice and cure process—which is required for the existing statutes to be consistent with Alaska Constitution, Article V, Section 1, and Article I, Section 7—would be

for Alaska Driver License, Permit or Identification Card, <https://doa.alaska.gov/dmv/forms/PDFS/D1.PDF> (requiring the applicant to include an email address and phone number).

³⁷ Absentee Review Procedures at 18, 23, 30, 36-37, 40, 47, 50-51.

³⁸ Absentee Review Procedures at 9.

possible without violating any Alaska Statute or holding any Alaska Statute unconstitutional.

39. Timely notice and cure already occurs in Anchorage municipal elections³⁹ and Juneau municipal elections.⁴⁰

40. In Anchorage, the cure process extends to mail ballots that are submitted without a voter identifying number or signature, and for ballots that are determined to have a voter signature that does not match a signature that the Municipality has on record for the voter (the State of Alaska does not engage in signature matching). For the ballots submitted without listing a voter identifying number, the Anchorage Municipal Clerk simply mails the affected voter a letter stating that “Your Urgent Action Is Required for Your Vote to Count!” and asks the voter to provide a copy of their ID in an enclosed return envelope or bring the ID in person to the Municipality Election Center during regular business hours by a specified date. For ballots submitted without a voter signature, the notification letter includes the same urgent subject line and asks the voter to sign a cure form that contains a copy of a voter declaration confirming that the voter completed their ballot. These same

³⁹ See AMC 28.70.030D.

⁴⁰ See CBJ 29.07.370(e)(3).

processes could be used by the State to provide the relief requested here before vote counts are finalized.

41. Anchorage voters heavily utilize the cure procedures available to them. A 2020 report from the Anchorage Municipal Clerk's Office to the Anchorage Assembly about the April 2020 Municipal Election detailed a 71.5% cure rate for ballot envelopes that had signature or other issues.⁴¹ That is, 71.5% of voters who would otherwise not have had their vote count clearly intended to have their vote count and took the extra step provided by the election authority to ensure that it did.

42. Unlike other states in which election results are tallied by county clerks or county election administrators, Alaska's approach is entirely state-centric, which provides for streamlined logistical operations. The Division of Elections oversees four regions,⁴² with which it is in constant contact during election season. Implementing a uniform notice and cure process would only require that direction be given to the four Regional Election Offices and the Absentee Review Board—all of whom already operate under the authority of the Division.

⁴¹ Municipality of Anchorage Assembly Memorandum No. AM 229-2020 (dated April 21, 2020).

⁴² See <https://www.elections.alaska.gov/Core/contactusandsitemap.php>.

43. The fiscal burden on Defendants of Plaintiffs’ requested relief would be minimal. The Division has estimated that a notice and cure procedure with more steps than Plaintiffs seek here would cost a mere \$110,500 per election year.⁴³ This is *de minimis* compared to the State’s nearly \$12 billion annual budget, \$6.9 million of which was appropriated to the Division.⁴⁴

CLAIMS FOR RELIEF

COUNT I

Undue Burden on the Right to Vote Alaska Constitution, Article V, Section 1

44. Plaintiffs reallege and incorporate by reference paragraphs 1 through 43, as though fully set forth herein.

⁴³ HB 267 Fiscal Note (Jan. 21, 2022). This fiscal note was prepared in response to a bill—HB 267—that would have mandated a notice and cure process. Nothing about that bill (or similar proposed bills) should be read to suggest that notice and cure is not permitted by the current statutes. These bills would make a legal requirement out of steps the Division is free to implement without any statutory change. HB 267 faced no documented opposition and was never rejected by any legislative vote. It was referred to the House State Affairs Committee, and no further action on it occurred before the end of the 2022 legislative session.

⁴⁴ See Office of Mgmt. & Budget, *Statewide Totals - Operating Budget (1159)* (June 28, 2022), https://omb.alaska.gov/ombfiles/23_budget/FY23Enacted_statewide_totals_6-28-22.pdf; State of Alaska, Office of Management and Budget, Component Summary for Office of the Governor (June 28, 2022) at 2.

45. Article V, Section 1, of the Alaska Constitution guarantees the right to vote to “[e]very citizen of the United States who is at least eighteen years of age” and “who meets registration residency requirements which may be prescribed by law.”

46. When the constitutionally protected right to vote is burdened, Alaska courts “assess the character and magnitude of the asserted injury to the right[]” and weigh that against “the precise interests put forward by the State as justifications for the burden imposed by its rule.”⁴⁵ Alaska courts then “judge the fit between the challenged legislation and the state’s interests in order to determine the extent to which those interests make it necessary to burden the plaintiff’s rights.”⁴⁶ “This is a flexible test: as the burden on constitutionally protected rights becomes more severe, the government interest must be more compelling and the fit between the challenged legislation and the state’s interest must be closer.”⁴⁷

47. Article V, Section 1, is violated by the current failure to provide an opportunity for timely notice of and an opportunity to cure common

⁴⁵ *State v. Arctic Vill. Council*, 495 P.3d 313, 321 (Alaska 2021).

⁴⁶ *Id.* (cleaned up).

⁴⁷ *Id.*

mistake on a voter's ballot certificate. Without notice and cure, voters face a substantial, if not severe, burden on the fundamental right to vote—not having their vote count—if they make a common and easily fixable mistake.

48. Rejecting mail ballots based solely on common mistakes without an opportunity to cure does not serve any important, let alone any compelling, state interest, particularly when (i) the State can otherwise verify a voter's eligibility to vote, (ii) state laws are already in place to detect and deter fraud, (iii) there is ample time in the election calendar to provide timely notice and a meaningful opportunity to cure, and (iv) election results will not be delayed by providing a short cure period. Thus, the burdens imposed on the fundamental right to vote by implementing the Voter Signature, Voter Identifier, and Witness Signature Requirements without notice and an opportunity to cure outweigh any purported state interest in adhering to its current practice.

49. Many Alaska voters will suffer direct and irreparable injury if Defendants refuse to allow them an opportunity to cure the slated rejection of their mail ballot due to a missing signature from either the voter or a witness or because of a missing or inadvertently incorrect identification number.

50. Without relief from this Court, many more Alaska voters will
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be deprived of their right to vote in future elections—as thousands have been in past elections.

COUNT II
Deprivation of Procedural Due Process
Alaska Constitution, Article I, Section 7

51. Plaintiffs reallege and reincorporate by reference paragraphs 1 through 50, as though fully set forth herein.

52. Article I, Section 7, of the Alaska Constitution provides that “[n]o person shall be deprived of life, liberty, or property without due process of law.”

53. The Alaska Supreme Court has held that “the Alaska Constitution’s due process clause must be flexibly applied by balancing three factors: the private interest affected by the official action; the risk of erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute safeguards; and finally, the government’s interest, including the fiscal and administrative burdens that additional or substitute procedural requirements would entail.”⁴⁸

⁴⁸ *Laidlaw Transit, Inc. v. Anchorage Sch. Dist.*, 118 P.3d 1018, 1026 (Alaska 2005) (cleaned up).

54. This standard is identical to the federal balancing test set forth in *Mathews v. Eldridge*.⁴⁹ Courts across the nation have found that a failure to provide timely notice and a meaningful opportunity to cure deficient ballots violates due process under the *Mathews* test.⁵⁰

55. Having created an absentee voter statutory scheme through which qualified voters can exercise their fundamental right to vote, Alaska must provide these voters with constitutionally adequate due process protections.⁵¹

56. The lack of timely notice and an opportunity to cure ballots slated for rejection due to common mistakes on ballot envelope certificates fails to meet due process requirements under the *Mathews* standard. Here, the private interest at issue is the fundamental right to vote. Defendants' current practice has resulted in thousands of absentee

⁴⁹ 424 U.S. 319, 335 (1976). See *Midgett v. Cook Inlet Pre-Trial Facility*, 53 P.3d 1105, 1111 (Alaska 2002) (adopting the *Mathews* tripartite test).

⁵⁰ See, e.g., *Democracy North Carolina v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158 (M.D.N.C. 2020); *Self Advoc. Sols., N.D. v. Jaeger*, 464 F. Supp. 3d 1039 (D.N.D. 2020); *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1338 (N.D. Ga. 2018); see also *Zessar v. Helander*, No. 05 C 1917, 2006 WL 642646, at *2 (N.D. Ill. Mar. 13, 2006).

⁵¹ See *Martin*, 341 F. Supp. 3d at 1338; *Zessar*, 2006 WL 642646, at *2; *Raetzl v. Parks/Bellemont Absentee Election Bd.*, 762 F. Supp. 1354, 1358 (D. Ariz. 1990).

ballots being rejected because absentee voters are not provided notice and opportunity to cure in a timely manner.

57. The risk of erroneous deprivation of a voter's fundamental right to vote is thus high. The value of instituting additional procedures to cure such deficiencies is great and will serve to protect the fundamental right to vote.

58. The State's interest in protecting the integrity of elections is easily served while implementing a system that does not disregard otherwise valid votes due to curable, common mistakes on a voter's ballot envelope. Any administrative burdens that would be entailed by providing a system of timely notice and an opportunity to cure are likely to be minimal.

59. Many Alaska voters will suffer direct and irreparable injury if Defendants continue to refuse to provide an opportunity to cure the rejection of mail ballots that are missing a required signature or proper voter identifier. Without relief from this Court, these voters will be deprived of their right to vote in future elections.

PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court enter judgment:

a) Declaring that Defendants' failure to provide voters with timely notice and a meaningful opportunity to cure deficiencies under Alaska's Voter Signature, Voter Identifier, and Witness Signature Requirements for mail ballots violates Article V, Section 1, and Article I, Section 7, of the Alaska Constitution;

b) Preliminarily and permanently enjoining Defendants, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from implementing, enforcing, or giving any effect to the Voter Signature, Voter Identifier, or Witness Signature Requirements without also providing a process by which voters will be timely notified and provided an opportunity to cure deficient mail ballot envelopes prior to the existing deadline for certifying vote counts;

c) Awarding Plaintiffs their costs, expenses, and reasonable attorneys' fees; and

d) Granting any other and further relief that this Court deems just and proper.

DATED: February 1, 2023.

Respectfully submitted,



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I hereby certify that on February 1, 2023,
a true and correct copy of the foregoing document
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