

IN THE 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,)
v.)
))
CAROL BEECHER, in her official capacity)
as the 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.)

Case No. 3AN-22-07766 CI

ORDER DENYING MOTION TO DISMISS

Defendants Carol Beecher, Nancy Dahlstrom, and the Alaska Division of Elections (collectively, the “State”) filed a Motion to Dismiss the Amended Complaint for Declaratory and Injunctive Relief filed by Plaintiffs Arctic Village Council, League of Women Voters of Alaska, Joyce Anderson, and Edward Toal. After the motion was fully briefed, oral argument was held on July 21, 2023.

Having reviewed and considered the motion, opposition, reply, and oral argument, the Court denies the Motion to Dismiss.

I. BACKGROUND

This case concerns the constitutionality of AS 15.20.203, which outlines procedures for reviewing the sufficiency of absentee ballots in Alaska elections. If a

voter erroneously submits a deficient absentee ballot, AS 15.20.203 does not require Alaska election officials to provide the voter with notice of and an opportunity to cure the mistake before the officials reject the ballot. Plaintiffs allege that the State's failure to provide any such notice-and-cure procedure violates the rights to vote and to procedural due process "as guaranteed by the Alaska Constitution, Article V, Section 1, and Article I, Section 7, respectively."¹

Under AS 15.20.203, "[a]n absentee ballot may not be counted if (1) the voter has failed to properly execute the certificate [or] (2) an official or the witnesses authorized by law to attest the voter's certificate fail to execute the certificate."² A properly executed ballot certificate "must include the voter's signature and the signature of an official witness or signature of one individual 18 years of age or older attesting the ballot."³ An absentee ballot will not be counted if the voter failed to provide a required form of identification, failed to sign the certificate, or failed to have the ballot witnessed.⁴ However, Alaska law does not require the voter's signature to match any other signature on file.⁵

After rejecting a ballot for one of the above errors, election officials must prepare and mail to the voter who submitted that ballot "a summary of the reason that the

¹ Am. Compl. at 1-2.

² AS 15.20.203(b)(1), (2).

³ 6 AAC 25.550(a).

⁴ 6 AAC 25.580(7)-(9); 6 AAC 25.510; 6 AAC 25.570(a).

⁵ See 6 AAC 25.550(b) ("The signature of the voter may be any written or printed form of the voter's name or initials, or any other mark intended as a signature.").

challenge to the absentee ballot was upheld and the absentee ballot was rejected.”⁶ This notification must occur “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 . . . [or] (2) 60 days after certification of the results of a general election or special election.”⁷ The statute allows this notification to occur after the certification of the election and does not require election officials to provide any opportunity for a voter to cure the deficiency.

In addition, election officials “shall make available through a free access system to each absentee voter a system to check to see whether the voter’s ballot was counted and, if not counted, the reason why the ballot was not counted.”⁸ This information may not be made available until at least “(1) 10 days after certification of the results of a primary election or a special primary election . . . [or] (2) 30 days after certification of the results of a general or special election.”⁹

In the Amended Complaint, Plaintiffs allege that “[e]very election, Alaska election officials reject mail-in ballots that are lawfully cast by Alaska voters because of simple mistakes on voters’ ballot envelopes.”¹⁰ Plaintiffs further allege that “[t]hese voters are not even notified that the Division rejected their ballots—and their votes were never

⁶ AS 15.20.203(h).

⁷ AS 15.20.203(i).

⁸ AS 15.20.203(j).

⁹ AS 15.20.203(j)(1)-(2).

¹⁰ Am. Compl. ¶ 2; *see also id.* ¶ 22 (“[E]ven 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.”).

counted—until *after* election results are finalized.”¹¹ Plaintiffs list absentee ballot rejection rates for recent statewide elections and allege that “[i]n areas of the state with greater percentage of Alaska Native voters, rejection rates have historically been much higher than the statewide average.”¹²

Plaintiffs allege that “[t]he Alaska Constitution requires [the State] to implement procedures to provide voters a timely and meaningful opportunity to correct curable common mistakes before vote count deadlines.”¹³ Plaintiffs assert that “[a]bsent 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.”¹⁴ Plaintiffs allege that Alaska’s election calendar “includes ample time” for the State to implement notice-and-cure procedures prior to certification of an election.¹⁵ Plaintiffs note that Anchorage and Juneau currently have notice-and-cure procedures in place for municipal elections.¹⁶ Plaintiffs cite the cost of a separate notice-and-cure procedure considered by the Alaska legislature and allege that “[t]he fiscal burden on [the State] of Plaintiffs’ requested relief would be minimal.”¹⁷

¹¹ *Id.*

¹² *Id.* ¶¶ 3-4, 23-28.

¹³ *Id.* ¶ 8.

¹⁴ *Id.* ¶ 29.

¹⁵ *Id.* ¶¶ 30-35.

¹⁶ *Id.* ¶¶ 40-41.

¹⁷ *Id.* ¶ 43.

Regarding the voting rights claim, Plaintiffs assert that “[w]ithout 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.”¹⁸ Plaintiffs further allege that rejecting ballots without notice and an opportunity to cure does not serve a compelling state interest because the State has other means of verifying voter eligibility and minimizing voter fraud, and implementing notice-and-cure procedures would not require additional time or create delay in releasing election results.¹⁹

Regarding the procedural due process claim, Plaintiffs allege that the lack of notice-and-cure procedures “fails to meet due process requirements” under the standard established by the United States Supreme Court in *Mathews v. Eldridge*.²⁰ Plaintiffs allege that “the private interest at issue is the fundamental right to vote,” that “[t]he value of instituting additional procedures to cure such deficiencies is great and will serve to protect the fundamental right to vote,” and that “[t]he 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.”²¹

II. LEGAL STANDARD

Under Alaska Rule of Civil Procedure 12(b)(6), a complaint may be dismissed for “failure to state a claim upon which relief can be granted.” “[M]otions to dismiss are

¹⁸ *Id.* ¶ 47.

¹⁹ *See id.* ¶ 48.

²⁰ *Id.* ¶ 56.

²¹ *Id.* ¶¶ 56-58.

disfavored and should be granted only if it appears beyond doubt that the plaintiff can prove no set of facts that would entitle him or her to relief.”²² Yet “[w]hile ‘the [Rule 12(b)(6)] threshold may be low, it is real.’”²³ To survive a motion to dismiss, the complaint must “allege a set of facts ‘consistent with and appropriate to some enforceable cause of action.’”²⁴

When reviewing a motion to dismiss under Rule 12(b)(6), courts construe the complaint liberally and treat all factual allegations as true.²⁵ In Alaska, “[i]f, within the framework of the complaint, evidence may be introduced which will sustain a grant of relief to the plaintiff, the complaint is sufficient.”²⁶ Though a complaint does not require detailed factual allegations, “even on a motion to dismiss, a court is not obliged to accept as true unwarranted factual inferences and conclusions of law.”²⁷

“[T]he complaint’s function is to put the opposing party on notice ‘of the nature of the claim[s] being asserted.’”²⁸ To ensure adequate notice, Alaska Rule of Civil Procedure 8(a) requires a complaint to “contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the

²² *Alleva v. Mun. of Anchorage*, 467 P.3d 1083, 1088 (Alaska 2020) (quotations omitted).

²³ *Valdez Fisheries Dev. Ass’n, Inc. v. Alyeska Pipeline Serv. Co.*, 45 P.3d 657, 667 (Alaska 2002) (alterations in original) (quoting *Gooley v. Mobil Oil Corp.*, 851 F.2d 513, 515 (1st Cir. 1988)).

²⁴ *Guerrero v. Alaska Hous. Fin. Corp.*, 6 P.3d 250, 254 (Alaska 2000) (quoting *Odom v. Fairbanks Mem’l Hosp.* 999 P.2d 123, 128 (Alaska 2000)).

²⁵ *Id.* at 253 (citing *Kollodge v. State*, 757 P.2d 1024, 1026 n.4 (Alaska 1988)).

²⁶ *Kollodge*, 757 P.2d at 1026 (quoting *Linck v. Barokas & Martin*, 667 P.2d 171, 173 (Alaska 1983)).

²⁷ *Forrer v. State*, 471 P.3d 569, 585 (Alaska 2020) (quotations omitted).

²⁸ *Griffith v. Taylor*, 937 P.2d 297, 307 (Alaska 1997) (quoting *Martin v. Mears*, 602 P.2d 421, 427 (Alaska 1979)).

relief the pleader seeks.”²⁹ Where a complaint fails to allege facts regarding the elements of a claim, dismissal is proper.³⁰ The complaint must give the defendant fair notice of both the claim and the grounds upon which it rests.³¹

III. DISCUSSION

For the reasons set forth below, the Court concludes that the Amended Complaint sufficiently states a claim for relief. Plaintiffs have alleged a set of facts consistent with their claims for declaratory relief that the absentee voter statutory scheme violates the right to vote under Article V, Section 1 of the Alaska Constitution, and the right to due process under Article I, Section 7 of the Alaska Constitution, because the statutory scheme fails to provide voters with timely notice and an opportunity to cure deficiencies in absentee ballots. Because it does not appear beyond doubt that Plaintiffs can prove no set of facts that would entitle them to relief, dismissal of the claims is not proper.

The parties dispute the scope of declaratory and injunctive relief which may be available if the Plaintiffs prevail in establishing a violation of the Alaska Constitution.³² But determining any potential scope of relief is premature at this stage of the case. The only question before the Court at this time is whether Plaintiffs have alleged a set of facts sufficient to state a claim for relief. The answer is yes.

²⁹ Alaska R. Civ. P. 8(a).

³⁰ See *Kollodge*, 757 P.2d at 1028 (citing 2A J. Moore & J. Lucas, *Moore's Federal Practice* ¶ 12.07, at 12-68 (1986)).

³¹ See *Robinson v. Alaska Hous. Fin. Corp.*, 442 P.3d 763, 770 (Alaska 2019).

³² See AS 22.10.020(c), (g).

A. Dismissal is not warranted for Plaintiffs' claim regarding the right to vote.

The State argues that AS 15.20.203 is facially valid under the framework established by the United States Supreme Court in *Anderson v. Celebrezze*³³ and *Burdick v. Takushi*.³⁴ Applying the *Anderson-Burdick* framework, the State argues that filling out an absentee ballot certificate places only a de minimus burden on voters, and that requiring voters to properly complete the certificate at the time of ballot submission furthers the State's compelling interests in maintaining election integrity and deterring voter fraud. The State further argues that discovery is not warranted regarding the burdens that a notice-and-cure procedure would place on state election officials because Plaintiffs do not specify what kind of process would provide adequate relief.

Plaintiffs argue that the allegations in the Amended Complaint sufficiently state a claim of a violation of Article V, Section 1 of the Alaska Constitution, and discovery will be necessary to fully develop the factual allegations in the Amended Complaint. Applying the *Anderson-Burdick* framework, Plaintiffs argue that the lack of a notice-and-cure procedure substantially burdens the constitutionally protected right to vote absentee because it results in votes not being counted. Plaintiffs argue that discovery will develop a better understanding of the extent of the burden on voters. Plaintiffs further argue that the lack of a notice-and-cure procedure does not further the State's interests in maintaining election integrity and deterring voter fraud, and additional factual

³³ 460 U.S. 780, 788-90 (1983).

³⁴ 504 U.S. 428, 433-34 (1992).

development is necessary to understand the administrative and financial burden on the State of implementing a notice-and-cure procedure.

Article V, Section 1 of the Alaska Constitution provides that “[e]very citizen of the United States who is at least eighteen years of age, who meets registration residency requirements which may be prescribed by law, and who is qualified to vote under this article, may vote in any state or local election.” The Alaska Supreme Court has recognized that “[e]lection laws will invariably impose some burden upon individual voters.”³⁵

Alaska courts employ the four-step *Anderson-Burdick* framework to assess the constitutionality of Alaska election laws. First, the court “determine[s] whether the claimant has in fact asserted a constitutionally protected right.”³⁶ Second, the court “assess[es] ‘the character and magnitude of the asserted injury to the rights.’”³⁷ Third, the court “weigh[s] ‘the precise interests put forward by the State as justifications for the burden imposed by its rule.’”³⁸ Fourth, the court “judge[s] the fit between the challenged legislation and the [S]tate’s interests in order to determine ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.’”³⁹

³⁵ *O’Callaghan v. State*, 914 P.2d 1250, 1253 (Alaska 1996) (quoting *Burdick*, 504 U.S. at 433).

³⁶ *State v. Arctic Vill. Council*, 495 P.3d 313, 321 (Alaska 2021) (quoting *State, Div. of Elections v. Green Party of Alaska*, 118 P.3d 1054, 1061 (Alaska 2005)).

³⁷ *Id.* (quoting *Green Party of Alaska*, 118 P.3d at 1061).

³⁸ *Id.* (quoting *Green Party of Alaska*, 118 P.3d at 1061).

³⁹ *Id.* (quoting *Green Party of Alaska*, 118 P.3d at 1061).

Accepting as true the factual allegations presented in the Amended Complaint, as the Court must on a Motion to Dismiss, it does not appear beyond doubt that Plaintiffs can prove no set of facts that would entitle them to relief under Article V, Section 1 of the Alaska Constitution. In satisfaction of the first step of the *Anderson-Burdick* test, there is no dispute that Plaintiffs have a constitutionally protected right to vote absentee.⁴⁰ In addition, Plaintiffs have alleged sufficient facts to state a claim under the remaining parts of the *Anderson-Burdick* test.

The second step of the *Anderson-Burdick* test requires courts to assess the asserted injury to the constitutionally protected right. Plaintiffs allege an injury to the right to vote absentee based on the ballot rejection rates in recent elections. Plaintiffs further assert that “[a]bsent 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.”⁴¹ Plaintiffs have sufficiently alleged the existence of an injury to a constitutionally protected right.

The third and fourth steps of the *Anderson-Burdick* test require consideration of the State’s interest justifying a burden on the constitutionally protected right, as well as the nexus between the burden and the State’s interests. Plaintiffs do not dispute that the

⁴⁰ See Alaska Const. art. V, § 3 (“Methods of voting, including absentee voting, shall be prescribed by law.”); see also *Arctic Village Council*, 495 P.3d at 322 (assuming the existence of a constitutionally protected right to vote absentee).

⁴¹ Am. Compl. ¶ 29.

State has an interest in maintaining election integrity and preventing voter fraud. But Plaintiffs allege that the lack of a notice-and-cure procedure does not serve the State's interests in maintaining election integrity and preventing voter fraud. Plaintiffs allege that the election calendar provides "ample time" for the State to provide a notice-and-cure procedure prior to the conclusion of an election.⁴² In addition, Plaintiffs allege that the State has other means, including other state laws, to verify voter eligibility and deter fraud. Further, Plaintiffs cite the estimated cost of a separate notice-and-cure provision to support their claim that the administrative and fiscal burden on the State would be minimal.

Because the Amended Complaint alleges facts sufficient to state a claim for a violation of Article V, Section 1 of the Alaska Constitution, dismissal is not proper.

B. Dismissal is not warranted for Plaintiffs' procedural due process claim.

The State argues that procedural due process protects only against state-perpetuated error, and thus procedural due process does not require states to implement procedures for voters to correct their own errors. The State further argues that the *Anderson-Burdick* test, rather than the general due process test established by the United States Supreme Court in *Mathews v. Eldridge*, is the appropriate test to assess procedural due process challenges to election laws.

⁴² *Id.* ¶ 30.

Plaintiffs argue that the *Mathews v. Eldridge* test applies to their procedural due process claim. Plaintiffs also assert that they have adequately stated a claim under either the *Mathews v. Eldridge* or *Anderson-Burdick* framework, both of which are fact-based balancing tests. Plaintiffs argue that they have been deprived of their fundamental interest in having their votes count, and that discovery would allow Plaintiffs to demonstrate both the value of a notice-and-cure procedure and the degree of potential burden on the State. Plaintiffs further argue that dismissal is not warranted because the Alaska Constitution generally provides greater procedural protections than the United States Constitution.

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.” For procedural due process claims, Alaska courts generally apply the three-factor *Mathews v. Eldridge* test, which weighs “(1) the private interest at stake; (2) ‘the risk of an erroneous deprivation’ of the private interest and the value of additional safeguards; and (3) the government interest—noting particularly the cost and ‘administrative burdens’ entailed by additional procedural protections.”⁴³

However, as described above, Alaska courts generally utilize the *Anderson-Burdick* test to assess the constitutionality of election laws under the Alaska

⁴³ *Copeland v. Ballard*, 210 P.3d 1197, 1204 (Alaska 2009) (quoting *City of Homer v. State, Dep’t of Nat. Res.*, 566 P.2d 1314, 1319 (Alaska 1977)); *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

Constitution.⁴⁴ The Alaska Supreme Court has not yet decided whether the *Mathews v. Eldridge* test or the *Anderson-Burdick* test applies to procedural due process challenges to election laws under the Alaska Constitution. Several federal appeals courts have applied the *Anderson-Burdick* framework to challenges to election laws under the due process clause of the United States Constitution.⁴⁵ It is premature and not necessary for the Court to decide which test applies at this stage of the proceedings because Plaintiffs have sufficiently stated a claim for relief under either test.

Just as the Amended Complaint presents adequate factual allegations under the *Anderson-Burdick* framework regarding the constitutionally protected right to vote, the Amended Complaint presents adequate factual allegations regarding the constitutional right to due process. While the State argues that procedural due process does not protect against voter error, the Plaintiffs' position is that the State errs by unconstitutionally burdening the right to vote absentee through its failure to provide a notice-and-cure procedure. Plaintiffs' allegations sufficiently state a claim that the State has erroneously burdened the right to vote absentee without sufficient justification for imposing that burden.

⁴⁴ See *Arctic Village Council*, 495 P.3d at 321.

⁴⁵ See *Arizona Democratic Party v. Hobbs*, 18 F.4th 1179, 1195 (9th Cir. 2021); *Richardson v. Texas Sec'y of State*, 978 F.3d 220, 233-35 (5th Cir. 2020); *New Georgia Project v. Raffensperger*, 976 F.3d 1278, 1282 (11th Cir. 2020); see also *Mazo v. New Jersey Sec'y of State*, 54 F.4th 124 (3d Cir. 2022) ("We have no occasion here to exhaust the list of constitutional claims reviewable under the *Anderson-Burdick* test. It suffices for present purposes that this test is not limited to laws that burden free association.").

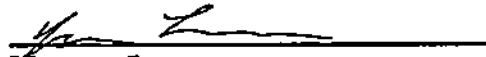
Similarly, Plaintiffs' allegations are sufficient to state a claim under the *Mathews v. Eldridge* test. The Amended Complaint claims a constitutionally protected private interest, which is the right to vote absentee. The Amended Complaint includes allegations that there is a risk that thousands of Alaskans will be deprived of the right to vote absentee due to the lack of a notice-and-cure procedure, and that there is value in instituting such a procedure to protect the right to vote. Finally, the Plaintiffs allege facts regarding the fiscal and administrative burdens for the State to implement a notice-and-cure procedure. Plaintiffs allege facts regarding the feasibility of such procedures in other locations (Anchorage and Juneau), as well as potential costs and time constraints of such procedures. These factual allegations could be further developed through discovery.

Because the Amended Complaint alleges facts sufficient to state a claim for a violation of Article 1, Section 7 of the Alaska Constitution, dismissal is not proper.

IV. CONCLUSION

For the foregoing reasons, the Motion to Dismiss is denied. The Answer to the Amended Complaint must be filed by February 28, 2024.

DATED at Anchorage, Alaska this 19th day of January 2024.


Yvonne Lamoureux
Superior Court Judge

I certify that on 1-19-24 a copy of
the above was served on:

L. Harrison; T. Flynn; S. Schirack; K. Feldis;
S. Orlansky; R. Botstein; M. Vidmar; M. Condon;
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