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

FILED
STATE OF ALASKA
THIRD JUDICIAL DISTRICT

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4 BENJAMIN NAGEAK, ROB ELKINS,)
5 ROBIN D. ELKINS, LAURA WELLES)
6 and LUKE WELLES,)

7 Plaintiffs,)

8 v.)

Case No.: 3AN-16-09015CI

9 LT. GOVERNOR BYRON MALLOTT,)
10 in his official capacity as Lt. Governor for)
11 the State of Alaska, and JOSEPHINE)
12 BAHNKE, in her official capacity as)
13 Director of the Division of Elections,)

14 Defendants,)

15 and)

16 DEAN WESTLAKE,)

17 Intervenor-Defendant.)

18 **STATE DEFENDANTS' PROPOSED FINDINGS**
19 **OF FACT AND CONCLUSIONS OF LAW**

20 The defendants, Lieutenant Governor Byron Mallott and Director of the Division
21 of Elections Josephine Bahnke, submit these proposed findings of fact and conclusions
22 of law following the trial held from September 27 through October 3, 2016.
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BACKGROUND

A. The Alaska Division of Elections

1. The core mandate of the Alaska Division of Elections is to ensure that every eligible Alaskan has a meaningful opportunity to cast a ballot and have their vote counted. [Tr. 35]
2. The Division of Elections remains neutral and objective as to the outcome of elections. [Tr. 36]
3. The Division has four regional offices that handle election administration in different areas of the state. [See Tr. 49, 78, 438] The Region IV office is located in Nome and covers Northern, Western and Southwest Alaska, and the Aleutian chain. [Tr. 46, 215]
4. House District 40 spans from Northwestern Alaska over most of the North Slope to the Canadian border. [Exh. DD]
5. House District 40 contains twenty-three precincts where voters can vote in person on Election Day. [Tr. 62]
6. Most of the precincts within House District 40—including those at issue in this case—are covered by the Division’s Region IV office. [Tr. 215]

B. Voting procedures

7. A voter may cast a ballot in several different ways. [Tr. 41-43]
8. A voter may vote in person at a precinct on Election Day.¹ [Tr. 43] If the voter’s name is on the precinct register and there is no question about the voter’s qualifications, the voter may cast a regular paper ballot.² [Tr. 43] Such a ballot is never placed in an individual envelope with identifying information; rather, it is comingled with other ballots in the ballot box.³ [Tr. 43]
9. A voter may choose to vote via a touch screen (TSX) machine instead of voting a

¹ AS 15.07.010.

² *Id.*

³ AS 15.15.200.

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- paper ballot. [Tr. 22] Every precinct has a TSX machine as required by federal law for the assistance of hearing and visually impaired voters. [Tr. 22]
10. A voter whose name is not on the precinct register, or whose name or residence has recently changed, may vote a “questioned” ballot.⁴ [Tr. 67] Poll workers are instructed to issue a questioned ballot whenever there is any doubt about a voter’s qualifications. [Tr. 67-68] The voter’s ballot is placed in a questioned ballot envelope that lists identifying information about the voter so that the Division can review the voter’s qualifications at a later date. [Exh. AA]
11. A voter who cannot to go to a polling place due to age, illness, or other disability may vote a “special needs” ballot.⁵ [Tr. 69] A voter may request and receive such a ballot through a representative, either before or on Election Day.⁶ The representative delivers the ballot to the voter, and after the voter votes, the ballot is placed in a special needs ballot envelope that lists identifying information and is signed by the voter and representative. [Exh. Z]
12. In a few locations—such as the Division’s regional offices—“early voting” is available before Election Day. [Tr. 42] At early voting locations, election workers have the capability to verify the qualifications of voters from anywhere in the state, and have ballots for all forty districts available. [Tr. 42]
13. A voter may request and vote an “absentee by mail” ballot.⁷ The Division sends the voter a ballot in the mail and the voter mails it back in an absentee ballot envelope.⁸ On the outside of the envelope is identifying information about the voter as well as the signatures of the voter and a witness. [Exh. 30, p. 11]
14. A voter may also vote “absentee in person” by applying and obtaining a ballot

⁴ AS 15.07.010.
⁵ AS 15.20.072(a).
⁶ AS 15.20.072(b), (d).
⁷ AS 15.20.081(a).
⁸ AS 15.20.081(e).

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from an absentee voting official or an election supervisor at any of the Division's offices beginning fifteen days before an election through Election Day.⁹ Ballots cast in this manner are placed in absentee in-person ballot envelopes that list information about the voter as well as the signatures of the voter and the official who provided the ballot.¹⁰ [Exh. II]

15. Absentee voting officials supervise absentee in-person voting in areas where election supervisors do not have offices.¹¹ Region IV has eighty-five absentee voting officials. [Tr. 46]

C. Vote-counting and auditing procedures

16. Some precincts are "hand count" and others are "optical scan" (OS). [Tr. 62] In a hand count precinct, poll workers count the ballots cast at the precinct by hand after the polls close on Election Day. [Tr. 73-74, 108-09] In an OS precinct, the ballots are fed into a machine that counts them. [Tr. 62-63, 108-09]

17. After the polls close, poll workers report their precinct results to the Division by phone or, in some OS precincts, by plugging the machine into a phone line. [Tr. 74, 109] These results include only regular ballots cast at the precinct, and do not include any of the types of ballots that are isolated in individual envelopes—i.e., questioned, special needs, and absentee ballots. [Tr. 74]

18. Poll workers then place the regular ballots, precinct registers, and other materials in a green bag and mail it to Juneau. [Tr. 74-75, 459] They place questioned ballots, special needs ballots, TSX memory cards, and other materials in a red bag and mail it to the regional office. [Tr. 74-75, 458-59; *see* Exh. FF] Poll workers are trained to mail these bags on the day after Election Day. [Tr. 76, 458]

19. Absentee voting officials mail absentee ballots to the regional office. [Tr. 48-49]

⁹ AS 15.20.061.

¹⁰ AS 15.20.045(c).

¹¹ AS 15.20.045.

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20. Absentee, special needs, and questioned ballots arrive at the regional office, where the regional supervisor logs them and convenes the regional absentee and questioned ballot review boards. [Tr. 459-60]
21. The regional questioned and absentee ballot review boards are hired by the Division to review questioned and absentee ballot envelopes for voter eligibility.¹² The board for Region IV works on call based on the volume of ballots received; for the August 16 primary election the board worked on five different days in the Division's Region IV office in Nome. [Tr. 459-460] Some regions have two separate boards for questioned and absentee ballots, but in Region IV the same people work on both boards. [Tr. 460].
22. The statewide review board meets in Juneau to audit the election results. The statewide review board receives all the election materials from all regions and audits them to assure their accuracy. [Tr. 563] Among other materials, the board has access to precinct registers and register covers with election workers and voter names on them; election results tapes from the touchscreen and optical scan machines; memory cards; questioned ballot registers; absentee ballot reports; reports of early votes; questioned ballot reports; and ballot stubs. [Tr. 524-25]
23. Paper ballots come in pads of twenty-five that are stapled together with a numbered strip across the top. [Tr. 600-601] Poll workers pull ballots off the pad, leaving "stubs," which they return to the regional offices. [Tr. 601] The State Review Board can review pads and stubs to determine how many ballots were voted in each precinct. [Tr. 525, 548, 588, 600-601]

D. Political party primary ballots

24. A voter may register as a member of a recognized political party.¹³
25. Alternatively, a voter may register as "Non-Partisan."¹⁴ A voter is considered

¹² See AS 15.20.190; AS 15.20.201-207.

¹³ AS 15.07.050.

¹⁴ AS 15.07.075(1).

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“Undeclared” if the voter registers as Undeclared, fails to declare an affiliation with a political group or party, or declares an affiliation with an entity other than a political group or party.¹⁵ A voter is considered “Other” if the voter declares an affiliation with a political group rather than a recognized political party.¹⁶

26. The State of Alaska runs the primary election for the nomination of candidates by political parties.¹⁷

27. The Alaska Republican Party permits only voters registered as Republican, Undeclared or Non-Partisan to vote in its primary. [Tr. Tr. 236-38, 349-50]

28. Other parties, including the Alaska Democratic Party, the Alaska Libertarian Party, and the Alaska Independence Party, permit any registered voter, no matter the party affiliation, to vote in their primaries. [Tr. 236-38]

29. Because of these party rules, the Division creates two separate primary ballots: (1) a Republican ballot and (2) a combined party ballot—sometimes called the “ADL ballot”¹⁸—that lists all parties’ candidates except the Republican Party’s. [Exh. BB, CC]

30. Republican, Undeclared and Non-Partisan voters are eligible to vote in all of the party primaries, so they may vote either the Republican or the combined party ballot. [Tr. 236-38]

31. Other voters, such as registered Democrats, are not eligible to vote in the Republican primary, so they may only vote the combined party ballot. [Tr. 237]

E. The 2016 primary election

32. The 2016 primary election was held on August 16, 2016.¹⁹ [Exh. 46]

33. All seats in the Alaska House of Representatives are up for election in 2016,

¹⁵ AS 15.07.075(2).

¹⁶ AS 15.07.075(3).

¹⁷ AS 15.25.010.

¹⁸ The other recognized parties in Alaska are the “Alaska Independence Party,” the “Democratic Party,” and the “Libertarian Party”—hence the acronym “ADL.”

¹⁹ AS 15.25.020.

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because the term of representatives is two years.²⁰ Thus, in the 2016 primary, candidates had the opportunity to run for their political parties' State House nominations, including nominations for the House District 40 seat.

34. No one sought the Alaska Republican Party's nomination for either State House or State Senate in House District 40, so the Republican primary ballot for that district included only candidates for federal office. [Exh. CC]

35. Two candidates sought the Alaska Democratic Party's nomination for State House in House District 40, Benjamin Nageak (the incumbent) and Dean Westlake (the challenger). The combined party ballot in House District 40 offered this race as well as Democratic and Libertarian candidates for federal office and one unopposed Democratic candidate for State Senate. [Exh. BB]

36. In the House District 40 precinct of Shungnak, due to poll worker error, all fifty in-person voters and one special needs voter received and voted both the combined party ballot and the Republican ballot. [Tr. 159-60, 169-70]

37. On September 6, 2016, the Division of Elections certified Mr. Westlake as the winner of the House District 40 Democratic primary for State House. [Exh. 46]

38. Representative Nageak requested a recount, which was conducted on September 12 and resulted in an eight-vote margin of victory for Mr. Westlake, 825 to 817. [Exh. 55]

ELECTION CONTEST STANDARD

39. Plaintiffs in election contests "carry a heavy burden."²¹ They must show more than just that errors occurred—they must prove "malconduct, fraud, or corruption on the part of an election official sufficient to change the result of the election."²²

²⁰ Alaska Const. Art. 2, § 3.

²¹ *Grimm v. Wagoner*, 77 P.3d 423, 432 (Alaska 2003).

²² AS 15.20.540(1).

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40. The “general rule” is that “every reasonable presumption will be indulged in favor of the validity of an election,”²³ because “the public has an important interest in the stability and finality of election results.”²⁴
41. Thus, in an election contest, the Court is not to assume the worst—by, for example, inferring that a change in a hand-count of ballots was the product of fraud as opposed to ballots sticking together, or inferring that the absence of a date notation means that a ballot was cast after Election Day. Rather, the Court is supposed to assume the best, and conclude that the election was conducted properly absent proof to the contrary.
42. Perfection in the conduct of an election is not possible, particularly given that “Alaska elections are primarily conducted by many volunteer workers,” and “[u]nique problems are presented in the vast area encompassed as well as the varied cultural backgrounds and primary languages of voters.”²⁵
43. Because perfection is not possible and courts strongly favor upholding election results, the election contest standard “parallels the ‘directory’ view”: election statutes “are directory” and “they therefore establish a desirable rather than a mandatory norm.”²⁶
44. In a post-election challenge, all statutory requirements “should be held directory only, in support of the result, unless of a character to affect an obstruction to the free and intelligent casting of the vote or to the ascertainment of the result, or unless the provisions affect an essential element of the election, or unless it is expressly declared by the statute that the particular act is essential to the validity of an election, or that its omission shall render it void.”²⁷

²³ *Turkington v. City of Kachemak*, 380 P.2d 593, 595 (Alaska 1963).
²⁴ *Dansereau v. Ulmer*, 903 P.2d 555, 559 (Alaska 1995).
²⁵ *Hammond v. Hickel*, 588 P.2d 256, 259 (Alaska 1978).
²⁶ *See Boucher v. Bomhoff*, 495 P.2d 77, 80 (Alaska 1972).
²⁷ *Finkelstein v. Stout*, 774 P.2d 786, 790 (Alaska 1989) (quoting *Willis v. Thomas*, 600 P.2d 1079, 1083 n.9 (Alaska 1979)).

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45. “Even where statutory terms have been construed as mandatory . . . the right to vote is a superseding mandate.”²⁸ The Court “must thus appraise mandate as against mandate, if there be a conflict,” and “[c]ertainly, the more controlling one is that the voter shall, ordinarily, have his vote recognized” if “the votes are cast and returned under such circumstances that it can be said it represents the voice of the majority of the voters participating.”²⁹
46. Courts are reluctant to permit a wholesale disfranchisement of qualified electors through no fault of their own, and “[w]here any reasonable construction of the statute can be found which will avoid such a result, the courts should and will favor it.”³⁰
47. “In the absence of fraud, election statutes generally will be liberally construed to guarantee to the elector an opportunity to freely cast his ballot, to prevent his disfranchisement, and to uphold the will of the electorate.”³¹
48. Given these strong public policies, mere good faith mistakes by poll workers are not grounds for an election contest. Rather, a plaintiff must show that a deviation from the law rises to the level of “malconduct.”³²
49. To determine whether a plaintiff has proven malconduct, “each alleged deviation from a statutorily or constitutionally prescribed norm” must be separately analyzed “to determine if it is ‘significant’ and to ascertain if it involves an element of scienter.”³³

²⁸ *Carr v. Thomas*, 586 P.2d 622, 626 (Alaska 1978).
²⁹ *Id.*
³⁰ *Id.* (quoting *Reese v. Dempsey*, 153 P.2d 127, 132 (N.M. 1944)).
³¹ *Carr*, 586 P.2d at 626 n. 11 (quoting *Brown v. Grzeskowiak*, 101 N.E.2d 639, 646 (Ind. 1951)).
³² AS 15.20.540(1).
³³ *Hammond v. Hickel*, 588 P.2d at 259.

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50. A “significant deviation” from the law may be “malconduct” if “a bias has been introduced into the vote.”³⁴ If no bias can be shown, even a significant deviation “will not amount to malconduct unless a knowing noncompliance with the law or a reckless indifference to norms established by law is demonstrated.”³⁵

51. Only after a plaintiff has first proven a deviation from legal requirements that is both “significant” enough and imbued with enough “scienter” to constitute “malconduct” must the Court consider whether the deviation was sufficient to change the election result.³⁶

52. If the malconduct did not introduce a bias into the vote and the affected votes cannot be precisely identified, “the contaminated votes must be deducted from the vote totals of each candidate in proportion to the votes received by each candidate in the precinct or district where the contaminated votes were cast” to determine whether the problem was sufficient to change the result.³⁷

THE PLAINTIFFS’ CLAIMS

A. Count I: Lack of three election board members in a precinct

53. The Division of Elections tries to ensure adequate poll worker staffing, but some of the precincts in House District 40 are located in remote communities with small populations, making it challenging to recruit poll workers. [Tr. 441]

54. The precinct of Bettles, for example, is located in a town with a population of twelve, according to the 2010 U.S. Census.³⁸ The precinct of Kaktovik is located in a town with a population of 239 people and is accessible only by plane.³⁹

³⁴ *Id.* at 258-259.

³⁵ *Id.* at 259.

³⁶ *Id.*

³⁷ *Id.* at 260.

³⁸ *See*

http://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml?src=bkmk

³⁹ *See*

http://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml?src=bkmk

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55. On the day of the primary, the House District 40 precinct of Point Hope did not have three poll workers present. [Tr. 140, 479-480]
56. When only one poll worker shows up on Election Day, the Division tries to find more workers by contacting sources within the community, for example the city clerk's office, tribal office, schools, and any other resource available. [Tr. 444]
57. The Point Hope precinct chair told the Division before the election that he would recruit help for Election Day, and he made attempts—including soliciting poll workers via VHF radio and by knocking on doors—but he could find no one who was interested in working the polls. [Exh. 2]
58. The Division of Elections did not know until the date after the election that there were staffing problems in Point Hope. [Tr. 479-480; Exh. 2]
59. The precinct register for Point Hope has thirty-two signatures in the precinct register, but forty total ballots were cast. [Tr. 139]
60. When the State Review Board finds a discrepancy that shows fewer signatures in a precinct register than ballots cast at the precinct—as happened in Point Hope—the board members attempt to find a cause by reviewing everything they have, including recalculating the signature and ballot tallies and checking the ballot stubs. [Tr. 548] If they cannot determine a cause for the discrepancy, they notify Division staff. [Tr. 548]
61. In the case of Point Hope, the State Review Board notified Division staff about the discrepancy, and the staff contacted the precinct chair. [Tr. 548] The precinct chair indicated that he believed that eight people had voted without first signing the register. [Tr. 548; Exh. 2]
62. The State Review Board then counted the forty ballots from Point Hope. [Tr. 550] It counted them because it has a policy that, once it has an explanation for the discrepancy, the ballots cast stand as they are. [Tr. 550, 614-15] Also, even if it did not have that policy, it could not know which eight ballots to remove from the comingled forty ballots. [Tr. 550]

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63. If the State Review Board instead counted none of the ballots from Point Hope, the entire community would be disenfranchised. [Tr. 551]

64. Other than the missing signatures on the Point Hope precinct register, the plaintiffs did not allege or provide any evidence of problems with voting in any precinct purportedly caused by insufficient staffing of the polls. Although some other precincts may have had missing voter signatures on the precinct registers, no evidence was presented to connect this to insufficient staffing.

65. Twenty-one voters (52.5%) in Point Hope voted in the Democratic primary for State House. [Exh. 55] Of these, the vote split was 15 votes (71.4%) for Rep. Nageak and 6 votes (28.6%) for Mr. Westlake. [Exh. 55]

66. Based on these numbers and the certified result of 825 votes for Mr. Westlake and 817 votes for Rep. Nageak, if all of the ballots from Point Hope were to be discarded based on the insufficient staffing of the polls in that precinct, the margin in the State House race between Rep. Nageak and Mr. Westlake would widen from 8 votes to 17 votes. [see Exh. 55]

67. If eight ballots from Point Hope were to be discarded based on the absence of eight voter signatures from the Point Hope register, and votes subtracted in proportion to the percentage of Point Hope voters who voted the combined party ballot for either Rep. Nageak or Mr. Westlake, the margin in the State House race between Rep. Nageak and Mr. Westlake would widen to 11.4 votes.

68. In a post-election challenge, the requirement of three election board members is directory, not mandatory,⁴⁰ so inexact compliance is not “significant” enough to be “malconduct” for purposes of an election contest.

69. Even if a lack of three election board members were a “significant deviation” from the law, it does not introduce a bias into the result, so it “will not amount to malconduct unless a knowing noncompliance with the law or a reckless

⁴⁰ See *Carr*, 586 P.2d at 626 (“In determining whether an election provision is to be regarded as mandatory or directory, great emphasis is placed on whether the challenge is prior or subsequent to the election.”).

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indifference to norms established by law is demonstrated.”⁴¹

70. The plaintiffs have not proven “knowing noncompliance with the law or a reckless indifference to norms established by law” with regard to the number of election board members in any precinct, so they have not shown “malconduct.”

71. It would be contrary to public policy for an election to be voided due to unexpected understaffing of polls. If the polls cannot open despite understaffing, entire communities would be disenfranchised.

72. Even if the plaintiffs had proven “malconduct” with regard to staffing of polls, they have not proven that it was “sufficient to change the result of the election.”

73. The only precinct at which the plaintiffs have identified a problem purportedly arising from insufficient staffing is Point Hope. Rejecting votes from Point Hope because of the staffing issues in that precinct only increases the margin between Rep. Nageak and Mr. Westlake.

74. The Court therefore rejects Count I.

B. Count II: Allegedly invalid special needs ballots

75. The Division of Elections facilitates special needs voting for those who cannot get to the polls to provide them an opportunity to vote. [Tr. 449]

76. “The burden of proving ballot illegality in general and particularly that the ballot in question was not cast on or before election day is on the challenger.”⁴²

i. How the ballots were cast

77. The Division of Elections does not target particular voters to receive special needs ballots, nor does it ask poll workers to seek out people who might be eligible for special needs ballots. [Tr. 110]

78. A voter may request a special needs ballot in several ways, including from a member of the precinct election board on Election Day.⁴³

⁴¹ See *Hammond v. Hickel*, 588 P.2d at 259.

⁴² *Finkelstein*, 774 P.2d at 788.

⁴³ AS 15.20.072(b)(4).

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79. In rural Alaska, elders can call the precinct by phone or VHF radio and request a special needs ballot. [Tr. 51, 448] In some communities on the North Slope, elders are encouraged to do this. [Tr. 110]

80. Alaska Statute 15.20.072(c) requires that a representative for a special needs voter sign a register that includes a list of information about the voter and the representative as well as the representative's signature.

81. A special needs ballot envelope contains blanks for all of the information required by AS 15.20.072(c), in the column entitled "Step 1." [Exh. Z] When a voter requests a special needs ballot, the voter's representative fills out this information directly onto the envelope. [Exh. Z] A carbon copy of the information filled out on the ballot envelope is torn off and remains with the precinct voter register, which serves as the register containing special needs voter information required by AS 15.20.072(c). [Exh. Y; Tr. 53]

82. When the polls close at 8 p.m. on Election Day, the precinct chair accounts for special needs ballots by matching the carbon copies of the special needs ballot envelopes with the returned special needs ballot envelopes. [Tr. 73]

83. Twelve special needs ballots were cast in the 2016 primary in the House District 40 precinct of Buckland. [Exh. Y] Eleven of these special needs ballots were cast by Buckland voters; the remaining ballot was cast by a voter from another area and was thus a questioned ballot as well as being a special needs ballot. [Exh. Y; Exh. 10; Tr. 117-119, 133]

84. Each special needs ballot envelope from Buckland is filled out with all of the information required by AS 15.20.072(c). [Exh. Y]

85. All but one of the voters who cast the special needs ballots in Buckland were elderly, with ages ranging from 64 to 94 years old; the average age was 79. [Exh. Y; Tr. 222]

86. Elders are honored and respected in the Inupiaq culture, and people in House District 40 take special care of their elders. [Tr. 244, 447]

87. Ten of the special needs voters in Buckland cast their ballots with the assistance

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of Krystal Hadley, who served as a poll worker in Buckland. [Exh. Y; Tr. 449]
88. In rural communities, the representative for a special needs voter is often a poll worker. [Tr. 71, 448] That is not unexpected, because poll workers are familiar with the special needs ballot procedure. [Tr. 448-49]
89. More special needs ballots were cast in Buckland than in other communities in House District 40. [Tr. 503] This was likely due to that community's familiarity with the special needs ballot option. [Tr. 424]
90. The plaintiffs presented no evidence that any election official in Buckland had improper motives.
91. The actions of the election officials and personal representatives involved in the casting of the special needs ballots from Buckland were commendable efforts to help elders in the community exercise their right to vote.

ii. When the ballots were cast

92. Special needs ballots must be received before 8 p.m. on Election Day.⁴⁴ The plaintiffs presented no evidence that the special needs ballots from Buckland were not cast and received by 8 p.m. on Election Day.
93. Special needs ballots in Region IV precincts, including Buckland, are sent on the day after Election Day to the regional headquarters in Nome to be counted by the regional questioned and absentee ballot review board. [Tr. 224-225, 458]
94. Mail can take six to fourteen days to get from Buckland to Nome. [Tr. 223, 453] This is because mail is routed from Buckland to Kotzebue, then to Anchorage, and finally to Nome. [Tr. 224] Given the route the mail travels, the fact that the Buckland ballots were received in Nome the Monday after the election suggests that they were in fact mailed the day after the election. [Tr. 453, 224]
95. In addition to having blanks for the information required by AS 15.20.072(c), a special needs ballot envelope has a column entitled "Election Official." [Exh. Z] This column includes blanks where an election official can record when a special

⁴⁴ AS 15.20.072(e).

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needs ballot is issued to a representative or returned to the Division. [Exh. Z]
None of the information requested in the “Election Official” column of the
special needs ballot envelope is required by law.

96. The absence of a notation on an envelope recording the receipt of a ballot in the
“Election Official” column of the envelope does not prove untimeliness.
97. And indeed, when an election official serves as a voter’s personal representative,
the ballot is never really “issued” by the Division or “returned” to the Division—
instead, it remains in the Division’s custody the whole time.
98. An election official’s failure to fill out information on the Buckland special needs
ballot envelopes that is not required by law is not a reason to disenfranchise the
voters who cast those ballots.
99. The plaintiffs have not proven any “malconduct, fraud, or corruption” with
regard to the Buckland special needs ballots or any other special needs ballots.
100. The Court therefore rejects Count II.

C. Count III: Voters allegedly not allowed to choose ballot

101. Laura Welles voted in the primary at the Browerville precinct. [Tr. 293] She was
mistakenly told that due to her party affiliation she would have to use the
questioned ballot process to vote the combined party ballot. [Tr. 294]
102. Ms. Welles thought the Browerville poll workers’ response to any unfamiliar
issue was to allow the voter to vote a questioned ballot so that the person would
get to vote and the issue would be out of their hands. [Tr. 296]
103. Ms. Welles voted the combined party ballot as a questioned ballot, and her ballot
was counted. [Tr. 299, 121, 218, 220; Exh. T, p. 5]
104. Luke Welles voted in the primary at the Browerville precinct. [Tr. 278] He was
mistakenly told that due to his party affiliation he would have to use the
questioned ballot process to vote the combined party ballot. [Tr. 279-80]
105. After Mr. Welles argued with the poll workers, they allowed him to vote a
combined party ballot through the regular, non-questioned ballot process, and his
ballot was counted. [Tr. 280, 289]

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106. The plaintiffs presented no evidence that any qualified voter was improperly denied the opportunity to vote the combined party ballot either as a questioned ballot or as a regular ballot.

107. Voters who vote and have their ballots counted—whether or not they are asked to vote questioned ballots—are not disenfranchised.

108. Because the plaintiffs presented no evidence that any voter was improperly denied the opportunity to vote a combined party ballot, the issues alleged in Count III could not have changed the election result.

109. The Court therefore rejects Count III.

D. Count IV: Four ballots misplaced during review board

110. Ballots designated “full count” are those that the regional absentee and questioned ballot review board has already determined should be counted. [Tr. 462-63] The board keeps full-count ballots separate from other ballots. [Tr. 463]

111. Lena Danner, an observer for Rep. Nageak who had never been an election observer before, observed the regional absentee and questioned ballot review board in Nome for four hours out of the five days that the board met. [Tr. 305-06, 320, 460] The board members were helpful in answering her questions. [Tr. 321]

112. While Ms. Danner was observing, the board was counting only full-count absentee and questioned ballots. [Tr. 463]

113. During this process, four full-count absentee ballots were mistakenly placed in an envelope containing full-count questioned ballots. [Tr. 467-68] The review showed that the questioned ballot count was four too many and that the absentee ballot count was four too few. [Tr. 468]

114. To correct the issue, officials took four ballots from the full-count questioned ballot envelope and placed them with the full-count absentee ballots so that each group of ballots—full-count questioned and full-count absentee—would contain the correct total number of ballots. [Tr. 468]

115. Because all of the ballots in both groups were full-count ballots—i.e., ballots that officials had already decided would be fully counted—the transfer of ballots had

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no effect on the vote totals in any race. [Tr. 468]

116. No ballots were counted that had not already been determined to be valid, full-count ballots. [Tr. 468]

117. Ms. Danner's suspicions related to this event were the product of her inexperience and misunderstanding of the review and counting process.

118. The election officials' treatment of the four ballots at issue in Count IV was reasonable and was not "malconduct."

119. Even if the treatment of the four ballots was "malconduct," it was not "sufficient to change the result of the election" because the ballots were simply transferred from one group of full-count ballots to another group of full-count ballots; both groups contained only ballots the regional absentee and questioned ballot review board had already decided would be counted.

120. The Court therefore rejects Count IV.

E. Count V: Voters who cast two primary ballots

121. The plaintiffs frame Count V as a constitutional claim, but because they seek to disrupt the stability and finality of the election result, Count V is an election contest claim to which election contest standards apply.⁴⁵

i. Shungnak

122. In the House District 40 precinct of Shungnak, due to poll worker error, all fifty in-person voters and one special needs voter received and voted both the combined party ballot and the Republican ballot. [Tr. 159-60, 169-70]

123. Because the Shungnak voters' ballots were comingled in the ballot box, the Division cannot associate particular ballots with the voters who cast them and thus cannot retroactively reject the voters' second ballots. [Tr. 152, 161]

124. The Division properly counted all of the ballots in Shungnak to avoid

⁴⁵ See *Walleri v. City of Fairbanks*, 964 P.2d 463, 466 (Alaska 1998) ("Whether a cause of action should be deemed an election contest . . . turns on the remedy sought. If granting the remedy would defeat the public interest in the stability and finality of election results, it is appropriate to deem the cause of action an election contest.").

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2 disenfranchising voters due to a poll worker error. [Tr. 161]

3 **a. The Shungnak error was not “malconduct”**

4 125. The Shungnak poll worker error was not “malconduct” because in the context of
5 the Alaska Democratic Party primary in 2016, no “significant deviation”⁴⁶ from
6 the law occurred with regard to any “essential element”⁴⁷ of the election: no one
7 voted more than once in any race, no one voted in more than one State House
8 primary, and every voter who voted in the Democratic primary was eligible to.
9 The error—a failure to force voters to choose between the two primary ballots—
10 did not affect an “essential element” of the Democratic primary.

11 126. Although by statute, each voter is only supposed to vote one primary ballot,⁴⁸
12 that requirement is mandatory only looking forward. In a post-election challenge,
13 all statutory requirements “should be held directory only, in support of the
14 result,” with just a few exceptions, like where the requirements “affect an
15 essential element of the election.”⁴⁹ Accordingly, the Court must consider
16 whether the Shungnak error affected an “essential element” of this election.

17 127. The “one person, one vote” principle is likely an “essential element” of any
18 election—in other words, no voter may cast more than one vote in a particular
19 race. But the “one person, one vote” principle was not violated in Shungnak
20 because the Republican and combined party ballots contained all different races.
21 [Exh. BB, CC] No Shungnak voter cast more than one vote in the race between
22 Rep. Nageak and Mr. Westlake or in any other race on either ballot. [Tr. 169]

23 128. It may be an “essential element” of a primary election that no voter may vote in
24 more than one party’s primary for the same office—by, for example, voting for
25 both Democratic and Republican candidates for State House. But that did not
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⁴⁶ See *Hammond v. Hickel*, 588 P.2d at 259.

⁴⁷ See *Finkelstein*, 774 P.2d at 790 (quoting *Willis v. Thomas*, 600 P.2d at 1083 n.9).

⁴⁸ AS 15.25.060(b).

⁴⁹ *Finkelstein*, 774 P.2d at 790 (quoting *Willis v. Thomas*, 600 P.2d at 1083 n.9).

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occur in Shungnak for the State House race because the Republican ballot contained no State House candidates. [Exh. CC] No Shungnak voter voted in more than one party's State House primary. [Tr. 328-29]

129. Allowing voters to vote in primary races for more than one political party does not affect an "essential element" of the Democratic primary. Indeed, it occurs in every Democratic primary: voters who vote the combined party ballot always have the opportunity to vote in more than one party's primary by, for example, voting for a Libertarian candidate for U.S. Senate and a Democratic candidate for State House. By remaining on the combined party ballot, the Alaska Democratic Party has chosen to allow voters to vote in multiple parties' primaries. If it were not for the fact that the Alaska Republican Party has a closed primary, its primary races would have appeared on the same party ballot too. So forcing voters to choose between the Democratic and Republican primaries is not an "essential element" of the Democratic primary.

130. Forcing voters to choose between the Democratic and Republican primaries may be an "essential element" of the *Republican* primary. The Alaska Republican Party has chosen a closed primary and wants to make sure voters from other parties do not interfere in its candidate nomination process. [Tr. 349-50, 404-05, 351, 386-87] Twenty-five of the Shungnak voters were not registered as Republican, Undeclared, or Non-Partisan and were thus ineligible to vote the Republican ballot under the party's rules. [Tr. 236-37; Exh. P]

131. So perhaps an "essential element" of the closed Republican primary was violated when ineligible voters were allowed to vote the Republican ballot in Shungnak. But the races on the Republican ballot are not part of this election contest and the margins in those races were wide enough that the votes of the ineligible Shungnak voters could not have made any difference. [Tr. 417-18] And no ineligible cross-party voting occurred in the race between Rep. Nageak and Mr. Westlake. All of the Shungnak voters were eligible to vote in that race under Alaska Democratic Party rules. [Tr. 170] No "essential element" of the

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- Democratic primary was violated, and that is the election at issue here.
132. Because the Shungnak poll worker error did not affect an “essential element”⁵⁰ of the Democratic primary, it was not a “significant deviation”⁵¹ from mandatory legal requirements that could support a “malconduct” finding.
133. Even if the Shungnak poll worker error were considered a “significant deviation” from mandatory legal requirements, absent bias, it “will not amount to malconduct unless a knowing noncompliance with the law or a reckless indifference to norms established by law is demonstrated.”⁵²
134. A “bias” is something that influences voting decisions, like misleading ballot proposition language that causes people to vote one way or the other.⁵³
135. The Shungnak poll workers simply gave two ballots to all voters. Because they did nothing that would have influenced votes, no bias was present. Although the plaintiffs suggested in closing argument that the poll workers acted purposefully out of a desire to advantage Mr. Westlake, they presented no evidence whatsoever that any Shungnak poll worker had such improper motives.
136. Nor did the plaintiffs prove the “knowing noncompliance” or “reckless indifference” that is necessary for a finding of “malconduct.”⁵⁴ Rather, the evidence suggests that the poll workers made an honest mistake.
137. Elections are complex productions with thousands of moving parts. [See Exh. 22, 24, 35] Alaska's primary election takes place once a year, for one day, every two years. The primary election is the only election at which a voter may receive a choice of ballot based on party affiliation.

⁵⁰ See *Finkelstein*, 774 P.2d at 790 (quoting *Willis v. Thomas*, 600 P.2d at 1083 n.9).

⁵¹ See *Hammond v. Hickel*, 588 P.2d at 259.

⁵² *Hammond v. Hickel*, 588 P.2d at 259.

⁵³ See *Boucher*, 495 P.2d at 81 (concluding that “inherently misleading” prefatory language introduced a bias into the election result).

⁵⁴ *Hammond v. Hickel*, 588 P.2d at 259.

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2 138. A poll worker’s job consists of dozens of bureaucratic tasks and activities.
3 According to Division records, the poll workers in Shungnak did not attend poll
4 worker training for the 2016 primary election, so they may have been out of
5 practice. [Exh. 5C] The plaintiffs did not offer the testimony of a single poll
6 worker from any of the 441 precincts in Alaska, including those in House District
7 40, to support their position that a poll worker could not make the Shungnak
8 error without being knowingly noncompliant or recklessly indifferent.

9 139. Thus, the plaintiffs did not meet their burden of proving “malconduct.”

10 **b. The Shungnak error was not “sufficient to change the result”**

11 140. Even if the Shungnak poll worker error did constitute “malconduct,” it was not
12 “sufficient to change the result of the election.”⁵⁵

13 141. When the Court analyzes whether an error was “sufficient to change the result of
14 the election,” the question is not whether the raw number of votes involved is
15 larger than the margin between the candidates such that it is mathematically
16 possible that the result could change. If it were that simple, the Alaska Supreme
17 Court’s discussion of pro-rata vote reduction in *Hammond v. Hickel*⁵⁶ and
18 *Fischer v. Stout*⁵⁷ would have been unnecessary. Instead of just looking at raw
19 numbers, the Alaska Supreme Court has used methods like pro-rata reduction to
20 ascertain whether an error *likely* changed the election result, not simply whether
21 it is mathematically possible that it did.

22 142. In this case, ascertaining whether the poll worker error was “sufficient to change
23 the result” requires the Court to consider how many Shungnak voters would have
24 chosen the Republican ballot over the combined party ballot if they had been
25 forced to choose between the two ballots. The plaintiffs presented no testimony
26 from any Shungnak voter asserting that he or she would have chosen the

⁵⁵ AS 15.20.540(1).

⁵⁶ See *Hammond v. Hickel*, 588 P.2d at 260.

⁵⁷ See *Fischer v. Stout*, 741 P.2d 217, 225-26 (Alaska 1987)

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Republican ballot rather than the combined party ballot. In the absence of such testimony, the Court should not invalidate these voters' votes.

143. The more persuasive evidence shows that if the poll worker error had not occurred, most Shungnak voters would have chosen the combined party ballot and voted in the race between Rep. Nageak and Mr. Westlake. Thus, most of the Shungnak votes in that race would have been cast regardless of the poll worker error, meaning that the error was not "sufficient to change the result."⁵⁸

144. Most Shungnak voters would have chosen the combined party ballot because the Republican ballot had only federal races that were not expected to be close, whereas the combined party ballot had a hotly contested and locally relevant State House race. [Tr. 417-18]

145. Most Shungnak voters would have chosen the combined party ballot because Mr. Westlake ran an active campaign and directed campaign efforts on Shungnak and other villages outside Kotzebue and in the Kobuk River Delta. Mr. Westlake traveled to Shungnak twice during the primary campaign, including the day before the election, and visited the town's residents by going door-to-door. Mr. Westlake's campaign raised more than \$35,000 in 2016. The campaign made a video of Mr. Westlake in the villages and promoted it on Facebook, which is an important form of communication in House District 40. The campaign also used mailings, yard signs, and door-to-door campaigning. [Testimony of John-Henry Heckendorn, Oct. 3, 2016]

146. The most recent analogous primary election was in 2012, when the Republican ballot in House District 40 had only an uncontested State Senate race and a congressional primary with no significant challenge to U.S. Representative Don Young, but the combined party ballot had four candidates vying for the Democratic Party's State House nomination. [Exh. 44] In that primary election, 85.5% of Shungnak voters chose the combined party ballot. [Exh. 44]

⁵⁸ AS 15.20.540(1).

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147. If the same percentage held true in 2016, 43.6 Shungnak voters (85.5% of 51) would have chosen the combined party ballot. Distributing those 43.6 votes to Rep. Nageak and Mr. Westlake in proportion to the overall vote split in Shungnak (which was 94% Westlake to 6% Nageak) results in 41 votes for Mr. Westlake and 2.6 votes for Mr. Nageak. This narrows the margin between the candidates, but still results in a lead for Mr. Westlake.
148. The plaintiffs' expert witness, Randolph Ruedrich, is a longtime Republican who has held a number of offices within the Alaska Republican Party, including serving as party chairman for thirteen years. [Tr. 328, 404] He continues to work on behalf of the Alaska Republican Party, including on the 2016 election. [Tr. 405] Although Mr. Ruedrich does not think political parties should interfere with each other's candidate nomination processes, he is pursuing this challenge to the Alaska Democratic Party's primary election result on behalf of the Alaska Republican Party. [Tr. 404-05, 350-51] Mr. Ruedrich is not an impartial expert nor did he offer a detached, objective analysis.
149. Mr. Ruedrich opined that absent the poll worker error, enough voters would have chosen the Republican ballot in Shungnak to change the outcome of the election. [Tr. 381] He reached this conclusion by averaging the absolute numbers of voters who chose the Republican ballot in the four most recent primary elections and assuming that the same number would choose the Republican ballot in 2016. [Tr. 391-92] The Court finds Mr. Ruedrich's analysis unpersuasive.
150. First, Mr. Ruedrich's analysis was not particularly rigorous. He used absolute numbers of voters instead of percentages, thus failing to account for fluctuations in voter turnout. [Tr. 391-92, 416] He did not look at the party affiliations of the voters who voted in Shungnak either in 2016 or in any other year. [Tr. 408-09] He did not do any comparisons of Shungnak with other precincts or districts. [Tr. 408, 415] In past situations when looking at what drives voter turnout, Mr. Ruedrich did regression analyses. [Tr. 407] But here, he did not do a regression analysis of voting patterns in Shungnak. [Tr. 407] In past situations

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when Mr. Ruedrich sought to determine whether particular ballots were crucial to an election outcome, he spoke to the voters themselves. [Tr. 406] But here, he did not speak to any Shungnak voters about their ballot choices. [Tr. 406]

151. Second, Mr. Ruedrich failed to consider important differences in the prior year primaries he used in his analysis—indeed, he failed to consider any variables other than the presence or absence of a U.S. Senate race. [Tr. 411-12] He argued that the 2012 primary election is not a good comparator because it did not involve a U.S. Senate race. [Tr. 395] But he did not consider any other factors that would affect ballot choice, such as ballot measures, campaigning or the closeness of the races on the ballot. For example, in 2010 and 2014 the U.S. Senate races on the Republican ballot were hotly contested, creating an incentive for voters to choose the Republican ballot. [Tr. 412-13] In 2016, by contrast, the races on the Republican ballot were not expected to be close. [Tr. 417-18]

152. Third, Mr. Ruedrich’s own testimony undermines his theory about Shungnak. He testified that in years with U.S. Senate races, most Republican primary ballots are taken by registered Republican voters, and that in years with gubernatorial races, more Undeclared and Non-Partisan voters take the Republican ballot. [Tr. 409-10] In 2016, the ballot included a U.S. Senate race but had no gubernatorial race, so Mr. Ruedrich’s testimony suggests that most voters likely to choose the Republican ballot in 2016 would be registered Republicans. [Tr. 409-10] Of the fifty in-person voters who voted in Shungnak, only four were registered Republicans. [Exh. P] Even assuming that all of these voters would have chosen the Republican ballot, registered Republicans would only constitute a majority of the Republican ballots chosen—consistent with Mr. Ruedrich’s theory—if less than eight total voters chose the Republican ballot in Shungnak. [Tr. 409-10]

153. The Court rejects Mr. Ruedrich’s analysis and finds that the 2012 primary election provides the closest comparator because the Republican ballot had no significant races to draw voters whereas the combined party ballot did, just as was true for the 2016 primary.

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154. Even using the 2014 primary election as a comparator, the best estimates of the impact of the Shungnak mistake is that it would not change the outcome of the election. Although Mr. Ruedrich relied on the fact that eleven Shungnak voters took the Republican ballot in 2014, he failed to adjust for lower overall voter turnout in 2016 when estimating likely numbers of Republican ballots in the 2016 primary. In the 2014 primary, voter turnout in Shungnak was 43.7% or 69 voters out of 158 on the register. [Exh. 45] In 2016, voter turnout was only 32% or 51 voters out of 159 on the register. [Exh. 5b, Exh. 54] Thus, the number of voters who turned out in Shungnak in 2016 was only 73.9% of the number who turned out in 2014. Given the lower turnout in 2016, the 11 Republican ballots in 2014 would suggest 8.1 Republican ballots (73.9% of 11) and 42.9 (51-8.1) combined party ballots would have been cast in the 2016 primary. Mr. Westlake won 94% of the vote in Shungnak in 2016; 94% of 42.9 is 40.3 votes for Mr. Westlake, reducing his total by 6.7 votes but still leaving him ahead in the election.

155. The Court finds that more voters in House District 40 chose the combined party ballot in 2016 than in 2014. In 2014, 67.8% or 2124 voters out of 3131 who turned out in House District 40 voted the combined party ballot. [Exh. 45] In 2016, outside of Shungnak, 1584 voters out of 2031 chose the combined party ballot, or 78%. [Exh. 54] Because a higher percentage of voters across House District 40 chose the combined party ballot in 2016 than in 2014, the Court finds that more voters in Shungnak in 2016 would have chosen the combined party ballot than did so in 2014.

156. The Court finds that applying a pro rata formula to estimate how many fewer combined party ballots would have been cast in Shungnak if voters there had had to choose—and how many of those ballots would have been cast for Mr. Westlake and Mr. Nageak respectively—does not implicate a sufficient number of votes to change the result of the election.

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157. Thus, the plaintiffs have not proven that the Shungnak poll worker's mistake was "sufficient to change the result of the election."

ii. Kivalina

158. In the House District 40 precinct of Kivalina, seven voters who had already voted one primary ballot (either the Republican or the combined party ballot) insisted on also voting the other primary ballot. [Tr. 170-71]

159. The poll workers in Kivalina allowed these voters to cast a second primary ballot as a questioned ballot; these seven ballots were placed in questioned ballot envelopes that went to the regional absentee and questioned ballot review board. [Tr. 170-71, 510]

160. The regional absentee and questioned ballot review board rejected these seven ballots as duplicates because the voters had already cast a primary ballot, so these ballots were not part of the original certified election results. [Tr. 123, 172]

161. At the recount on September 12, one of Rep. Nageak's observers challenged the Division's decision not to count these seven ballots, insisting that they be counted because the Shungnak ballots had been counted. [Tr. 173]

162. Upon review of the issue at the request of Rep. Nageak's observer, the Division decided to count these seven questioned Kivalina ballots. [Tr. 173-175, 231]

163. Although counting the seven questioned Kivalina ballots was not necessary in hindsight because they had been segregated and could be rejected as duplicates, counting them made no difference. [Tr. 174]

164. The Kivalina ballots were opened and counted at the recount; five were Republican ballots and two were combined party ballots. [Tr. 173-174] Of the two combined party ballots, one was voted for Mr. Westlake and the other was voted for Rep. Nageak. [Tr. 173-174] This vote count was confirmed when the ballots were examined in open court during the trial. [Tr. 540-45; Exh. OO]

165. Thus, for purposes of the Democratic State House primary, the seven Kivalina questioned ballots could not possibly have made any difference to the result, regardless of whether they were counted or rejected.

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166. It does not matter which ballots the seven Kivalina voters marked first. When asked to place one ballot in the ballot box and submit the other as a questioned ballot, a rational voter would place his or her first choice in the ballot box. But regardless of the order in which the Kivalina voters chose to cast their ballots, counting their regular ballots—rather than their questioned ballots—is appropriate. Whenever a voter submits duplicate ballots, the Division must always count the ballot that is comingled with other ballots in the ballot box and reject the ballot that is segregated. Thus, a voter who marks and mails an absentee ballot five days before Election Day, and then votes a second ballot on Election Day, will have the second, comingled ballot counted and the first, segregated ballot rejected. This is how the Division typically prevents duplicate votes from being counted.

167. No election officials committed “malconduct” in connection with the Kivalina ballots, and even if they had, the malconduct was not “sufficient to change the result of the election” given the way the ballots were voted.

168. The Court therefore rejects Count V.

F. Claims not raised in the complaint

169. The plaintiffs hinted at potential claims during trial that are not listed as counts in their complaint, but the Court will not consider any new claims.

170. The plaintiffs have not asked to amend their complaint to add new claims—indeed, in oral argument on their motion to amend the complaint to add new voter plaintiffs, they affirmatively represented that they were *not* seeking to add any new claims. [Tr. 341-42]

171. The plaintiffs also did not mention any new claims in either their trial brief or their opening statement.

172. The defendants have not had a fair opportunity to respond to unraised claims.

173. Even if the plaintiffs sought to add new claims at this late date, they would be

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untimely because the filing deadline for an election contest has passed.⁵⁹

174. Elections normally do not fall within the scope of judicial review;⁶⁰ rather, an election contest is strictly statutory, and the election contest statute must be strictly observed and construed.⁶¹

175. The statutory requirements are considered jurisdictional.⁶²

176. The failure of a plaintiff to strictly comply with the statutory requirements is fatal to his right to have the election contested.⁶³ It is “well established, both in Alaska and in other jurisdictions, that election law filing deadlines are to be strictly enforced.”⁶⁴

REMEDIES

177. The Court should reject all of the plaintiffs’ claims, but if it does not, it should make the following findings and conclusions regarding potential remedies.

178. No legal authority supports the plaintiffs’ request that the Court invalidate every vote cast in Shungnak.

179. No legal authority supports the plaintiffs’ request that the Court invalidate the twelve special needs ballots cast by disabled and elderly voters in Buckland.

180. A new election is an “extreme remedy.”⁶⁵

181. The problem in Shungnak was that some voters were not forced to choose between the Republican and combined party ballots. If the Court orders a new election, the voters again will not be forced to choose between those two ballots;

⁵⁹ AS 15.20.550.

⁶⁰ *Crouch v. Howard*, 23 So.3d 663, 664 (Ala. 2009).

⁶¹ *Washington v. Hill*, 960 So.2d 643, 646 (Ala. 2006); *Donaghey v. Attorney General*, 584 P.2d 557, 559 (Ariz. 1978) (en banc); *Dale v. Greater Anchorage Area Borough*, 439 P.2d 790, 792 (Alaska 1968).

⁶² *Forbes v. Bell*, 816 S.W. 2d 716, 718 (Tenn. 1991).

⁶³ *Dale v. Greater Anchorage Area Borough*, 439 P.2d at 792.

⁶⁴ *State v. Jeffery*, 170 P.3d 226, 234 (Alaska 2007) (quoting *Falke v. State*, 717 P.2d 369, 373 (Alaska 1986)).

⁶⁵ *Hammond v. Hickel*, 588 P.2d at 259.

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2 voters will be presented only one ballot with one race, because all other races on
3 the House District 40 primary ballot have been certified and are unchallenged. So
4 a new election would not be an appropriate remedy for this problem.

5 DATED: October 4, 2016.

6 JAHNA LINDEMUTH
7 ATTORNEY GENERAL

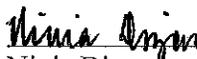
8 By: 
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10 Elizabeth M. Bakalar (0606036)
11 Laura Fox (0905015)
Assistant Attorneys General

12 Certificate of Service

13 This is to certify that on this date
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