

FILED  
STATE OF ALASKA  
THIRD DISTRICT

2016 OCT -3 PM 4:51

CITIZEN TRIAL COURT

BY: \_\_\_\_\_  
COURT CLERK

Timothy A. McKeever, Esq.  
tmckeever@hwb-law.com  
Stacey C. Stone, Esq.  
sstone@hwb-law.com  
Holmes Weddle & Barcott, P.C.  
701 W. 8th Ave., Suite 700  
Anchorage, Alaska 99501  
Ph: (907) 274-0666  
Fax: (907) 277-4657  
*Attorneys for Plaintiffs*

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

BENJAMIN N. NAGEAK, et al.

Plaintiffs,

vs.

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

Case No. 3AN-16-9015 CI

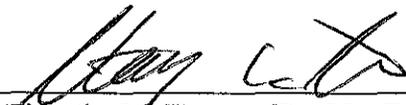
Defendants.

**PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY**

COMES NOW Plaintiffs by and through their attorneys, Holmes Weddle & Barcott,  
P.C., and tender the attached legislative history relating to the law concerning special needs  
ballots.

DATED this 3rd day of October, 2016.

HOLMES WEDDLE & BARCOTT, P.C.  
Attorneys for Plaintiffs

By:   
Timothy McKeever (Bar No. 7611146)  
Stacey Stone (Bar No. 1005030)

HOLMES WEDDLE & BARCOTT, PC  
701 WEST EIGHTH AVENUE, SUITE 700  
ANCHORAGE, AK 99501-3408  
TELEPHONE (907) 274-0666  
FACSIMILE (907) 277-4657

U

**HOLMES WEDDLE & BARCOTT, PC**

701 WEST EIGHTH AVENUE, SUITE 700  
ANCHORAGE, AK 99501-3408  
TELEPHONE (907) 274-0666  
FACSIMILE (907) 277-4657

**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 3<sup>rd</sup> day  
of October, 2016, a true and correct copy of  
the foregoing document was served via:

- E-Mail
- U.S. Mail
- Facsimile
- Hand-Delivery

to:

Elizabeth Bakalar  
Margaret Paton-Walsh  
Alaska Department of Law – Civil Div.  
P.O. Box 110300  
Juneau, AK 99801  
Email: libby.bakalar@alaska.gov  
Email: margaret.paton-walsh@alaska.gov

Thomas Amodio  
Reeves Amodio LLC  
500 L St. Ste 300  
Anchorage, AK 99501  
Email: tom@reevesamodio.com

By: \_\_\_\_\_

  
Legal Secretary/Assistant  
Holmes Weddle & Barcott, P.C.

21st Legislature(1999-2000)

**Committee Minutes**

SENATE STATE AFFAIRS

**Mar 16, 2000**

HB 163-DIVISION OF ELECTIONS

MR. RICHARD SCHMITZ, Legislative Staff to Representative Jeanette James, stated HB 163 is an election statute "fix-up" and makes minor changes. Mr. Schmitz referred to the last gubernatorial race regarding write-in candidates and said HB 163 makes minor changes to absentee voter regulations.

MS. GAIL FENUMIAI, Election Program Specialist, Division of Elections, stated HB 163 updates terminology conforming to the Optical Ballot Tabulation System the State currently uses.

HB 163 makes four changes to elections statute, the first is regarding write-in candidates and using stickers on ballots. It also proposes changes to the "absentee, in person" voting process and proposes to improve the "absentee, by personal representative" voting process for persons with disabilities. It deals with "initiative, referendum, and recall petition" by making changes to the statute as a result of a U.S. Supreme Court decision in Buckley v. American Constitutional Law Foundation. Ms. Fenumiai referred to questions handed to her by the committee.

TAPE 00-05, SIDE B

Number 2329

SENATOR ELTON asked about the 1998 gubernatorial election and a party naming a Governor or Lt. Governor.

MS. FENUMIAI stated HB 163 pertains to the people who appear on the primary election ballot. Write-in candidates are not allowed on the primary election ballot.

CHAIRMAN WARD stated if a party elected two people to run for Governor/Lt. Governor, and one person withdrew and the party chose not to replace the running mate, that would make the Governor/Lt. Governor ineligible to run.

MS. FENUMIAI replied yes. Under current statute there are no rules for write-in candidates, HB 163 would make provision changes.

CHAIRMAN WARD referred to the 1998 gubernatorial election and Senator Taylor running for Governor. Chairman Ward asked if Senator Taylor's running mate withdrew, whether his name would still be on the ballot.

MS. FENUMIAI stated no, it would be a write-in race because the ballots are printed and available 25 days before the election. People with no party affiliation must file nominating petitions. They have the same deadline as party nominees.

SENATOR ELTON stated if HB 163 had been in statute during the Arliss Sturgulewski, Jack Coghill, and Walter Hickel gubernatorial race, the outcome would have been different. The party could have

refused to name a Lt. Governor. Arliss Sturgulewski's name would have been kept off the ballot.

MS. FENUMIAI replied that has never happened in Alaska's history.

SENATOR GREEN asked if stickers are not used on the ballots whether the write-in candidates names need to be spelled correctly.

MS. FENUMIAI stated provisions say the last name of the gubernatorial candidates would suffice.

SENATOR ELTON stated the language in Section 1, line 10, "the month in which a primary or general election is held," would excuse a person from jury duty for the month of November, but they would not be able to complete their work from October. Senator Elton offered a friendly amendment to Section 1, line 10 to read "or that the person summoned is employed as a full-time or temporary election official and the jury service is during the 30 days preceding a primary or general election." Without objection, the amendment was adopted.

CHAIRMAN WARD asked about the name and phone number of election supervisors.

MS. FENUMIAI replied that section relates to radio notices. The purpose is to cut down on the length of the radio notices.

SENATOR GREEN asked Ms. Fenumiai to review the checks & balances regarding disabled absentee ballots.

MS. FENUMIAI stated personal representatives need to identify themselves to the election official and sign a register. The representative takes the ballot to the disabled person. That person must write down identification on the envelope and sign the envelope.

SENATOR GREEN asked if this process is witnessed by a third party.

MS. FENUMIAI stated no. The integrity of the personal representatives is upright and commendable.

CHAIRMAN WARD asked if any provisions would be altered to change paper ballots used in elections.

MS. FENUMIAI stated no.

SENATOR WILKEN asked, if HB 163 does not pass, what the consequences would be.

MS. FENUMIAI replied if HB 163 does not pass, the State could possibly have a lengthy lawsuit ahead of it.

SENATOR GREEN asked if people are not required to identify themselves when obtaining signatures, how the Division of Elections (DOE) keeps track of the signature books.

MS. FENUMIAI stated people are required to notify the Division of Elections who is receiving which book and their name is put on the book. The Buckley decision stated those officials do not need to

wear a badge. At the bottom of each page of the signature book is a notice stating whether the person collecting signatures is being paid and, if so, by whom.

SENATOR PHILLIPS moved amendment number 2, regarding stickers being used on ballots. He said the State should not discourage anyone from voting. Senator Elton objected and stated if people use stickers on ballots the State is inducing error. The amendment was adopted with Senators Phillips, Green, and Ward voting "Yea" and Senator Elton voting "Nay."

MS. FENUMIAI explained if a sticker were fed through the optical ballot machine and gummed up a sensor, at the end of counting the ballots, the tabulation would be incorrect. The Division of Elections would not know where or when the inaccuracy began. Hand counting ballots for a statewide race would effect all races on the ballot and be a time consuming process.

SENATOR GREEN moved to delete Sections 63-70 relating to Buckley v. American Constitutional Law Foundation. Without objection, the motion carried.

CHAIRMAN WARD stated the amendments that have been adopted will be drafted into a committee substitute. HB 163 will be held in committee and he asked Ms. Fenumiai to clarify the language in Sections 63-70 of HB 163 at the next meeting.

---

21st Legislature(1999-2000)

**Committee Minutes**

HOUSE STATE AFFAIRS

Feb 08, 2000

HB 163-DIVISION OF ELECTIONS

Number 1919

CHAIR JAMES announced the next order of business is HOUSE BILL NO. 163, "An Act relating to qualifications of voters; relating to the registration of voters; relating to election districts and officials; relating to election procedures and ballots; relating to special procedures for elections; relating to nomination of candidates; relating to national elections; relating to special elections and appointments; relating to constitutional amendments; relating to election offenses and corrupt practices; relating to election pamphlets; relating to the deferral of jury service for certain election officials; relating to an exemption from the State Procurement Code regarding election ballots; relating to the provision and use of mailing addresses on permanent fund dividend applications for election purposes; relating to the inclusion of voter registration forms with permanent fund dividend applications; making conforming amendments in references to 'election district' and 'chairman'; and providing for an effective date."

Number 1960

REPRESENTATIVE HUDSON made a motion to adopt the proposed CS for HB 163, version 1-LS0769ND, Kurtz, 2/2/00, as a work draft. There being no objection, proposed CSHB 163, Version D, was before the committee.

Number 1970

RICHARD SCHMITZ, Staff Legislative Secretary to Representative James, read the sponsor statement for HB 163 as follows:

House Bill 163 is primarily a housekeeping bill that will update current election law to conform with the optical scanning ballot tabulation system.

The goal of HB 163 is to make the electoral process more efficient while continuing to maintain the integrity of the process.

In addition to housekeeping measures which are outlined in an accompanying sectional analysis, HB 163 contains three policy changes which will help make the election process more efficient for both the electorate and the Division of Elections.

Write-in Candidates

It became apparent after the 1998 gubernatorial election that the state needs clear procedures for the qualification of write-in candidates and for the counting of votes. HB 163 will prohibit the use of

stickers by write-in candidates. Write-in stickers cannot be used with the state's optical scan ballot tabulation system. The Division has been advised by the manufacturer, Global Elections Systems, that stickers could damage the Accu-Vote machines.

#### Revision of Absentee by Personal Representative Process

The current statutory process is too cumbersome and the resulting mistakes by people attempting to assist other voters have resulted in the disqualification of many ballots. Current law requires the personal representative to deliver an application to the voter, return the application to an election official, pick up the ballot and voting material, deliver the material to the voter and then return the voted ballot and material to an election official, and multiple signatures on a complex form. The new process would allow the personal representative to deliver an application and voting material at one time and then return the voted ballot and material to an election official. The same checks and balances remain in place to protect the integrity of the electoral process.

#### Change to the Absentee In-Person Voting Process

Early voting would apply to absentee voting in the regional election office absentee voting stations. Voters registered in a house district in which the regional election office has jurisdiction would no longer be required to complete an absentee oath and affidavit envelope. This will significantly reduce the number of absentee ballots requiring review by the division of elections. If a voter's residence address information is different from that which appears on the division's records at the time of voting, the voter will be required to complete an oath and affidavit envelope.

MR. SCHMITZ explained that the proposed CS is a fix-it bill as a result of the November 1998 gubernatorial election, which seemed to have caused some confusion. The proposed CS attempts to mitigate confusion regarding write-in candidates and the absentee voting process.

#### Number 2070

GAIL FENUMIAI, Election Program Specialist, Division of Elections, Office of the Lieutenant Governor, provided the division's position and answered questions regarding the proposed CS for HB 163. She started by explaining three major areas of change. First, the state's new computerized voting system becomes jammed if voters use stickers for write-in candidates; therefore, Section 40 on page 15 repeals the use of stickers under AS 15.15.361.

MS. FENUMIAI discussed the second issue regarding write-in candidates and directed committee members to follow along on page 23, Section 58. This is a new section that the Division of

Elections is proposing in an effort to establish guidelines for write-in candidates. Apparently the 1998 election for governor had caused confusion as to how a person could have his/her name written in on the ballot. A question had arisen regarding whether a write-in candidate for governor who did not have a running mate could even be elected. Therefore, the Division of Elections desired to establish some guidelines. Under the proposed CS, a write-in candidate must file a declaration of candidacy five days prior to the general election, which would give the Division of Elections time to advise the public about the write-in candidate.

MS. FENUMIAI referred to page 15, lines 8-19. She explained that this section shows voters how to write in the candidate and how to fill in the ovals on the voting form.

Number 2291

REPRESENTATIVE HUDSON asked if the machine counts the votes.

CHAIR JAMES answered that the machine counts the ovals that are filled in correctly.

MS. FENUMIAI mentioned that every candidate who does run for office must file a declaration of candidacy with the Alaska Public Offices Commission (APOC). She drew attention to Section 48, page 18, lines 10-24, which deals with early voting. She said this section is being proposed as a matter of efficiency to speed the process of counting absentee ballots. The early-voting section discussed here only applies to the four regional absentee voting stations of Juneau, Anchorage, Fairbanks and Nome. Each of those four voting stations is online with the Division of Elections' voter registration system. Instead of filling out an "oath and affidavit envelope" as is currently required, an absentee voter could simply vote and put the ballot into the ballot tabulator. This would decrease the number of absentee voter envelopes that each voting station had to review. Ms. Fenumiai noted that there were over 13,000 absentee votes cast in the 1998 general election. She envisions under the proposed CS that staff time spent opening envelopes would be reduced considerably.

Number 2445

CHAIR JAMES asked what happens if proof regarding the absentee voter's place of residence does not match voter registration information.

MS. FENUMIAI answered that then the absentee voter must fill out an "oath and affidavit envelope."

REPRESENTATIVE OGAN noted that Section 49, regarding special needs voting, does not appear to address people who are not mentally cognizant, such as those who suffer from Alzheimer's disease. He is concerned about unscrupulous manipulation to obtain votes from people suffering some degree of dementia, he explained. He objects to the fact that there do not seem to be safeguards to prevent abuse of the absentee voter system.

Number 2527

MS. FENUMIAI answered that a law which precluded a person of unsound mind from voting was repealed in the 1990s. She noted that when a special needs ballot envelope is received by a voting station, it is reviewed by a regional absentee review board. If the information on the disabled person's ballot envelope does not match the voter registration, then the ballot is disqualified. Personally, she has not observed any voter fraud under circumstances described by Representative Ogan.

REPRESENTATIVE OGAN emphasized his belief that just because the Division of Elections is not aware of a fraud problem does not mean that such a problem does not exist. He said there seems to be room for possible exploitation on the part of people who may have access to confidential personal information about people who suffer from dementia.

Number 2652

MS. FENUMIAI noted that there are election misconduct statutes. If a person coerced another person about voting or pretended to be the other person, the perpetrator would face election misconduct charges. Regional election supervisors act as guards for the integrity of the absentee voting system by finding volunteer groups - such as the League of Women Voters - who will serve as personal representatives for disabled persons. Generally, it is family members who request special needs ballots.

CHAIR JAMES said as far as she understands, the disabled person actually votes; it is not someone else voting for the disabled person. The personal representative picks up the ballot at a voting station and delivers it to the disabled person.

Number 2725

MS. FENUMIAI affirmed that. She explained that the Division of Elections also maintains a log of personal representatives who pick up ballots for disabled persons. Anything of a suspicious nature is investigated by the Division of Elections.

REPRESENTATIVE HUDSON asked committee members to review page 18, beginning at line 26, all the way through to the bottom of page 19. He noted that this section thoroughly describes the subject of absentee voting for someone else. He mentioned that page 19, line 26, addresses "unlawful interference with voting," which he felt should put Representative Ogan's fears to rest regarding fraud.

Number 2777

REPRESENTATIVE SMALLEY agreed with Representative Hudson that page 19, lines 23-27, seemed to cover the fraud question. However, there might be a problem for visually impaired people since they cannot see where to mark the ballot. MS. FENUMIAI answered that the personal representative is authorized to direct the disabled person where to mark the ballot. Presently, a visually impaired person requests a

personal representative to accompany the voter into the voting booth to assist in voting. Ms. Fenumiai reminded the committee that the personal representative has taken an oath to follow the voter's direction and not divulge the vote. The Division of Elections' goal in presenting the proposed CS is to reduce the number of trips that a personal representative makes under the current statute. Under the proposed CS, the personal representative could take the absentee voter application and the voting packet at the same time to the special needs voter. She explained that the Division of Elections is trying to make it easier for the voter to participate in the election process.

MS. FENUMIAI informed the committee that other changes to statute outlined in the proposed CS are simply to bring existing language into compliance with the new election-related scanning equipment.  
Number 2915

REPRESENTATIVE WHITAKER said he is concerned with the notion that a running mate is now required for a write-in gubernatorial candidate. That has not been a requirement in the past.

CHAIR JAMES answered that the present political system in a primary election requires a lieutenant governor position to accompany the governor position. Accordingly, a write-in candidate for governor should also have a running mate.

TAPE 00-4, SIDE B  
Number 2990

MS. FENUMIAI expanded by saying that the Division of Elections wanted to level the playing field by requiring that a write-in candidate name a running mate.

REPRESENTATIVE WHITAKER said he had brought up the question because there are people in Alaska who object to further regulations and rules being placed on current regulations.

Number 2951

REPRESENTATIVE HUDSON made a motion to move CSHB 163, version 1-LS0769\D, Kurtz, 2/2/00, from committee with individual recommendations and the attached fiscal note. There being no objection, CSHB 163(STA) moved from the House State Affairs Standing Committee.

---