

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 PLAINTIFFS' MOTION FOR SUMMARY  
JUDGMENT AND GRANTING DEFENDANTS' CROSS-MOTION FOR  
SUMMARY JUDGMENT**

Plaintiffs Arctic Village Council, League of Women Voters of Alaska, Joyce Anderson, and Edward Toal filed a Motion for Summary Judgment on August 8, 2024 against Carol Beecher, Nancy Dahlstrom, and the Alaska Division of Elections (collectively, the "State" or the "Division"). On September 16, 2024, Defendants filed an Opposition and Cross-Motion for Summary Judgment. Plaintiffs filed a Reply and Opposition to Defendants' Cross-Motion on October 17, 2024, followed by Defendants' Reply on November 15, 2024. Oral argument was held on December 12, 2024.

Having reviewed and considered the motions, oppositions, replies, together with oral argument, the Court denies Plaintiffs' Motion for Summary Judgment and grants Defendants' Cross-Motion for Summary Judgment.

## **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. Under AS 15.20.203, if a voter submits a deficient absentee ballot, that ballot is not counted. AS 15.20.203 does not require Alaska election officials to provide a voter with notice of or an opportunity to cure a mistake on their absentee ballot before the election. Plaintiffs allege that AS 15.20.203 and the State's failure to provide a notice-and-cure procedure violates their fundamental right to vote as guaranteed by the Alaska Constitution, article V, section 1.

The Alaska Constitution guarantees 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."<sup>1</sup> In addition, "[m]ethods of voting, including absentee voting, shall be prescribed by law."<sup>2</sup>

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<sup>1</sup> Alaska Const. art. V, § 1.

<sup>2</sup> Alaska Const. art. V, § 3.

### A. Absentee Ballot Requirements

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.”<sup>3</sup> 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.”<sup>4</sup> 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.<sup>5</sup> Alaska law does not require the voter’s signature to match any other signature on file.<sup>6</sup>

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 absentee ballot was rejected.<sup>7</sup> The notice 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.”<sup>8</sup> The statute clearly allows this notice to occur after the certification of the election. The

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<sup>3</sup> AS 15.20.203(b)(1)-(2).

<sup>4</sup> 6 AAC 25.550(a).

<sup>5</sup> 6 AAC 25.580(7)-(9); 6 AAC 25.510; 6 AAC 25.570(a).

<sup>6</sup> 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.”).

<sup>7</sup> AS 15.20.203(h).

<sup>8</sup> AS 15.20.203(i).

statute does not include any reference to an opportunity to cure a ballot with an error, and does not require election officials to provide any opportunity for a voter to cure a deficiency.

AS 15.20.203 does require election officials to “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.”<sup>9</sup> This information must be made available “not less than (1) 10 days after certification of the results of a primary election or a special primary election . . . and (2) 30 days after certification of the results of a general or special election.”<sup>10</sup>

In discovery, Plaintiffs submitted Interrogatory No. 6 to Defendants to “[i]dentify each fact that supports the contention that the witness signature requirement, voter signature requirement, and voter identifier requirement advance the State’s interests in maintaining election integrity and deterring voter fraud.”<sup>11</sup>

Defendants answered as follows:

The witness signature requirement, voter signature requirement, and voter identifier requirement allow the Division to verify whether a returned absentee ballot was voted by the qualified voter who applied for it. Verifying that a returned absentee ballot was voted by the qualified voter who applied for it before counting that ballot is essential to election security and accuracy, and the prevention of

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<sup>9</sup> AS 15.20.203(j).

<sup>10</sup> AS 15.20.203(j)(1)-(2).

<sup>11</sup> Plaintiffs’ Memo. in Support of Summ. J. [hereinafter Pl. Motion], Ex. 4 at 6.

fraud. Without these requirements, voters could cast multiple ballots undetected.

These requirements further deter fraud by making it harder to fraudulently vote absentee. They also provide a means for the Division to recognize potentially fraudulent ballots or patterns on multiple ballots. Also, by signing the ballot, the voter certifies under penalty of perjury that the statements in the voter's certification are true. This further deters fraud by attaching criminal penalties to false certification of the voter's certification.<sup>12</sup>

In the past, the Division has accepted some absentee ballots with minor errors.<sup>13</sup> For example, in instances where the voter wrote the year of the election rather than the voter's birth year but the voter correctly wrote their birth month and date, or if two digits were transposed within a voter's driver's license or Social Security Number, the Division counted such ballots.<sup>14</sup> In 2024, however, new regulations took effect that now require a voter to provide identification on their ballot that is "identical to the identification information in the voter's registration record or in a database to which the division has access."<sup>15</sup>

In the November 2024 election, voters in the Third Judicial District received ballots for the Fourth Judicial District instead of the Third Judicial District.<sup>16</sup> Ninety-one absentee in-person voters voted ballots for the incorrect judicial district. The Division attempted to contact those voters to notify them that

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<sup>12</sup> *Id.* at 7.

<sup>13</sup> Pl. Motion, Ex. 1 at Tr. 53-55; Ex. 3 at Tr. 24-27.

<sup>14</sup> *Id.*, Ex. 3 at Tr. 24-25.

<sup>15</sup> See 6 AAC 25.510(d); Pl. Motion, Ex. 8.

<sup>16</sup> Opp. to Req. for Judicial Notice at 2 (stipulating to certain facts).

they could cast a replacement absentee ballot or vote on election day.<sup>17</sup> If voters did not cast replacement ballots, all of their votes were still counted except their votes for the incorrect judges who were not in their judicial district.<sup>18</sup> If those voters did cast replacement ballots, their incorrect ballots were destroyed.<sup>19</sup>

## **B. Rejected Absentee Ballots**

Plaintiffs describe instances when qualified voters made mistakes on their timely-returned by-mail ballots and, as a result, their ballots were not counted.<sup>20</sup> For example, Mr. Toal mistakenly thought that the witness signature was unnecessary for his mail-in ballot for the June 2022 special primary election, and he failed to obtain a witness signature on his ballot envelope.<sup>21</sup> Prior to election day, Mr. Toal realized his mistake but “was told that [his] vote had been cast and [the] error could not be corrected.”<sup>22</sup> Another example was Ms. Anderson’s mail-in ballot for the June 2022 special primary election. Ms. Anderson accidentally entered the last four digits of her old phone number instead of her social security number.<sup>23</sup> Ms. Anderson was not aware that she made a mistake on her ballot, and

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Pl. Motion at 14.

<sup>21</sup> *Id.*, Ex. 6, ¶¶ 3-6.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*, Ex. 7, ¶ 5.

was informed via a letter from the Division after the election results had been certified that her ballot had been rejected.<sup>24</sup>

The State provided a report of the number of rejected absentee ballots in the 2020 and 2022 elections for lack of voter signature, inadequate witnessing, or incorrect or missing identifier information.<sup>25</sup> The report reflects that in each of the five elections in 2020 and 2022 hundreds of mail-in ballots were rejected for failing to correctly complete the ballot certificate.<sup>26</sup> In the 2022 general election, of the 55,312 returned absentee ballots, 365 by-mail ballots, or 0.65%, were rejected for failing to correctly complete the ballot certificate.<sup>27</sup> In the 2022 regular primary election, 182 by-mail ballots out of 26,679 total returned absentee ballots were rejected, or 0.68%, for failing to correctly complete the ballot certificate.<sup>28</sup> For both of those elections, approximately 70% of those rejected ballots were for inadequate witnessing.<sup>29</sup>

### C. Notice-and-Cure Procedure

The Division currently does not provide notice before an election of an apparent problem with a ballot envelope that could result in the vote being

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<sup>24</sup> *Id.* ¶ 6.

<sup>25</sup> *Id.*, Ex. 2; Defendants' Opp. & Cross-Mot. for Summ. J. [hereinafter Def. Opp. & Cross] at 14 (delineating the total number of rejected absentee ballots by delivery method (by-mail, online, fax, etc.) and type of error (no signature, inadequate witnessing, no identifier, etc.)).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> In 2022, 258 of the 365 by-mail ballots were for inadequate witnessing. In the 2022 regular primary election, 130 of the 182 by-mail rejected ballots were for inadequate witnessing. *Id.*

disqualified.<sup>30</sup> In addition, the Division does not provide an opportunity for a voter to cure an error on a ballot envelope, even if the voter on their own recognizes the error and contacts the Division before election day to try to remedy the error or omission.<sup>31</sup>

While AS 15.20.203 requires the Division to notify a voter whose absentee ballot was rejected, the notice required by the statute is not notice in advance of the election. In addition, the statute does not provide any mechanism for a voter to cure the mistake or reason for which the absentee ballot was rejected. Accordingly, the Division does not provide notice to a voter in advance of an election that the absentee ballot will be rejected or offer an opportunity for the voter to correct the mistake on the ballot that has been cast.

Plaintiffs argue that not only does the Alaska Constitution require a notice-and-cure procedure, but also that such a procedure would fit well within Alaska's current system of processing mail-in ballots. Plaintiffs point out that many jurisdictions across the country provide notice-and-cure procedures. Plaintiffs also point to communities within Alaska, specifically Anchorage and Juneau, which already provide notice-and-cure procedures for municipal elections.

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<sup>30</sup> Pl. Motion, Ex. 1 at Tr. 17.

<sup>31</sup> *Id.* at 27.



The Alaska legislature has considered adopting a notice-and-cure procedure.<sup>32</sup> In the 2021, 2022, and 2023 legislative sessions, a number of bills were introduced that would have enacted some form of notice-and-cure process, all with varying proposed deadlines and methods for pre- or post-election notice-and-cure.<sup>33</sup> The legislature did not pass any of the bills with notice-and-cure provisions during those years. In the 2024 session, the legislature considered House Bill 129 which would have required the Division to give voters notice of any missing signatures or insufficient voter identification within 24 hours by email or phone, or 48 hours by mail, and not more than five days after election day.<sup>34</sup> The latest version of House Bill 129 also would have allowed a voter to cure any deficiencies within two weeks after election day.<sup>35</sup> This bill passed the Senate but did not pass the House by the end of the 2024 legislative session.<sup>36</sup>

#### **D. Proceedings**

In the Amended Complaint, Plaintiffs alleged voting rights and procedural due process claims. The State moved for dismissal of Plaintiffs' claims. The Court denied the Motion to Dismiss, and allowed Plaintiffs time to conduct

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<sup>32</sup> See Def. Mot. to Dismiss at 17-20 (discussing prior bills for some form of notice-and-cure procedure).

<sup>33</sup> See e.g., H.B. 66, 138, 196, 32d Leg., 2d Sess. (Alaska 2021); S.B. 39, 32d Leg., 2d Sess. (Alaska 2021); H.B. 66, 267, 286, 32d Leg., 2d Sess. (Alaska 2022); S.B. 39C, 167, 32d Leg., 2d Sess. (Alaska 2022); H.B. 37, 33d Leg., 1st Sess. (Alaska 2023); S.B. 1, 19, 33d Leg., 1st Sess. (Alaska 2023).

<sup>34</sup> H.B. 129, 33d Leg., 2d Sess. (Alaska 2024).

<sup>35</sup> *Id.*

<sup>36</sup> [https://www.akleg.gov/basis/Bill/Detail/33?Root=HB%20129#tab1\\_4](https://www.akleg.gov/basis/Bill/Detail/33?Root=HB%20129#tab1_4).

discovery. The parties filed a Stipulation on March 29, 2024, stating that they agree that this case can be resolved on cross-motions for summary judgment.

Plaintiffs now move for summary judgment solely on their claim that the absence of a notice-and-cure procedure violates the right to vote.<sup>37</sup> Plaintiffs are no longer pursuing the due process claim alleged in the Amended Complaint.<sup>38</sup>

The State cross-moves for summary judgment arguing that the existing absentee ballot requirements are constitutional, that the Division's practices are consistent with the statutory framework, and that an order requiring a notice-and-cure procedure would violate the separation of powers.

Both parties agree that there are no genuine issues of material fact. At oral argument, both parties agreed that the analysis in this case does not turn on the application of the summary judgment standard, and the Court can treat the exhibits attached to the briefing as if they were admitted in a bench trial. The exhibits include affidavits, deposition transcripts, discovery responses, and proposed legislation.

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<sup>37</sup> Pl. Motion at 27.

<sup>38</sup> Pl. Motion at 2, fn 1.

## II. DISCUSSION

### A. The Absentee Ballot Requirements Do Not Violate the Right to Vote

Plaintiffs argue that the State's failure to provide a notice-and-cure procedure violates article V, section 1 of the Alaska Constitution.<sup>39</sup> Plaintiffs argue that AS 15.20.203 is unconstitutional as applied to Plaintiffs because the statute lacks a notice-and-cure procedure and unreasonably burdens their right to vote. The State argues that Alaska's absentee ballot requirements are constitutional because they impose a minimal burden on voters and advance important State interests. For the reasons set forth below, the Court concludes that the State is entitled to summary judgment.

The controlling test in Alaska for constitutional challenges to a state election law or regulation is the framework established by the United States Supreme Court in *Anderson v. Celebrezze*<sup>40</sup> and *Burdick v. Takushi*.<sup>41</sup> Under this framework, the court first "determine[s] whether the claimant has in fact asserted a constitutionally protected right."<sup>42</sup> Second, the court "assess[es] 'the character and magnitude of the asserted injury to the rights.'"<sup>43</sup> Third, the court "weigh[s] 'the precise interests put forward by the State as justifications for the burden imposed

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<sup>39</sup> Pl. Motion at 28.

<sup>40</sup> 460 U.S. 780, 788-90 (1983).

<sup>41</sup> 504 U.S. 428, 433-34 (1992).

<sup>42</sup> *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)).

<sup>43</sup> *Id.* (quoting *O'Callaghan v. State*, 914 P.2d 1250, 1254 (Alaska 1996)).

by its rule.”<sup>44</sup> 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.’”<sup>45</sup> “[S]ubstantial burdens require compelling [State] interests narrowly tailored to minimally infringe on the right; modest or minimal burdens require only that the law is reasonable, non-discriminatory, and advances ‘important regulatory interests.’”<sup>46</sup>

The State argues that the *Anderson-Burdick* test does not apply to Plaintiffs’ argument because the purpose of the test is “to determine whether to strike down an election statute as unconstitutional,” and Plaintiffs are not asking the Court to strike down any laws here.<sup>47</sup> In support of this position, the State relies on a decision issued by the Supreme Court of Wyoming, which held that the *Anderson-Burdick* test did not apply where plaintiffs sought enforcement of a statute rather than challenging its constitutionality.<sup>48</sup>

The Alaska Supreme Court has held that the *Anderson-Burdick* test should be used to evaluate whether an election law violates the Alaska Constitution.<sup>49</sup> Because the Plaintiffs challenge the constitutionality of AS 15.20.203, the Court

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<sup>44</sup> *Id.* (quoting *Burdick*, 504 U.S. at 434).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 322 (quoting *State v. Alaska Democratic Party*, 426 P.3d 901, 909 (Alaska 2018) (internal quotations omitted)).

<sup>47</sup> Defs.’ Reply at 15.

<sup>48</sup> *Conrad v. Uinta Cty Republican Party*, 529 P.3d 482, 493 (Wyo. 2023).

<sup>49</sup> *Green Party of Alaska*, 118 P.3d at 1060.

applies the *Anderson-Burdick* test to determine the constitutionality of AS 15.20.203.

**1. Plaintiffs assert a constitutionally protected right to vote.**

The Court must first determine whether the claimant has in fact asserted a constitutionally protected right.<sup>50</sup> The Court previously held, and the parties agree, that Plaintiffs have a constitutionally protected right to vote absentee.<sup>51</sup> The first step of the *Anderson-Burdick* test is satisfied.

**2. The absentee ballot requirements place a minimal burden on the right to vote.**

Plaintiffs argue that the lack of a notice-and-cure procedure in AS 15.20.203 substantially burdens their right to vote because it results in voters not having their votes counted. Plaintiffs allege that given Alaska's "history of very close elections, including some decided by a single vote," these disqualifications "could affect the outcome of the election."<sup>52</sup> Plaintiffs further argue that the Division's ballot envelope requirements as written, coupled with no notice-and-cure procedure, results in "complete voter disenfranchisement for voters who do not complete their ballot envelopes perfectly."<sup>53</sup> According to Plaintiffs, this

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<sup>50</sup> *Id.* at 1061.

<sup>51</sup> Alaska Const. art. V, §§ 1, 3; *see* Order Denying Mot. to Dismiss at 10 ("[T]here is no dispute that Plaintiffs have a constitutionally protected right to vote absentee.")

<sup>52</sup> Pl. Motion at 16-17.

<sup>53</sup> Pl. Reply & Opp. at 13.

amounts to a substantial burden on their fundamental right to vote, warranting heightened scrutiny for the remainder of the Court's analysis.

The State argues that the proper measure of the severity of the burden is the ease or difficulty of complying with the law, rather than the consequences of failing to comply with the law.<sup>54</sup> The State further argues that it is "easy" to fill out a ballot because voters must simply sign, have the ballot witnessed and dated, and provide one of four possible identifiers.<sup>55</sup> The State asserts that because Alaska's absentee ballot requirements impose a minimal burden on the right to vote, heightened scrutiny is not warranted for the remainder of the analysis.<sup>56</sup>

The second step of the *Anderson-Burdick* test requires the Court to "assess the character and magnitude of the asserted injury to the constitutionally protected right."<sup>57</sup> This step of the analysis requires the Court to determine the extent to which the requirements of AS 15.20.203 and related regulations burden the right to vote. Because the Court applies a flexible test, the severity of the burden impacts the remainder of the test. The Alaska Supreme Court has explained that "as the burden on constitutionally protected rights becomes more severe, the government interest must be more compelling and fit between the challenged legislation and the state's interest must be closer."<sup>58</sup>

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<sup>54</sup> Def. Opp. & Cross at 9 (citing *Green Party of Alaska*, 118 P.3d at 1059).

<sup>55</sup> *Id.* at 13, 17-18.

<sup>56</sup> *Id.* at 20.

<sup>57</sup> *Anderson*, 460 U.S. at 789; *Burdick*, 504 U.S. at 434.

<sup>58</sup> *Green Party of Alaska*, 118 P.3d at 1061.

The Alaska Supreme Court has held that a requirement or prohibition which limits voters' rights such that they may have to forgo completely the opportunity to participate in the election constitutes a substantial burden. In *Arctic Village Council*, the Alaska Supreme Court held that the witness requirement during the COVID-19 pandemic placed a substantial burden on the right to vote in the context of the pandemic during the 2020 general election because voters were forced to choose between risking their health and safety, and exercising their right to vote.<sup>59</sup> The burden on the right to vote recognized by the Alaska Supreme Court in *Arctic Village Council* was unique to the COVID-19 pandemic.

In *Green Party of Alaska*, the Alaska Supreme Court held that the prohibition on combined ballots forces voters to "choose to fully affiliate themselves with a single political party or to forgo completely the opportunity to participate in that political party's primary."<sup>60</sup> The Alaska Supreme Court concluded that "this places a substantial restriction on the political party's associational rights" based on the "choice that the state forces a voter to make."<sup>61</sup>

Here, the absentee ballot requirements do not place voters in a situation where they are forced to choose whether to participate in an election. The facts of this case are distinguishable from those at issue in *Arctic Village Council* for the

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<sup>59</sup> 495 P.3d at 322-24.

<sup>60</sup> 118 P.3d at 1065.

<sup>61</sup> *Id.*

2020 general election because there is no longer a COVID-19 pandemic, and Plaintiffs are not claiming that they have to choose between risking their health and exercising their right to vote. Unlike the facts at issue in *Green Party of Alaska*, there is no issue in this case that Plaintiffs' associational rights are restricted due to the absentee ballot requirements.

Other courts have examined voting requirements and determined that they impose only a minimal burden. In *Arizona Democratic Party v. Hobbs*, the Ninth Circuit Court of Appeals held that an "election-day deadline for submitting a completed ballot imposes, at most, a minimal burden."<sup>62</sup> The Ninth Circuit noted that "[t]o the extent that the election-day deadline results in voters' not casting a vote in an election, that result 'was not caused by [the election-day deadline], but by their own failure to take timely steps to effect their [vote].'"<sup>63</sup> The Ninth Circuit reasoned that the statutory deadline "does not prohibit voters from voting in any election," and concluded that the ballot requirements are "reasonable, nondiscriminatory regulations that impose only a minimal burden on voting rights."<sup>64</sup>

In *Crawford v. Marion County Election Board*, the United States Supreme Court considered a challenge to a statute requiring voters to present photo

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<sup>62</sup> 18 F.4th 1179, 1187 (9th Cir. 2021).

<sup>63</sup> *Id.* at 1189 (quoting *Rosario v. Rockefeller*, 410 U.S. 752, 758 (1973)).

<sup>64</sup> *Id.* at 1189-90.



identification.<sup>65</sup> The United States Supreme Court concluded that the requirements imposed ““only a limited burden on voters’ rights.””<sup>66</sup> The United States Supreme Court explained that “the inconvenience of making a trip to the BMV, gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting.”<sup>67</sup> The United States Supreme Court acknowledged that the requirements may place a heavier burden on a limited number of persons.<sup>68</sup> But the United States Supreme Court also concluded that the proper remedy would not be to invalidate the statute “even assuming that the burden may not be justified as to a few voters.”<sup>69</sup>

Here, AS 15.20.203 and related regulations set forth the requirements for absentee ballots to be counted. First, voters must sign the certificate.<sup>70</sup> But the signature need not match other signatures the Division has on file.<sup>71</sup> Second, voters must provide identification in one of multiple possible forms: voter registration number, the last four digits of their social security number, date of birth, Alaska driver’s license number, or Alaska State identification number.<sup>72</sup>

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<sup>65</sup> 553 U.S. 181 (2008).

<sup>66</sup> *Id.* at 203 (quoting *Burdick*, 504 U.S. at 439).

<sup>67</sup> *Id.* at 198.

<sup>68</sup> *Id.* at 199.

<sup>69</sup> *Id.* at 199-200.

<sup>70</sup> AS 15.20.081(d); AS 15.20.203(b).

<sup>71</sup> 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.”).

<sup>72</sup> AS 15.20.081(f); 6 AAC 25.510(b).

Third, voters must have their signature witnessed in the presence of an official or anyone over 18, who also must sign as a witness.<sup>73</sup> Finally, absentee ballots must be attested and postmarked on or before election day.<sup>74</sup> An absentee ballot cannot be counted if it was delivered by a means other than mail after election day.<sup>75</sup> If a voter fails to comply with any of the above requirements, their absentee ballot will not be counted in that election.<sup>76</sup> The requirements of AS 15.20.203 and the related regulations do not prohibit voters from voting in any election.

The State's report on absentee ballot rejection rates provides a synopsis of absentee ballot rejection rates, including the reasons for which they have been rejected in the past.<sup>77</sup> The percentages of total rejected absentee ballots attributed to incorrectly completing the ballot certificate are low. In the 2022 general election, 0.65% absentee ballots were rejected for failing to correctly complete the certificate, and 0.68% were rejected in the 2022 regular primary election.<sup>78</sup> While the report shows a significant spike in absentee ballot rejections in the 2022 special primary election, this was likely an outlier year considering it was the first ever entirely by-mail statewide election.<sup>79</sup> There was also some voter confusion

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<sup>73</sup> AS 15.20.081(d).

<sup>74</sup> AS 15.20.203(b)(3)-(4).

<sup>75</sup> AS 15.20.203(b)(5).

<sup>76</sup> AS 15.20.203(b).

<sup>77</sup> Pl. Motion, Ex. 2; Def. Opp. & Cross at 14.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* (7,546 by-mail absentee ballots were rejected in the all by-mail 2022 special primary election, whereas 1,170 by-mail absentee ballots were rejected in the 2020 primary election).

due to the 2020 court rulings pausing the witness requirement during the COVID-19 pandemic.<sup>80</sup>

The Plaintiffs in this case include two voters who timely mailed in their absentee ballots, but their ballots were not counted. Mr. Toal's ballot was not counted because he failed to obtain a witness signature, and Ms. Anderson's ballot was not counted because she mistakenly wrote the wrong last four digits of her social security number. But the results of failing to comply with the absentee ballot requirements do not lead the Court to conclude that the burden of complying with the requirements is a heavy one. The requirements that a voter sign the ballot, provide an identifier, and have their ballot witnessed fall under the "usual burdens of voting."<sup>81</sup> To the extent that failing to comply with the ballot requirements results in a disqualified ballot, that result is not caused by the requirements themselves, but by the voters' own failure to follow the requirements.<sup>82</sup>

The Court concludes that the requirements for absentee ballots under AS 15.20.203 and the related regulations, without a pre-election notice-and-cure procedure, impose only a limited burden on the right to vote. Properly executing

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<sup>80</sup> See Pl. Motion, Ex. 6, ¶¶ 3-4.

<sup>81</sup> *Crawford*, 553 U.S. at 198.

<sup>82</sup> See *Hobbs*, 18 F.4th at 1189 (citing *Rosario*, 410 U.S. at 758, where the United States Supreme Court found that any alleged voter disenfranchisement "was not caused by [section] 186 but by [voters'] own failure to take timely steps to effect their enrollment").

the certificate, having a witness sign the certificate, and mailing it by election day are the typical and minimal burdens of voting absentee.

**3. The State has important regulatory interests in deterring voter fraud, increasing election integrity, and promoting trust in elections.**

Plaintiffs acknowledge that the State has legitimate interests in deterring voter fraud, increasing election integrity, and promoting trust in elections. But they argue that these interests are only compelling in the abstract.<sup>83</sup> Plaintiffs further argue that the State has asserted no specific interests in administering an election system that lacks any procedure for notice-and-cure.<sup>84</sup> In opposition, Defendants assert that the absentee ballot requirements advance compelling state interests in deterring fraud, increasing election integrity, and promoting trust in elections.<sup>85</sup>

The United States Supreme Court has held that “there is no question about the legitimacy or importance of the State’s interest in counting only the votes of eligible voters.”<sup>86</sup> The United States Supreme Court has acknowledged that “public confidence in the integrity of the electoral process has independent significance” and “the electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters.”<sup>87</sup>

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<sup>83</sup> Pl. Motion at 17.

<sup>84</sup> *Id.* at 17-18.

<sup>85</sup> Def. Opp. & Cross at 19; Pl. Motion, Ex. 4 at 6-7.

<sup>86</sup> *Crawford*, 553 U.S. at 196.

<sup>87</sup> *Id.* at 197.

The United States Supreme Court has also held that “[a] State indisputably has a compelling interest in preserving the integrity of its election process.”<sup>88</sup> The United States Supreme Court has recognized the government interests in deterring voter fraud: “While the most effective method of preventing election fraud may well be debatable, the propriety of doing so is perfectly clear.”<sup>89</sup>

The Court concludes that the State has a legitimate interest in deterring voter fraud, increasing election integrity, and promoting trust in elections. The Alaska Supreme Court has held that “a particularized showing is not required” in evaluating interests underlying state election laws.<sup>90</sup> But it has also held that the State “cannot justify imposing significant constitutional burdens merely by asserting interests that are compelling in the abstract.”<sup>91</sup> The risk of voter fraud is real, and concerns regarding public confidence in the integrity of the electoral process are legitimate. The State has identified legitimate and valid interests in protecting the integrity of the elections and deterring voter fraud that justify imposing a minimal burden on voters.

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<sup>88</sup> *Purcell v. Gonzales*, 549 U.S. 1, 4 (2006).

<sup>89</sup> *Crawford*, 553 U.S. at 196.

<sup>90</sup> *Arctic Vill. Council*, 495 P.3d at 324 (quoting *Green Party of Alaska*, 118 P.3d at 1065) (internal quotations omitted).

<sup>91</sup> *Id.* (quoting *Green Party of Alaska*, 118 P.3d at 1066).

**4. The State's important regulatory interests justify the absentee ballot requirements.**

Plaintiffs argue that the State's interests do not justify the burden placed on voters under any level of scrutiny. Plaintiffs also argue that the State's abstract interests do not justify requiring voters to fill out their ballots perfectly. Plaintiffs argue that it is not necessary to burden the right to vote without offering voters an opportunity to cure a fixable mistake.<sup>92</sup> Plaintiffs further argue that there is no evidence that any of the ballot requirements actually assists in deterring fraud or promoting election integrity, and that the State has no benchmark or process for determining whether its requirements deter fraud.<sup>93</sup>

The State argues that because the absentee ballot requirements impose a minimal burden, the State need only show that the requirements are justified by "important regulatory interests."<sup>94</sup> The State argues that the absentee ballot requirements deter fraud, increase election integrity, and promote trust in elections.<sup>95</sup> The State further explains that the three requirements act together to detect voter fraud.<sup>96</sup> Additionally, the State argues that the act of complying with the statutory requirements helps promote voter confidence.<sup>97</sup>

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<sup>92</sup> Pl. Reply & Opp. at 26.

<sup>93</sup> Pl. Motion, Ex. 3 at Tr. 50.

<sup>94</sup> Def. Opp. & Cross at 19 (citing *Burdick*, 504 U.S. at 434).

<sup>95</sup> *Id.*; Pl. Motion, Ex. 4 at 6-7.

<sup>96</sup> *Id.* at 20.

<sup>97</sup> *Id.* at 23.

The final step in the Court's analysis is "judging the fit between the challenged legislation and the State's interests in order to determine the extent to which those interests make it necessary to burden the plaintiff's rights."<sup>98</sup> In *Burdick*, the United States Supreme Court held that "when a state election law provision imposes only 'reasonable, nondiscriminatory restrictions . . . the State's important regulatory interests are generally sufficient to justify' the restrictions."<sup>99</sup> The Alaska Supreme Court has adopted this standard.<sup>100</sup> In *O'Callaghan*, the Alaska Supreme Court concluded that no particularized showing is required in evaluating interests underlying state election laws.<sup>101</sup> Thus, when the Court "ha[s] already concluded that the burden is slight, the State need not establish a compelling interest to tip the constitutional scales in its direction."<sup>102</sup>

The Court concludes that the State's interests in deterring fraud, increasing integrity in the election system, and promoting voter confidence justify the reasonable, nondiscriminatory restrictions imposed by the ballot requirements under AS 15.20.203. The State explains how the requirements help the Division detect fraudulent votes and double voting by "allow[ing] the Division to verify whether a returned absentee ballot was voted by the qualified voter who applied

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<sup>98</sup> *Arctic Vill. Council*, 495 P.3d at 324 (quoting *O'Callaghan*, 914 P.2d at 1254) (internal quotations omitted).

<sup>99</sup> *Burdick*, 504 U.S. at 434.

<sup>100</sup> *O'Callaghan*, 914 P.2d at 1254.

<sup>101</sup> *Id.*

<sup>102</sup> *Burdick*, 504 U.S. at 439.

for it.”<sup>103</sup> Ms. Thompson, the Assistant Director of Elections, stated that the requirements are “a deterrent for fraud for people to think twice before doing something illegal,” and the requirements allow the Division “to be able to look to see if there’s patterns, if there are issues.”<sup>104</sup> Ms. Beecher, the Division Director, affirmed in her testimony that without a system of verification “you open the door for the possibility of fraud.”<sup>105</sup> Ms. Beecher also testified that requiring identical identification “goes toward [the Division’s] goal of following statute, following the law, and integrity, and that voters can trust that elections are . . . consistent.”<sup>106</sup>

The Court recognizes the challenge of proving the effectiveness of safeguards to deter fraud, increase election integrity, and promote trust in elections. But the Alaska Supreme Court has already concluded that there is no requirement for such proof where there are only minimal burdens placed on the voters’ rights:

To require States to prove actual voter confusion, ballot overcrowding, or the presence of frivolous candidacies as a predicate to the imposition of reasonable ballot access restrictions would invariably lead to endless court battles over the sufficiency of the “evidence” marshalled by a State to prove the predicate. Such a requirement would necessitate that a State’s political system sustain some level of damage before the legislature could take corrective action. Legislatures, we think, should be permitted to respond to potential deficiencies in the electoral process with foresight rather

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<sup>103</sup> Pl. Motion, Ex. 4 at 6-7; Def. Opp. & Cross, Ex. B at Tr. 40-41, 44-45.

<sup>104</sup> Def. Opp. & Cross, Ex. B at Tr. 55-57.

<sup>105</sup> Def. Opp. & Cross, Ex. A at Tr. 52.

<sup>106</sup> *Id.* at Tr. 28.



than reactively, provided that the response is reasonable and does not significantly impinge on constitutionally protected rights.<sup>107</sup>

Similarly, here, to require the State to prove deterrence as a predicate to the imposition of reasonable restrictions would lead to court battles over the sufficiency of the evidence and would limit the Legislature's ability to adopt measures consistent with their goals of deterring fraud, increasing election integrity, and promoting trust.

Here, there is a credible record demonstrating the importance of each requirement in furthering the State's interests.<sup>108</sup> In *Arctic Village Council*, the Alaska Supreme Court considered the constitutionality of the witness requirement only, while acknowledging that other requirements of AS 15.20.203, such as the voter signature and identification requirements, increase election integrity.<sup>109</sup> The Court concludes that the State's important regulatory interests justify the minimal burden on voters in having to comply with the absentee ballot requirements. Because the Court concludes that AS 15.20.203 is constitutional under the *Anderson-Burdick* test, the State is entitled to summary judgment.

The Court notes that the Plaintiffs' position that voters should have an opportunity to cure or satisfy the requirements also may be consistent with a

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<sup>107</sup> *O'Callaghan*, 914 P.2d at 1254 (quoting *Munro v. Socialist Workers Party*, 479 U.S. 189, 195-96 (1996)).

<sup>108</sup> See generally Def. Opp. & Cross at 21-24, Ex.'s A and B (providing testimony from Ms. Thompson and Ms. Beecher on the value of each absentee ballot requirement).

<sup>109</sup> *Arctic Vill. Council*, 495 P.3d at 325.

finding that the State's interests justify the requirements. Just as in *Hobbs*, the relevant inquiry here is not whether the legislature or the Division could implement a notice-and-cure system. The Alaska Constitution does not demand that a pre-election notice-and-cure process be put in place.<sup>110</sup>

**B. The Division's Interpretation and Practice Does Not Violate the Right to Vote**

For the same reasons set forth above, the Court concludes that the Division's interpretation of the absentee ballot statutory requirements does not violate the right to vote. The Division's regulations and practice are consistent with the statutory framework for absentee ballot requirements.

Plaintiffs argue that by administering elections without a notice-and-cure process, the Division imposes a severe burden on voters.<sup>111</sup> Plaintiffs argue that the Division has the ability to promulgate regulations and adopt procedures making it easier to vote, including counting ballots with minor, correctable mistakes on the ballot envelopes, and providing opportunities for notice and cure.<sup>112</sup> Plaintiffs point out that the Division has historically exercised its discretionary authority by allowing affected ballots to count even when voters were not in strict compliance with the statutory requirements.<sup>113</sup> Plaintiffs further argue that the new regulations under 6 AAC 25.510(d) reflect that the Division has

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<sup>110</sup> See *Hobbs*, 18 F.4th at 1193.

<sup>111</sup> Pl. Reply & Opp. at 11.

<sup>112</sup> *Id.* at 13-15.

<sup>113</sup> *Id.* at 14-15.

discretion, which could include implementing a notice-and-cure system.<sup>114</sup>

Finally, Plaintiffs argue that AS 15.20.203 does not forbid the Division from providing absentee voters an opportunity to cure because the statute is ambiguous.<sup>115</sup>

The State argues that the Division does not have discretionary authority to implement a notice-and-cure process because the election statutes do not allow for notice or cure.<sup>116</sup> The State argues that “[a]gency regulations must be consistent with the governing statutory scheme,” and here, the statutory scheme leaves no opportunity for pre-election notice or cure.<sup>117</sup> Accordingly, the State’s position is that it is not the Division’s practice that burdens voters because the Division’s practice merely implements the governing statutory scheme. The State disputes Plaintiffs’ argument that the absentee voting statute is ambiguous, and argues that the creation of a notice-and-cure regulation would contradict the existing statute.<sup>118</sup>

Agency regulations must be “consistent with and reasonably necessary to carry out the purposes of the statutory provisions.”<sup>119</sup> When interpreting a statute,

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<sup>114</sup> *Id.* at 16-17, Ex. 8.

<sup>115</sup> *Id.* at 28.

<sup>116</sup> Defs.’ Reply at 11.

<sup>117</sup> *Id.* at 11-12 (citing *City of Valdez v. State*, 372 P.3d 240, 246 (Alaska 2016)).

<sup>118</sup> *Id.* at 11-12, 15.

<sup>119</sup> *State, Dep’t of Health and Soc. Servs., Div. of Pub. Assistance v. Gross*, 347 P.3d 116, 120 (Alaska 2015) (quoting *Lakosh v. Alaska Dep’t of Envtl. Conservation*, 49 P.3d 1111, 1114 (Alaska 2002)).

the Court “consider[s] its language, its purpose, and its legislative history.”<sup>120</sup> A statute is considered ambiguous when “it is susceptible of two or more conflicting but reasonable meanings.”<sup>121</sup> The Alaska Supreme Court uses a “sliding scale approach to statutory interpretation . . . ‘the plainer the statutory language is, the more convincing the evidence of contrary legislative purpose or intent must be.’”<sup>122</sup>

Here, the plain language of AS 15.20.203 is not ambiguous and is not susceptible to more than one reasonable interpretation. First, the statute clearly directs the Division to provide notice of deficient ballots *after* certification of election results.<sup>123</sup> There is no language in the statute indicating a legislative intent for the Division to give pre-election notice. The notice is required to be provided to each absentee voter whose absentee ballot *was* rejected. The free access system is required to be available to check to see whether the voter’s ballot *was* counted and, if not counted, the reason why the ballot *was* not counted. There is no express language directing the Division to provide pre-election notice or an

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<sup>120</sup> *State v. Planned Parenthood of the Great Northwest*, 436 P.3d 984, 992 (Alaska 2019) (quoting *Alyeska Pipeline Serv. Co. v. DeShong*, 77 P.3d 1227, 1234 (Alaska 2003)).

<sup>121</sup> *Dep’t of Health & Soc. Servs. v. White*, 529 P.3d 534, 540 (Alaska 2023) (quoting *State v. Andrews*, 707 P.2d 900, 988 (Alaska App. 1985)).

<sup>122</sup> *Ass’n of Vill. Council Presidents Reg’l Hous. Auth. v. Mael*, 507 P.3d 963, 985 (Alaska 2022) (quoting *Bohn v. Providence Health Servs.-Wash.*, 484 P.3d 584, 593-94 (Alaska 2021)).

<sup>123</sup> See AS 15.20.203(i) and (j) (instructing the director to provide notice to voters not later than “10 days after completion of the review of ballots by the state review board”; and “60 days after certification of the results of a general election or special election;” and to make a free access system available not less than “10 days after certification of results of a primary election or special primary election”; and “30 days after certification of the results of a general or special election”).

opportunity to cure. Second, the statute clearly provides that “[a]n absentee ballot may not be counted” if any of the requirements are not satisfied.<sup>124</sup> Accordingly, the Division cannot accept a ballot when a voter fails to properly execute the certificate, and is under no statutory directive to provide voters an opportunity to cure.

The fact that the Division in the past counted some ballots which were not in strict compliance with the statutory requirements does not render the Division’s current interpretation or practice to not count such ballots unconstitutional. In addition, the fact that Third Judicial District voters recently received and then voted the wrong ballots for the Fourth Judicial District is a unique factual scenario not addressed by the statutory framework and distinguishable from failing to sign ballots, have them witnessed, or include identification as required. The Division’s interpretation of the statutory requirements to count or reject ballots is constitutional.

At oral argument, Plaintiffs pointed to the Alaska Supreme Court decisions in *Miller v. Treadwell* and *Native Village of Kwinhagak v. Department of Health and Social Services*.<sup>125</sup> In *Miller v. Treadwell*, the Alaska Supreme Court acknowledged its holding that a voter “shall not be disenfranchised because of mere mistake,” but also concluded that AS 15.15.360 should not be interpreted to

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<sup>124</sup> AS 15.20.203(b).

<sup>125</sup> 245 P.3d 867, 869 (Alaska 2010); 542 P.3d 1099, 1112 (Alaska 2024).

excuse write-in voters from marking ovals as required by law.<sup>126</sup> Because “[w]riting in the name but not marking the oval is not compliant with the statute,” those ballots were not counted consistent with the statutory requirements.<sup>127</sup>

In *Native Village of Kwinhagak*, the Alaska Supreme Court held that the “court cannot rewrite the law to include what the legislature has omitted.”<sup>128</sup> The plaintiffs in *Native Village of Kwinhagak* argued that the legislature could not have intended the Office of Children’s Services to be exempt from oversight when admitting children in its custody to a psychiatric hospital because that would be inconsistent with the relevant statutes.<sup>129</sup> The Alaska Supreme Court recognized the “gap” in the existing statutory scheme, but ultimately concluded that “[w]hether the statutory ‘gap’ is due to intention or oversight, [the Court] has no authority to rewrite statutes.”<sup>130</sup> The Alaska Supreme Court concluded that the child’s hospitalization without timely notice and a hearing violated the child’s right to procedural due process.<sup>131</sup>

To the extent that Plaintiffs argue that AS 15.20.203 is “silent” as to notice-and-cure, the Court is unaware of legislative history for AS 15.20.203 indicating that the legislature intended to authorize the Division to implement a notice-and-

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<sup>126</sup> 245 P.3d 867, 869 (Alaska 2010).

<sup>127</sup> *Id.* at 878.

<sup>128</sup> 542 P.3d 1099, 1112 (Alaska 2024).

<sup>129</sup> *Id.* at 1111.

<sup>130</sup> *Id.* at 1114.

<sup>131</sup> *Id.* at 1119.

cure system. The plain language reflects only legislative intent for post-election notice. While the Alaska legislature has previously considered adopting a notice-and-cure system, the existing statutory framework remains in effect. The Division's interpretation that it does not have authority to implement a notice-and-cure process, and corresponding practice, does not violate the constitutional right to vote.

### C. Separation of Powers

Plaintiffs request that this Court “declare that the State’s system of disqualifying mail-in ballots for failure to comply with the ballot envelope requirements is unconstitutional” and “direct the State to act promptly to develop and implement a system of notice and cure.”<sup>132</sup> The State argues that the Court cannot order either the State or the legislature to create a notice-and-cure process without violating the separation of powers.<sup>133</sup>

The Court’s limited role is to determine whether the statutory framework and the Division’s interpretation and practice for absentee ballot requirements complies with the constitutional right to vote. Because the Court concludes that AS 15.20.203 is constitutional as written and applied, the Court does not address the parties’ separation of powers arguments. But the Court notes that it “may not read into a statute that which is not there, even in the interest of avoiding a finding

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<sup>132</sup> Pl. Motion at 27-28.

<sup>133</sup> Def. Opp. & Cross at 25.

of unconstitutionality.”<sup>134</sup> As discussed above, the Alaska legislature has previously contemplated a notice-and-cure process, and it is within the legislature’s power whether to choose to enact a notice-and-cure procedure.<sup>135</sup>

### III. CONCLUSION

For the foregoing reasons, Plaintiffs’ Motion for Summary Judgment is denied and Defendants’ Cross-Motion for Summary Judgment is granted.

DATED at Anchorage, Alaska this 24th day of January 2025.

  
Yvonne Lamoureux  
Superior Court Judge

I certify that on 1/24/25 a copy of  
the above was served on:

R. Botstein, E. Rosenberg, P. Chaudhuri,  
S. Tarzwell, W. Furlong, M. Newman, M. Condon,  
S. Orlansky, L. Harrison, T. Flynn

B. Cavanaugh  
Judicial Assistant

<sup>134</sup> *Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183, 192 (Alaska 2007).

<sup>135</sup> *See Pennsylvania Democratic Party v. Boockvar*, 662 Pa. 39, 86 (Pa. 2020) (concluding that the decision to provide a notice-and-cure procedure is “one best suited for the Legislature”); *see also Richardson v. Texas Sec’y of State*, 485 F.Supp.3d 744, 810 (W.D. Tex. 2020) (holding that “the Texas legislature may be in a better position to design [notice and cure] procedures”).