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**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA**

**THIRD JUDICIAL DISTRICT AT ANCHORAGE**

| | |
|---|---|
| MIDNIGHT SUN INDEPENDENCE FUND,<br><br>Plaintiff,<br><br>v.<br><br>NANCY DAHLSTROM, in her official capacity as Lieutenant Governor of Alaska; CAROL BEECHER, in her official capacity as Director of the Alaska Division of Elections; and the ALASKA DIVISION OF ELECTIONS,<br><br>Defendants. | Case No. 3AN-26- CI |

**MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER**

Pursuant to Alaska Statute 09.40.230 and Civil Rule 65(a), Plaintiff Midnight Sun Independence Fund moves for a preliminary injunction and temporary restraining order. As set

forth in its memorandum in support of this motion, Plaintiff is entitled to a preliminary injunction and temporary restraining order requiring Defendants Nancy Dahlstrom, in her official capacity as Lieutenant Governor of Alaska; Carol Breeacher, in her official capacity as Director of the Alaska Division of Election; and the Alaska Division of Elections to open and operate each of the absentee in-person voting locations listed on the Division's website as of the week of October 19, 2026, at the times and places listed for each location on the website, through and including election day, November 3, 2026.

This motion is supported by the attached affidavits, memorandum in support, and proposed order. Given the urgency of this matter, Plaintiffs respectfully request that expedited consideration is granted, that a temporary restraining order is issued immediately, and that a hearing on the motion for preliminary injunction is set prior to the expiration of the TRO.

DATED this 29th day of October, 2026 at Anchorage, Alaska.

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**CERTIFICATE OF SERVICE**
I certify that the foregoing was served upon the following parties by email and U.S. Mail this 29 day of October, 2026 to the following:

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**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA**

**THIRD JUDICIAL DISTRICT AT ANCHORAGE**

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| MIDNIGHT SUN INDEPENDENCE FUND,<br><br>Plaintiff,<br><br>v.<br><br>NANCY DAHLSTROM, in her official capacity as Lieutenant Governor of Alaska; CAROL BEECHER, in her official capacity as Director of the Alaska Division of Elections; and the ALASKA DIVISION OF ELECTIONS,<br><br>Defendants. | Case No. 3AN-26- CI |

**MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER**

Plaintiff Midnight Sun Independence Fund ("Midnight Sun") moves for a preliminary injunction and temporary restraining order in the above-captioned matter.

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The Alaska Division of Elections has failed to operate the crucial absentee in-person voting sites that it promised to voters in more than 20 communities primarily in rural western Alaska. In October 2026, in accordance with Alaska law, the Alaska Division of Elections published on its website a list of locations where voters may appear in person to request and cast absentee ballots. But when absentee in-person voting opened on October 19, voters at several of these locations—some of whom traveled long distances in difficult circumstances—found locked doors, closed offices, or local officials who were woefully unprepared and uninformed about absentee in-person voting. The result has been chaos, with rural voters and the organizations that support them scrambling for up-to-date information on where, how, and when they can vote—information that appears to be changing day to day.

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The Alaska Constitution prohibits this bait-and-switch. "[T]he right of the citizens to cast their ballots and thus participate in the selection of those who control their government is one of the fundamental prerogatives of citizenship."[1] The unannounced closure of designated absentee in-person voting sites advertised prominently on the Division of Elections' website severely burdens the right to vote for Alaskans in small rural communities that otherwise have limited access to voting opportunities. Those who made the trip to absentee in-person sites in reliance on the representations made by the Division of Elections only to find those sites inoperable face the further burden of making yet another journey to attempt to exercise their right to vote. For many, the cost and burden of making a second trip will be prohibitive. And the chaos and confusion that has gripped rural Alaska's elections has made it impossible for voters to know how or where to

[1] *State v. Arctic Vill. Council*, 495 P.3d 313, 321 (Alaska 2021) (quoting *Miller v. Treadwell*, 245 P.3d 867, 868 (Alaska 2010)).

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vote or for organizations supporting voters to provide accurate and up to date information. There is simply no state interest in misleading and misinforming the voting public or failing to follow through on the state's commitments to voters. And there is no administrative burden or cost savings to consider here: pursuant to state law, the Division has *already* signed agreements with local authorities to operate absentee in-person sites and has *already mailed the necessary materials* to those sites.

Time is short. Election day is just days away and still voters and organizers have no reliable insight into the actual availability of absentee in-person voting. The Court must act immediately to prevent further violation of rural Alaskans' fundamental voting rights and ongoing irreparable harm to Plaintiff's crucial voter education and mobilization activities.

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## BACKGROUND

### I. Alaska's absentee in-person voting system is crucial for many Alaska Voters.

Early in-person voting is a critical option for many Alaska voters to access the franchise. In the 2024 general election, 92,281 Alaskans voted early in-person, over 27% of voters in the State.[2] In the 2022 general election, that number was 47,298, or almost 18% of Alaskans voting in that election.[3]

Alaska law provides that, during the 15 days before an election and on election day, a qualified voter may vote early in person through one of two methods: "early voting" or "absentee in-person."[4] At early voting locations, the voter's eligibility is determined at the time of voting

[2] U.S. Election Assistance Comm'n, *Election Administration and Voting Survey: Alaska Data Brief* (2024), https://perma.cc/D54F-NHNK.
[3] U.S. Election Assistance Comm'n, *Election Administration and Voting Survey: Alaska Data Brief* (2022), https://perma.cc/7M7Q-WWGY.
[4] Alaska Stat. § 15.20.064(a); Alaska Admin. Code tit. 6, § 25.500(a).

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through a secure connection into the voter registration database and their ballot is inserted into the scanner that day.[5] At absentee in-person locations, the voter completes an absentee envelope with their voted ballot and leaves their envelope and ballot in a ballot box; the ballots are not scanned at the voting location and the envelopes are later reviewed by the Absentee Review Board to confirm eligibility.[6]

Each of the five election supervisors' offices—in Juneau, Anchorage, Fairbanks, Nome, and Wasilla—are automatically designated as absentee in-person voting locations by regulation.[7] The Director of the Division of Elections may designate additional absentee in-person voting locations.[8] The Director shall supply all absentee in-person voting locations with ballots for all electoral districts in the State and designate absentee voting officials to serve at each location.[9] The Director must give notice of the location of designated absentee in-person voting sites at least 45 days before each election.[10] This includes posting the locations on the Division of Elections website.[11]

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[5] Alaska Stat. § 15.20.064(b)–(c).
[6] *Absentee and Early Voting*, Alaska Div. of Elections, https://perma.cc/5CAB-253Y.
[7] Alaska Admin. Code tit. 6, § 25.500(a).
[8] Alaska Stat.§ 15.20.045(b).
[9] *Id*.
[10] *Id*.§ 15.20.050.
[11] *See Early & Absentee In-Person Voting Locations*, Alaska Div. of Elections (captured October 16, 2026), https://web.archive.org/web/20261016204543/https://www.elections.alaska.gov/avo/.

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## II. The Division of Elections' website listed numerous absentee in-person voting sites that have failed to open for the 2026 general election.

In advance of the 2026 general election, the Division posted on its website a list of absentee in-person voting locations that would be available to voters in the 15 days leading up to the November 3, 2026 election.[12]

However, as of the week of October 19, 2026, it was publicly reported that at least 18 of the locations designated on the Division's website as open for absentee in-person voting were not in fact operating for Alaska voters. This includes listed locations in the communities of Chignik Bay, Holy Cross, Pilot Station, Goodnews Bay, Ekwok, Mountain Village, Alakanuk, Gambell, Quinhagak, Manokotak, Chistochina, Kongiganak, Huslia, Pedro Bay, Nanwalek, Napaskiak, Newhalen, and Toksook Bay.[13] In some circumstances, the local officials running the absentee in-person location reported not receiving the necessary materials or information to operate the sites.[14]

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On October 23, after learning of these effective poll closures, State Senator Bill Wielechowski and Midnight Sun both separately sent letters to the Director informing her of the discrepancy between the absentee in-person voting locations designated by her office and listed on the Division's website and those actually in operation.[15] On October 27, the Director responded to Senator Wielechowski that, of the 18 locations listed in his letter, 12 confirmed to the Division that their site is open to voters, three responded that they no longer planned to open an absentee

[12] *See id*.
[13] *See* Ex. 1, Letter from B. Wielechowski to C. Beecher (Oct. 23, 2026); Ex. 2, Letter from A. Khanna to C. Beecher (Oct. 23, 2026); *see also* Anna Griffin & Emily Schwing, *In Alaska, Some Early Voting Sites in Rural Villages Have Not Yet Opened*, N.Y. Times (Oct. 24, 2026), https://www.nytimes.com/2026/10/24/us/alaska-early-voting-sites.html.
[14] Griffin & Schwing, *supra* note **Error! Bookmark not defined.**.
[15] *See* Ex. 1; Ex. 2.

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in-person location, and three have not responded.[16] Plaintiff has not been able to confirm the information in the Director's October 27 letter, including which locations correspond to the three categories the Director described. However, as of October 27, the Division's website listed five absentee in-person voting locations as "temporarily closed"—Ekwok, Goodnews Bay, Kongiganak, Mertarvik and Scammon Bay—without any information on how "temporary" those closures are.[17] Three other locations—Chignik Bay, Fort Wainwright and Levelock—have been removed from the Division's website completely since the October 23 letters were sent to the Director.[18]

In addition, local community members have reported that at least five additional locations not mentioned in either letter—Kwenthluk, Napakiak, Oscarville, Tuntutuliak, and Tununak, all in the Yukon-Kuskokwim Delta region—were not operating as of October 27, despite their inclusion on the Division's website as open for absentee in-person voting.[19] These communities and others in the Yukon-Kuskokwim Delta are disconnected from the state's road system and accessible only by boat or plane.[20] Traveling to Bethel—the nearest community with a confirmed absentee in-person voting site—requires significant advance planning and can be prohibitively burdensome and expensive.[21] Flying to Bethel from Toksook Bay, for example, costs roughly

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[16] *See* Ex. 3, Letter from C. Beecher to B. Wielechowski (Oct. 26, 2026).
[17] *See Early & Absentee In-Person Voting Locations*, Alaska Div. of Elections (captured October 27, 2026), https://web.archive.org/web/20261026000000*/https://www.elections.alaska.gov/avo/
[18] Eric Stone & Hannah Flor, *Some Rural Alaska absentee voting sites failed to open ahead of midterms*, Alaska Public Media (Oct. 27, 2026), https://perma.cc/PB6K-77R5.
[19] Ex. 4, Affidavit of Rachael Skywalker Gunn ("Gunn Aff.") ¶ 6.
[20] *Id.* ¶¶ 14–16.
[21] *Id.* ¶ 14

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$450.[22] That is a particularly severe burden in communities like Toksook Bay where the median income is less than $25,000 annually.[23]

## LEGAL STANDARD

Under Alaska Rule of Civil Procedure 65, "[a] party may obtain preliminary injunctive relief under one of two standards: the balance of hardships standard or the probable-success-on-the-merits standard."[24] The balance of hardships standard applies where "the plaintiff faces the danger of irreparable harm" and "the opposing party is adequately protected."[25] If those conditions are met, a plaintiff must raise only "serious and substantial questions going to the merits of the case."[26] But even if "the plaintiff's threatened harm is less than irreparable or if the opposing party cannot be adequately protected," a plaintiff may still succeed by making a "clear showing of probable success on the merits."[27]

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## ARGUMENT

The Court should immediately grant a Temporary Restraining Order and Preliminary Injunction to protect Midnight Sun and the Alaska voters it serves from ongoing harm. As an initial matter, Plaintiff has standing to bring this action because it has suffered an economic injury as a result of the Division's unlawful conduct. Plaintiff also satisfies both standards for a preliminary injunction. First, because Plaintiff has made a "clear showing of probable success on the merits," it is entitled to a temporary restraining order and a preliminary injunction even without a showing

[22] *Id.*
[23] *Id.*
[24] *State v. Galvin*, 491 P.3d 325, 332 (Alaska 2021).
[25] *Arctic Vill. Council*, 495 P.3d at 320 (quotation omitted).
[26] *Id.* (quotations omitted).
[27] *Id.* (quotations omitted).

of irreparable harm.[28] Second, Plaintiff is independently entitled to a temporary restraining order and preliminary injunction because it will suffer irreparable harm absent relief, the balance of equities tips in its favor, and it has at the very least raised "serious and substantial questions" on the merits.[29]

## I. Plaintiff has standing.

Plaintiff Midnight Sun has standing to challenge the Division's failure to operate promised absentee in-person voting sites because it is suffering ongoing injury to its economic interests and its ability to carry out its core mission. "The concept of standing has been interpreted broadly in Alaska," and Alaska courts "favor[] increased accessibility to judicial forums."[30] Standing in Alaska courts "is not a constitutional doctrine; rather, it is a rule of judicial self-restraint based on the principle that courts should not resolve abstract questions or issue advisory opinions."[31] Its "basic requirement" is "adversity."[32] Under Alaska's "interest-injury approach" to standing, "a plaintiff must have an interest adversely affected by the conduct complained of. Such an interest may be economic, or it may be intangible, such as an aesthetic or environmental interest."[33] And the "degree of injury to the interest need not be great; the basic idea is that an identifiable trifle is enough for standing to fight out a question of principle; the trifle is the basis for standing and the principle supplies the motivation."[34]

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[28] *Id*.
[29] *Id*.
[30] *Trs. for Alaska v. State*, 736 P.2d 324, 327 (Alaska 1987) (quotations omitted).
[31] *Id*.
[32] *Id*.
[33] *Id*. (citation omitted).
[34] *Id*. (citation modified).

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The Division's failure to live up to its promises to voters has fundamentally upended Plaintiff's operations in the crucial period leading up to election day. Plaintiff's core mission involves educating Alaska voters, particularly voters in rural, predominantly Alaska Native communities in western Alaska, about how to exercise their right to vote and the various options available to them under Alaska law.[35] Plaintiff has invested significant resources into encouraging voters to vote as early as possible using absentee in-person voting. It purchased banners encouraging voters in rural communities to vote early or absentee in-person, listing the times and places where those forms of voting would be offered.[36] And it relied on the Division of Elections' website to identify those hours and locations and made sure that the banners were prominently displayed in small rural communities particularly in western Alaska.[37]

Because of the Division's failures, Plaintiff has ramped up its efforts to communicate with affected voters and educate them about alternative ways to cast their ballot.[38] This is made difficult, however, by the lack of reliable information coming from the Division of Elections. Plaintiff has had to devote significant time and resources to working with partners on the ground to understand the shifting landscape of closures, limited hours, and minimal (or misleading) information.[39] It has also explored purchasing "care packages" of fax machines and Starlink satellite internet routers to send to affected communities where absentee in-person voting is unexpectedly unavailable.[40] But even this effort has been hindered by the lack of reliable information coming from the Division of Elections.

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[35] Ex. 5, Affidavit of Frank Gwartney ("Gwartney Aff."), ¶ 3.
[36] *Id.* ¶ 4.
[37] *Id.* ¶ 7.
[38] *Id.* ¶ 10.
[39] *Id.*
[40] *Id.* ¶ 12.

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Because of the ever-changing landscape of absentee in-person voting sites and numerous discrepancies between the information provided by the Division and reporting from individuals on the ground, it is impossible to know which communities to prioritize when sending these care packages.[41] Plaintiff is thus forced to make critical decisions about the allocation of its limited resources without reliable information. These unanticipated challenges have severely hampered its ability to execute its mission of educating, protecting, and turning out voters in rural communities. It has had to take time and resources away from its planned activities, including contacting low propensity voters and encouraging them to vote.[42]

A party that claims economic injury "from the state's enforcement of an unconstitutional law" satisfies "the basic requirement of adversity for standing."[43] Thus, for example, a public contractor had interest-injury standing to challenge a resident hiring preference on equal protection grounds even though "the law's alleged constitutional infirmity involve[d] discrimination between Alaska employees," because the contractor "allege[d] that enforcement of the preference law caused it economic injury."[44] So too here. The Division of Elections' unlawful abridgment of the rights to vote and to due process under the Alaska Constitution has caused Plaintiff economic harm and has hindered pursuit of its mission.[45] That those rights belong to the voters that Plaintiff serves, rather than to the organization itself, is irrelevant to the interest-injury standing analysis.

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[41] *Id.*
[42] *Id.* ¶ 13.
[43] *State v. Enserch Alaska Const., Inc.*, 787 P.2d 624, 630 (Alaska 1989).
[44] *Id.*
[45] *See Trs. for Alaska*, 736 P.3d at 327 (explaining plaintiff's interest "may be economic . . . or it may be intangible," and that "an identifiable trifle is enough for standing").

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## II. Plaintiff has made a clear showing of probable success on the merits.

### A. The unannounced closure of designated polling locations violates the fundamental right to vote protected by the Alaska Constitution.

The unannounced closure of previously advertised absentee in-person voting sites violates the fundamental right to vote protected by the Alaska Constitution. Alaska courts apply a "four-step analysis" for addressing burdens on the right to vote, starting with the "bedrock principle that the right of the citizens to cast their ballots and thus participate in the selection of those who control their government is one of the fundamental prerogatives of citizenship."[46] "When an election law is challenged the court must first determine whether the claimant has in fact asserted a constitutionally protected right."[47] If it finds that it has, the court "must then assess the character and magnitude of the asserted injury to the rights."[48] Following that, the court weighs "the precise interests put forward by the State as justifications for the burden imposed by its rule."[49] Finally, the court must "judge the fit between the challenged legislation and the State's interests in order to determine the extent to which those interests make it necessary to burden the plaintiff's rights."[50] The test is "flexible": "as the burden on constitutionally protected rights becomes more severe, the government interest must be more compelling and the fit between the challenged legislation and the State's interest must be closer."[51] While this test mirrors the *Anderson-Burdick* balancing test

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[46] *Arctic Vill. Council*, 495 P.3d at 321.
[47] *Id.* (citation modified).
[48] *Id*. (citation modified).
[49] *Id*. (citation modified).
[50] *Id.* (citation modified).
[51] *Id.* at 321–22 (citation modified).

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that federal courts apply to claimed violations of the right to vote,[52] "Alaska's constitution is more protective of rights and liberties than is the United States Constitution."[53]

Plaintiff's challenge here easily satisfies this test. First, the Division's failures undoubtedly implicate a constitutionally protected right: the right to vote and have one's vote counted, which is "one of the fundamental prerogatives of citizenship" and "encompasses the voter's right to express the voter's opinion and is a way to declare the voter's full membership in the political community."[54] The unannounced closures of absentee in-person sites imposes severe burdens on that right that are not justified by any adequate state interest, let alone a compelling one. Even in communities that do have absentee in-person voting sites, voters often must travel significant distances by boat, car, or plane to reach those sites. "Approximately 82% of Alaska's communities are not connected to the road system,"[55] and roughly half of Alaska's precincts are "only accessible by boat or plane."[56] Voters who make that trip in reliance on the Division website only to find that absentee voting is in fact unavailable will be forced to make that trip a second or third time to attempt to exercise their right to vote, or may be unable to vote at all if the trip proves too burdensome.[57]

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[52] *See O'Callaghan v. State*, 914 P.2d 1250, 1253–54 (Alaska 1996) (quoting *Burdick v. Takushi*, 504 U.S. 428, 433–34 (1992)).
[53] *Arctic Vill. Council*, 495 P.3d at 321 (quoting *State, Div. of Elections v. Green Party of Alaska*, 118 P.3d 1054, 1060 (Alaska 2005)).
[54] *Id.* (quoting *Miller*, 245 P.3d at 868).
[55] Am. Soc'y of Civ. Eng'rs, *Alaska 2025 Report*, 2025 Report Card for Am.'s Infrastructure (2025), https://infrastructurereportcard.org/state-item/alaska/.
[56] U.S. Election Assistance Comm'n, *The State of Alaska Div. of Elections Election Official Training - Television Broadcast* 1 (2020), https://perma.cc/JK5K-8T8J.
[57] Gunn Aff. ¶¶ 11–12

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As the U.S. Supreme Court has recognized, "[t]he accessibility, prominence, facilities, and prior notice of [a] polling place's location all have an effect on a person's ability to exercise his franchise."[58] And "a law severely burdens voting rights if the burdened voters have few alternate means of access to the ballot."[59] That is precisely the situation in which many voters find themselves as a result of the Division's actions. For many, the cost and burden of ultimately successfully being able to access a voting site will be prohibitive.[60]

Nor will the availability of absentee voting by mail provide voters with an adequate alternative. Indeed, even the State of Alaska has acknowledged in briefing before the U.S. Supreme Court that "mail delivery isn't guaranteed for remote areas of Alaska" due to the "bad weather and unreliable or nonexistent weather reporting" that are frequent issues in the state.[61] By way of example, just last year an October typhoon caused the entire communities of Kipnuk and Kwigillingok to be evacuated and many of those community members have still not yet been able to return to their homes.[62] Furthermore, many voters may not realize they need to vote by mail until it is too late to return a mail ballot in time, believing—in reliance upon the Division's previous designations and the locations listed on its website—that they can vote at an absentee in-person location that is in fact closed. The same weather and travel-related issues create challenges for voting on Election Day as well.[63] In some communities in the the Yukon-Kuskokwim Delta, such

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[58] *Perkins v. Matthews*, 400 U.S. 379, 387 (1971).
[59] *Citizens for Legis. Choice v. Miller*, 144 F.3d 916, 921 (6th Cir. 1998) (citing *Burdick*, 504 U.S. at 436–37).
[60] Gunn Aff. ¶¶ 11–14.
[61] Br. of Amicus Curiae State of Alaska in Supp. of Neither Party at 4, *Watson v. Republican Nat'l Comm.*, No. 24-1260 (U.S. Jan. 9, 2026), https://perma.cc/6YD7-QU7K.
[62] Gunn Aff. ¶ 15.
[63] *See, e.g.,* James Brooks, *Some rural Alaska polling stations opened late on election day, a sign of continuing problems*, Alaska Beacon (August 18, 2026)

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as Kasigluk, voters can only reach their in-person voting place by crossing the river.[64] If the river crest is too high, voters will not be able to access their election day voting place.[65]

Indeed, the chaos and uncertainty caused by the shifting facts on the ground and the Division's dissemination of wrong or incomplete information is itself an undue burden on the right to vote. The simple reality is that Alaskans in far flung rural communities cannot trust that an absentee in-person site that is listed on the Division's website will be available when they arrive at that location. Nor are they being reliably informed when an absentee in-person site previously reported as closed or unavailable is re-opened. As a result, voters cannot adequately plan transportation and other arrangements necessary to cast their votes. And organizations that serve voters—like Midnight Sun—cannot adequately advise voters on how to exercise their rights or support them in doing so.

The confusion created by the Division of Elections will inevitably discourage some voters from heading to the polls at all. When voters receive incomplete, conflicting, or simply wrong information, they lose trust in the electoral process and become less likely to vote.[66] This is all the more problematic for voters who plan and make the effort to vote at an absentee in-person voting site only to find that site is not available when they get there; it is difficult for voters to turn out multiple times in a single election in the hopes that they will eventually be able to successfully cast a ballot.

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https://alaskabeacon.com/2026/08/18/some-rural-alaska-polling-stations-opened-late-on-election-day-a-sign-of-continuing-problems/ (reporting two rural polling stations opened late during statewide primary election due to bad weather).

[64] Gunn Decl. ¶ 16.

[65] *Id.*

[66] Gwartney Decl. ¶ 14; Gunn Decl ¶ 12; *cf. Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) ("[C]onflicting orders[] can themselves result in voter confusion and consequent incentive to remain away from the polls.").

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The Division can offer no justification for its failure to operate the absentee in-person voting sites that it promised to voters. There is no state interest, let alone a compelling one, in telling voters one thing and then doing another. Whatever administrative burdens or resource expenditures may be involved in operating an absentee in-person voting site, those are obligations that the Division has *already* undertaken. The Director of the Division of Elections was required to supply municipal clerks acting as absentee voting officials with absentee ballots for absentee in-person voting "[a]t least 15 days before the election."[67] And the Director has represented in correspondence to Senator Wielechowski that those materials were "mailed out the first week of October."[68] There is no conceivable state interest in allowing those materials to sit unused in municipal offices around the state in derogation of promises made to rural Alaskan voters as recently as last week. Indeed, such a nonexistent state interest could not justify even a minimal burden on Alaskans' voting rights. *See Lakin v. Adams Cnty. Bd. of Elections*, 149 F.4th 291, 318 (3d Cir. 2025) (holding a "minimally burdensome" election regulation unlawful under *Anderson-Burdick* because there were only "tangential links, at best," between the asserted state interests and the challenged law).

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**B. The unannounced closure of designated absentee in-person sites violates the right to Due Process under the Alaska Constitution.**

The Division's bait and switch also violates voters' substantive due process rights. Article I, Section 7 of the Alaska Constitution provides that "[n]o person shall be deprived of life, liberty, or property, without due process of law." "Alaska has a long history of substantive due process jurisprudence" drawing on Article I, Section 7's counterpart in the Due Process Clause of the

[67] Alaska Stat. § 15.20.045.
[68] *See* Ex. 3.

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United States Constitution.[69] "Substantive due process focuses on the result of a governmental action, not its procedures."[70] As multiple federal courts have held, a state violates voters' substantive due process rights when it tells them "one thing before the election and change[s] its policy thereafter."[71] A state may not constitutionally "induce the voters to vote by this means" and then fail to allow them to cast a ballot.[72] Substantive due process is therefore violated "if two elements are present: (1) likely reliance by voters on an established election procedure and/or official pronouncements about what the procedure will be in the coming election; and (2) significant disenfranchisement that results from a change in the election procedures."[73] In short, a state may not allow an election to be "conducted in a manner that is fundamentally unfair."[74]

The Division's failure to provide voting opportunities that it already promised to Alaskans is "unfair" by any measure. Both of the elements identified by the Ninth Circuit in *Bennett* are present here: (1) voters likely relied on the Division's website—an "official pronouncement[] about what the procedure will be in the coming election"—in deciding how, when, and where to cast their vote; and (2) as explained above, the Division's abrupt change of course is likely to result in "significant disenfranchisement."[75] It is no answer that the Division has since updated its website to note that some absentee in-person sites have been "temporarily" closed and simply

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[69] *Matter of Mabel B.*, 485 P.3d 1018, 1024 (Alaska 2021).
[70] *Id.* (quoting 16C C.J.S. *Constitutional Law* § 1821 (2020)).
[71] *Scheer v. City of Miami*, 15 F. Supp. 2d 1338, 1344 (S.D. Fla. 1998).
[72] *Griffin v. Burns*, 570 F.2d 1065, 1074 (1st Cir. 1978).
[73] *Bennett v. Yoshina*, 140 F.3d 1218, 1226–27 (9th Cir. 1998); *see also In re 2021 Redistricting Cases Matanuska-Susitna Borough*, 528 P.3d 40, 58 (Alaska 2023) (noting that "courts in other jurisdictions have found Due Process violations if state action 'seriously undermine[s] the fundamental fairness of the electoral process") (citation omitted).
[74] *Bennett*, 140 F.3d at 1226.
[75] *Id.* at 1226–27

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removed others as if they were never designated. Undoubtedly, some number of voters will have consulted the website prior to any recent updates, or may have received information from the website through a secondary source (such as through word of mouth or volunteer outreach) with little access to reliable internet service. And the list of absentee in-person sites was established *weeks* ago. Many have almost certainly made plans to vote in reliance on that list.

## III. Plaintiff alternatively satisfies the "balance of hardships" standard.

Because Plaintiff has made "a clear showing of probable success on the merits," it satisfies the probable-success-on-the-merits standard even if its "threatened harm is less than irreparable or if the opposing party cannot be adequately protected."[76] But even if the Court were unpersuaded, Plaintiff has, at the very least, raised "serious and substantial questions going to the merits of the case."[77] Its claims certainly are not "frivolous or obviously without merit."[78] The Court therefore must grant a preliminary injunction because Plaintiff will suffer irreparable harm, and the balance of the equities and the public interest favor relief.

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Absent relief, Midnight Sun will suffer irreparable harm to its economic interests and its ability to carry it out its mission of educating and turning out voters. "Irreparable harm is an injury which should not be inflicted and which, because it is so large or so small, or is of such constant and frequent occurrence, or because no certain pecuniary standard exists for the measurement of damages, cannot receive reasonable redress in a court of law."[79] Where elections and voting rights

[76] *Arctic Vill. Council*, 495 P.3d at 320 (quotation omitted).
[77] *Galvin*, 491 P.3d at 333 (quoting *Alaska Pub. Utils. Comm'n v. Greater Anchorage Area Borough*, 534 P.2d 549, 554 (Alaska 1975)).
[78] *Id.* (citation modified).
[79] *Id.* (citation modified).

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are at stake, irreparable harm flows directly from the likelihood of success on the merits.[80] When "a plaintiff seeks a preliminary injunction because of an alleged constitutional violation and shows it is likely to prevail on the merits, that showing will almost always demonstrate it is suffering irreparable harm as well."[81]

The harms to Midnight Sun's interests are ongoing and irreparable. The Division's failures have stymied Midnight Sun's crucial education and organizing efforts in the last days of the election cycle. With just days left to mobilize voters to the polls, there is simply no time for Midnight Sun to make up the lost ground. "[O]nce the election occurs, there can be no do-over and no redress."[82] As a result, "no certain pecuniary standard exists for the measurement of damages," and Plaintiff "cannot receive reasonable redress in a court of law."[83] Pecuniary relief issued after election day would do nothing to redress Plaintiff's injuries: it will by that time be too late to reallocate its resources to turn out voters as originally planned. And it certainly will not compensate for the confusion that has gripped the final days of the election period.

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The balance of the equities and the public interest also favor injunctive relief. The relief requested imposes no burden on the Division of Elections other than enforcing the agreements and obligations that it has already undertaken. Alaska law makes the Division responsible for administering all state elections and names its director as the official charged with carrying out

[80] *See id.* ("If Galvin's statutory or constitutional arguments are correct, then she indeed faced irreparable harm; the ballots printed by the Division would be legally inadequate and misleading. The harm to her candidacy cannot be quantified with certainty, and so is not susceptible to monetary compensation.").
[81] *United States v. California*, 173 F.4th 1060, 1069 (9th Cir. 2026) (citation modified).
[82] *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014).
[83] *Galvin*, 491 P.3d 325, 333.

that responsibility.[84] The Division's director has indicated that each of the absentee in-person voting locations flagged by Senator Wielechowski "provided a signed agreement to the Division listing the location and hours."[85] And the Division already mailed out the required materials "the first week of October."[86] All that is left for the Division to do is enforce its agreements and ensure that the materials it sent to absentee in-person locations are utilized as intended. It need not produce additional ballots, mail additional materials, or spend additional staff time to operate these sites. A temporary restraining order and an injunction therefore would not "imperil the prospects of an orderly and successful election."[87] And the requested relief is in the public interest because "it is always in the public interest" to protect constitutional rights."[88]

**CONCLUSION**

The Court should grant an immediate temporary restraining order requiring the Division of Elections to ensure that each of the absentee in-person voting sites advertised on its website since October 19, 2026, is fully operational during the advertised hours and in the advertised location for each remaining day of the early voting period.

DATED this 29th day of October, 2026 at Anchorage, Alaska.

REEVES AMODIO, LLC

By: */s/ Thomas P. Amodio*
Thomas P. Amodio
Alaska Bar No. 8511142

By: */s/ Kevin M. Boots*

[84] Alaska Stat. §§ 15.10.105; 15.15.010; 15.20.045.
[85] Ex. 3.
[86] *Id.*
[87] *Galvin*, 491 P.3d at 333.
[88] *California*, 173 F.4th at 1069 (citation modified).

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Kevin M. Boots
Alaska Bar No. 0912090

By: */s/ Lily Ginsburg*
Lily Ginsburg
Alaska Bar No. 2411117

ELIAS LAW GROUP LLP

By: */s/ Abha Khanna*
Abha Khanna
**Pro Hac Vice forthcoming*

By: */s/ Richard A. Medina*
Richard A. Medina
**Pro Hac Vice forthcoming*

By: */s/ Desiree Pelletier*
Desiree Pelletier
**Pro Hac Vice forthcoming*

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**CERTIFICATE OF SERVICE**
I certify that the foregoing was served upon the following parties by email and U.S. Mail this 29th day of October, 2026 to the following:

**Margaret Paton Walsh**
**Laura Fox**
**Assistant Attorneys General**
**Department of Law**
1031 West Fourth Avenue, Ste. 200
Anchorage, AK 99501
*margaret.paton-walsh@alaska.gov*
*laura.fox@alaska.gov*

/s/ Jada Craig .
Jada Craig

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# Exhibit 1

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ALASKA STATE LEGISLATURE

Senator Bill Wielechowski
*Serving East Anchorage*

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RULES

VICE CHAIR
RESOURCES

MEMBER
STATE AFFAIRS

LEGISLATIVE
BUDGET & AUDIT

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October 23, 2026

The Honorable Nancy Dahlstrom
Lieutenant Governor
Alaska State Capitol
Juneau AK, 99801

Carol Beecher
Director, Division of Elections
PO Box 110017
Juneau, AK 9811

Sent by email

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Dear Lieutenant Governor Dahlstrom and Director Beecher:

It has come to my attention that at least 18 (eighteen) Division of Elections ("Division") designated early and absentee in-person voting locations in rural Alaska have failed to open as legally required, even though the Division's website has legally designated and advertised that they are open for voting. In some cases, the local partners who were supposed to operate the voting sites reported that they did not receive the necessary materials or even know they were expected to operate a voting site for the general election. My office has consulted with the Alaska Legislative Legal Services Division who confirmed that these actions or inactions likely constitute a violation of the state and federal constitutional right to vote and a violation of a variety of state and federal laws.

AS 15.20.064 (d) requires, "The director shall designate locations for early voting by June 1 of an election year." 6 AAC 25.500 requires that, "Absentee voting stations will be established through the direction and approval of the director. Absentee voting officials will be present in the absentee voting station." The Division's official website has a listing of these locations at a weblink that that lists, "EARLY & ABSENTEE IN-PERSON VOTING LOCATIONS."

As of the week of October 19-21, the following locations listed on the Division's website as being available for early and in-person absentee voting failed to open: Alakanuk, Chignik Bay, Chistochina, Ekwok, Gambell, Goodnews Bay, Holy Cross, Huslia, Kongiganak, Manokotak, Mountain

Village, Nanwalek, Napaskiak, Newhalen, Pedro Bay, Pilot Station, Quinhagak, and Toksook Bay. This count does not include closures for Alaska Day, and it reflects only the communities that have reported – so the number of closures could easily be much higher.

There is no legal excuse for the failure to open these sites. The legislature appropriated the funds requested by the Division to administer elections this year. The Legislature passed Senate Bill 64 which would have helped provide additional assistance for rural voting – such as a rural liaison to assist in getting poll workers, and provisions to more easily allow the Division to raise poll worker pay to help attract workers. But this bill was vetoed by Gov. Dunleavy at the request of the Division, who maintained that bill was not needed this election. So there are no excuses.

The failure to open absentee in-person voting locations on time is particularly troubling considering that in the primary election in August, dozens of rural Alaskan voters did not have their absentee in-person votes counted because it took too long for their ballots to arrive by mail to the Division's regional office. In light of this issue, rural voters who want to ensure their absentee in person votes were counted would want to vote earlier to allow more time for their ballots to be mailed to the regional office. Given the ongoing challenges the Division has had with staffing polling places in rural Alaska, absentee in-person voting is critical to ensure rural voters are able to vote in person in their communities without risking that their polling place will not open on Election Day.

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Moreover, there have been reports of ballots being rejected at several open in-person absentee polling locations due to mistakes by Division employees. The Division should immediately work to remedy this problem by better training of workers and allowing curing of poll worker errors.

To say the Division's failures are shocking would be a profound understatement. The right to vote is the most basic foundation of a democratic society and I request that you take immediate action to ensure that all designated voting locations are open at the times advertised. My office has saved a copy of the Division's website listing absentee in person and early voting locations as it existed on October 22, 2026. I further request that you ensure all local partners receive all materials and support necessary for properly operating their polling place as soon as possible. Please provide my office with copies of communications sent from the Division to absentee in-person location operators and keep my office informed of all efforts the Division takes to remedy this situation.

Sincerely,



Senator Bill Wielechowski

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# Exhibit 2

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ELIAS LAW GROUP

1700 Seventh Ave, Suite 2100 | Seattle, WA 98101

October 23, 2026

**VIA EMAIL**

Carol Beecher
Alaska Division of Elections
Court Plaza Building
240 Main Street, 4th Floor
Juneau, AK 99801
carol.beecher@alaska.gov

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**Re: Closure of Absentee In-Person Voting Locations**

Dear Director Beecher:

I write on behalf of Midnight Sun Independence Fund ("Midnight Sun") to address recent reports that several absentee in-person voting sites advertised as open and available on the Alaska Division of Elections' website are not in fact open and available to Alaska voters. Among other issues, Midnight Sun has received reports that absentee in-person voting is not available in the communities of Pilot Station, Goodnews Bay, Ekwok, Mountain Village, Alakanuk, Gambell, Quinhagak, Manokotak, Chistochina, Kongiganak, Huslia, Pedro Bay, Nanwalek, Napaskiak, Newhalen, and Toksook Bay. Each of these locations is currently listed on the Division of Elections' website as hosting an absentee in-person voting site beginning on October 19.[1] This list is almost certainly underinclusive. Alaska law makes the Division responsible for administering all state elections and names you as the official charged with carrying out that responsibility.[2] That includes ensuring that the voting sites the Division itself publicizes actually exist. When the State tells voters, many in remote communities with few alternatives, that they can vote at a specific location and they arrive to find no site, it not only misleads them, it denies them their fundamental right to vote under the United States Constitution and Article V of the Alaska Constitution.

Midnight Sun therefore demands that the Division promptly:

1. Ensure the proper staffing and opening of every advertised absentee in-person voting site that is not currently operating, or immediately provide an equally accessible alternative in each affected community; and

[1] *See Early & Absentee In-Person Voting Locations*, Alaska Division of Elections, https://www.elections.alaska.gov/avo/ (last visited Oct. 23, 2026).
[2] Alaska Stat. Ann. §§ 15.10.105; 15.15.010; 15.20.045.

2. Correct its website and public notices if alternative sites are designated so they accurately reflect which sites are open, and when.

Midnight Sun reserves all rights, including the right to seek immediate judicial relief, if the Division does not act. And note that simply closing sites to avoid publishing false information is no answer – doing so will only more fully deprive voters of their constitutionally guaranteed right to vote. As you know, absentee in-person voting is crucial for Alaskans in small rural communities that otherwise have limited access to voting opportunities. Even in communities that do have absentee in-person voting sites, voters often must travel significant distances by boat, car, or plane to reach those sites. "Approximately 82% of Alaska's communities are not connected to the road system"[3] and roughly half of Alaska's precincts are "only accessible by boat or plane."[4] Voters who make that trip in reliance on the DOE website only to find that absentee voting is in fact unavailable will be forced to make that trip a second or third time.

The unannounced closures of absentee in-person sites therefore impose significant burdens on Alaskans' right to vote that are not justified by any adequate state interest, in violation of the U.S. and Alaska Constitutions.[5] As the U.S. Supreme Court has recognized, "[t]he accessibility, prominence, facilities, and prior notice of [a] polling place's location all have an effect on a person's ability to exercise his franchise."[6] And "a law severely burdens voting rights if the burdened voters have few alternate means of access to the ballot."[7] That is precisely the situation in which voters who make futile trips to absentee in-person voting sites will find themselves. For many, the cost and burden of making a second trip will be prohibitive. Nor will the availability of absentee voting by mail be sufficient to provide voters with an adequate alternative. Indeed, even the State of Alaska has acknowledged in briefing before the U.S. Supreme Court that "mail delivery isn't guaranteed for remote areas of Alaska" due to the "bad weather and unreliable or nonexistent weather reporting" that are frequent issues in the state.[8]

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The Alaska Constitution also prohibits these unjustified burdens on the right to vote. As the Alaska Supreme Court has made clear, "the right of the citizens to cast their ballots and thus participate in the selection of those who control their government is one of the fundamental

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[3] Am. Soc'y of Civil Engineers, *Alaska 2025 Report*, 2025 Report Card for Am.'s Infrastructure (2025), https://infrastructurereportcard.org/state-item/alaska/.

[4] U.S. Election Assistance Comm'n, *The State of Alaska Div. of Elections Election Official Training - Television Broadcast* 1 (2020), https://www.eac.gov/sites/default/files/clearinghouseawards/2020/Alaska_Division_of_Elections_Poll_Worker.pdf.

[5] *See, e.g.*, *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (holding that a "court considering a challenge to a state election law must weigh 'the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate' against 'the precise interests put forward by the State as justifications for the burden imposed by its rule'" and that "when those rights are subjected to 'severe' restrictions, the regulation must be 'narrowly drawn to advance a state interest of compelling importance'" (citations omitted)).

[6] *Perkins v. Matthews*, 400 U.S. 379, 387 (1971).

[7] *Citizens for Legis. Choice v. Miller*, 144 F.3d 916, 921 (6th Cir. 1998) (citing *Burdick*, 504 U.S. at 436–37).

[8] Br. of Amicus Curiae State of Alaska in Supp. of Neither Party at 4, *Watson v. Republican Nat'l Comm.*, 146 S. Ct. 2165 (2026).

prerogatives of citizenship."[9] And while Alaska courts employ a similar version of the well-established federal balancing test for right-to-vote claims, they also recognize that "Alaska's constitution is *more* protective of rights and liberties than is the United States Constitution."[10]

Further, the U.S. Constitution's Due Process Clause prohibits exactly this kind of bait-and-switch. A state violates voters' substantive due process rights when it tells them "one thing before the election and changes its policy thereafter." *Scheer v. City of Miami*, 15 F. Supp. 2d 1338, 1344 (S.D. Fla. 1998). A state may not constitutionally "induce the voters to vote by this means" and then fail to allow them to cast a ballot. *Griffin v. Burns*, 570 F.2d 1065, 1074 (1st Cir. 1978). And a state may not allow an election to be "conducted in a manner that is fundamentally unfair." *Bennett v. Yoshina*, 140 F.3d 1218, 1226 (9th Cir. 1998). Inducing voters to travel long distances to take advantage of a method of voting provided by Alaska law only to send them home disappointed is "unfair" by any measure.

In short, the unannounced closure of these absentee in-person voting locations unreasonably burdens voters in all of these affected communities, violating their right to vote and their right to due process under both the U.S. and Alaska Constitutions. **To avoid violating the constitutional rights of Alaska voters and uphold your statutory duty to administer elections, we demand you to take immediate action to ensure that all sites advertised on the Division of Elections website for absentee in-person voting are made immediately available or designate sufficient alternative sites.**

**Please confirm no later than Monday, October 26, at 5:00 p.m. the concrete steps you are taking to address the site closures. Otherwise, we will need to consider litigation to address the ongoing disenfranchisement of Alaska voters.**

We further request, pursuant to Alaska Stat. § 40.25.110 et seq., that you provide, as soon as possible but in no event later than ten working days from receipt of this letter, copies of any instructions, manuals, handbooks, training materials, or other communications that the Division of Elections has provided to absentee in-person poll managers pertaining to the operation of absentee in person poll sites.

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Sincerely,

Abha Khanna
Counsel to Midnight Sun

[9] *State v. Arctic Vill. Council*, 495 P.3d 313, 321 (Alaska 2021) (quoting *Miller v. Treadwell*, 245 P.3d 867, 868 (Alaska 2010)).
[10] *Id.* (emphasis added) (quoting *State, Div. of Elections v. Green Party of Alaska*, 118 P.3d 1054, 1060 (Alaska 2005)).

# Exhibit 3

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THE STATE of ALASKA
GOVERNOR MIKE DUNLEAVY

Office of the Lieutenant Governor

DIVISION OF ELECTIONS
Office of the Director
240 Main Street, Suite 400
PO Box 110017
Juneau, Alaska 99811-0017
Main: 907.465.4611

October 26, 2026

Dear Senator Wielechowski,

Thank you for sharing your concerns about the absentee-in-person locations. In order to understand the situation, it is important to clarify the difference between an Early Voting location and an Absentee-in-person site.

Early Voting, as defined in AS 15.20.045(b) and AS 15.20.064 is different from absentee-in-person voting. AS 15.20.064(d) is specific to Early Voting. The Early Voting locations, also called "absentee voting stations," were designated by June 1, 2026 as required by 6 AAC 25.500. The division is required to have an Early Voting location for every regional office and, although not required, we also open other Early Voting sites in locations with larger urban populations. These sites have ballots for all 40 House Districts and direct access to the Voter Registration System to confirm voter eligibility. Voters sign an affidavit confirming their eligibility to vote. Early Votes cast within five days of election day are not scanned, they are placed in an envelope and not counted until the 5th or 7th day after election day, once the voting history from the election day registers is completed. This ensures that no double voting has occurred.

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Absentee-in-person voting is nearly identical to by-mail voting. At an absentee-in-person site the voter signs for the ballot, votes the ballot, places it in the envelope that they must fill out and sign, and gives the signed, sealed envelope to the absentee voting official (AVO). The ballots are collected and periodically mailed to the division. They are considered received by the division on the day they are voted. These ballots are then reviewed by the absentee review boards.

Absentee-in-person locations are described in AS 15.20.045(a) and (c). Absentee-in-person sites are permitted by statute and the Division attempts to have them open in as many communities as possible to provide opportunities to vote. To this end, notices are sent out to communities starting in April of an election year, asking municipal and tribal offices if they would like to operate an absentee in-person location. They must send back a signed agreement, which states the hours and days they will be open for voting. Across Region 4, 109 communities agreed to have an AVO open for the 2026 elections. The materials were mailed out the first week of October. The material bags have a USPS tracking number which allows us to check on arrival, although some bags are picked up by workers directly from the flight. Staff attempt to contact any location where the bag has not been confirmed as picked up.

Each of the AVO locations listed in your letter provided a signed agreement to the Division listing the location and hours. This information was posted on our website and is updated as necessary. Of the eighteen sites listed in your letter, three have now declined to open, twelve have confirmed they are open, and we are working to hear from the remaining three locations. Locations are free to change or extend their hours, up to the closing of the polls, to provide additional opportunities to vote.

We need more information to respond to reports of ballots being rejected at absentee in-person locations. We would appreciate any contacts you can share so we can further investigate and clear up any potential questions. Ballots voted at AVOs have begun to be recorded as received and given a preliminary count code. However, they have not yet been reviewed by an absentee review board or opened. As of this writing, general election ballots are just beginning to undergo board review. Absentee in-person ballots are not rejected because of mistakes made by AVOs. *See* AS 15.20.203(b)(2).

Please let us know if you have additional questions or concerns. Because the division is focused on administering next week's general election, we are unable at this time to search for, review, and produce all communications from the Division to AVOs.

Sincerely,

Carol Beecher
Director

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# Exhibit 4

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

| | |
|---|---|
| Midnight Sun Independence Fund,<br><br>Plaintiff,<br><br>v.<br><br>Nancy Dahlstrom, in her official capacity as Lieutenant Governor of Alaska; Carol Beecher, in her official capacity as Director of the Alaska Division of Elections; and the Alaska Division of Elections,<br><br>Defendants. | **Case No. _____** |

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**AFFIDAVIT OF RACHAEL SKYWALKER GUNN IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER**

STATE OF ALASKA )
) ss:
THIRD JUDICIAL DISTRICT )

Rachael Skywalker Gunn, being duly sworn hereby deposes and states as follows:

1. I am over the age of 18 and competent to make this declaration. I make this declaration on personal knowledge of the facts and circumstances set forth herein and, if called and sworn as a witness, could and would competently testify to them.

2. I am a resident of Anchorage, Alaska. I live in Juneau, Alaska, during the legislative session.

3. I am the Chief of Staff for Alaska State Representative Nellie Jimmie, however I have taken a leave of absence during the 2026 election cycle to act as campaign manager for Alaska State Representative Nellie Jimmie's campaign for re-election (the "Campaign"). Representative Jimmie is running to represent Alaska House District 38, which includes the communities of

Akiachak, Akiak, Atmautlauk, Bethel, Chefornak, Chevak, Eek, Kasigluk, Kipnuk, Kongiganak, Kwethluk, Kwigillingok, Mekoryuk, Mertavik, Napakiak, Napaskiak, Newtok, Nightmute, Nunapitchuk, Quinhagak, Toksook Bay, Tuluksak, Tuntutuliak, and Tununak.

4. I have worked in Alaskan politics for over 4 years and am very familiar with the communities that comprise House District 38, as I spend a significant time in these communities throughout the year.

5. My campaign volunteers and I have been in regular contact with voters and local leaders throughout House District 38 as part of our organizing efforts in support of Rep. Jimmie's campaign. This includes local absentee voting officials ("AVOs") designated by the Division of Election, mayors, tribal administrators, and other local community members.

6. Through these contacts, I have learned that at least 11 absentee in-person voting locations within House District 38 that are listed on the Division of Elections' website have not been open during the early voting period for the November 3, 2026 general election. As of October 22, 2026, I learned that Mertarvik, Kongiganak, Tununak, Toksook Bay, Nunapitchuk, and Akiak were not open for absentee in-person voting. As of October 28, 2026, I also learned from local community members that at least five additional locations—Kwenthluk, Napakiak, Oscarville, Tuntutuliak, and Tununak—were not open as of October 27, 2026.

7. Many of the local officials we contacted stated that they do not have staff to operate the absentee in-person voting locations, despite the locations being listed on the Division of Election's website. For example, the Tununak tribal council informed us they are not sure who is supposed to run the absentee in-person location and therefore are not open for absentee in-person voting. I also learned that the AVO who was supposed to run the absentee in-person

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location in Tuluksak had resigned and, as of October 27, 2026, no one was hired to replace the AVO.

8. Of the absentee in-person locations that do have staff, many had not received adequate information from the Division of Elections to run the location. For example, I spoke with an AVO in Kasigluk who reported that they received materials from the Division of Elections for absentee in-person voting locations but were not provided with instructions or training on how to operate the sites. This AVO called the Division of Elections for guidance, and, as of October 27, has not heard back. Other AVOs in Akiak have also not heard from the Division of Elections at all on how to run absentee in-person voting sites.

9. Furthermore, officials from absentee in-person locations that have opened during the 2026 general election cycle within District 38 reported to the Campaign that the hours of operation or addresses listed on the Division of Elections website were inaccurate. For example, the Division website directs Napaskiak voters to vote at the bingo hall, but the actual absentee in-person voting location is at a tribal location. The Napaskiak location was also closed on October 28, 2026, despite the Division's website's indicating it should be open. Similarly, for Nunapitchuk, the location listed on the Division website was incorrect and the site was opened hours later than the Division's website advertises.

10. My colleagues and I have tried to contact other absentee in-person locations within District 38 listed on the Division of Election's website but have been unable to get more information.

11. It is concerning, to say the least, that someone like me—who has years of experience in elections, spends hours each day trying to understand the voting, and has deep

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ties in the communities within District 38—simply cannot understand or get good information on which absentee in-person locations are actually open for voters and when. It is certain that everyday voters will be confused about when and where they can vote. I believed that the Division's original designation and publication of voting sites was meant to provide voters information they could rely on to create a plan to vote. But the closure of multiple voting sites stymies those plans.

12. I am concerned that voters within House District 38 will be misled by the inaccurate and constantly changing information on the Division of Election's website, leading them to travel to locations that are not open to vote absentee in-person. These voters will have try a second or third time to cast their ballot, potentially at significant expense. Some voters may be discouraged or simply not able to try again to vote at a later time. In my experience, when voters receive incorrect information from election officials, they are less likely to vote. This is particularly problematic when voters plan and make the effort to vote at an absentee in-person voting site, relying on information from the state, only to find that location is not open when they get there or is at a different location. It is challenging to convince voters to turn out to vote multiple times in a single election.

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13. Due to the reported issues with absentee in-person voting locations, the Campaign has been encouraging constituents to vote early or absentee in-person in Bethel when possible.

14. Bethel serves as a central hub community for the Yukon-Kuskokwim Delta region covered by District 38. But it, too, is difficult to reach. Bethel is not connected to the road system, and as a result voters from outside communities would need to travel to the Bethel early voting location by plane or boat. This can be costly and burdensome for voters. For example,

Toksook Bay's absentee in-person voting location has not opened for the general 2026 election. Voters wanting or needing to vote early in-person would need to travel by plane to Bethel – which often costs over $450. This is particularly prohibitive for members of a community such as Toksook Bay, where the median income is less than $25,000 per year.

15. Weather during this time of year can also make it especially difficult, or impossible, to reach in-person voting from communities in House District 38. For example, in October 2025 the entire communities of Kipnuk and Kwigillingok were evacuated due to a typhoon. Most of these community members have still not been able to return to their homes and local officials still have not heard from the Division of Elections how evacuated individuals will be able to cast their vote in their home community, as they are entitled to under law.

16. Without absentee in-person voting, many communities don't have easy access to in-person voting. For example, communities in the Yukon-Kuskokwim Delta, such as Kasigluk can only reach their in-person voting place by crossing the river. If the river crest is too high, voters will not be able to access their election day voting place.

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Executed on this 29th day of October, 2026

Rachael Skywalker Gunn

Rachael Skywalker Gunn

STATE OF FLORIDA / COUNTY OF ST LUCIE

SUBSCRIBED AND SWORN to before me this 29th day of October 2026.

MARGARET M ARRAIZ
Notary Public - State of Florida
Commission # HH 795529
Expires on June 7, 2030

Margaret M Arraiz

Notary Public
My Commission Expires: 06/07/2030

Notarized remotely online using communication technology via Proof.

# Exhibit 5

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** Motion for admission Pro Hac Vice forthcoming*

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**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA**

**THIRD JUDICIAL DISTRICT AT ANCHORAGE**

| | |
|---|---|
| MIDNIGHT SUN INDEPENDENCE FUND,<br><br>Plaintiff,<br>v.<br><br>NANCY DAHLSTROM, in her official capacity as Lieutenant Governor of Alaska; CAROL BEECHER, in her official capacity as Director of the Alaska Division of Elections; and the ALASKA DIVISION OF ELECTIONS,<br><br>Defendants. | Case No. 3AN-26- CI |

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**AFFIDAVIT OF FRANK GWARTNEY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER**

STATE OF ALASKA )
) ss:
THIRD JUDICIAL DISTRICT )

FRANK GWARTNEY, being duly sworn hereby deposes and states as follows:

1. I am over the age of 18 and competent to make this declaration. I make this declaration on personal knowledge of the facts and circumstances set forth herein and, if called and sworn as a witness, could and would competently testify to them.
2. I am a Member of the Board of Midnight Sun Independence Fund ("Midnight Sun"), Plaintiff in the above-captioned action.
3. Midnight Sun is an IRS-registered 501(c)(4) nonprofit organization. Its core mission includes educating Alaska voters, particularly voters in rural, predominantly Alaska Native communities in western Alaska, about how to exercise their right to vote and the various options available to them under Alaska law.
4. For example, Midnight Sun provides an online resource to Alaska voters to help them find their election day polling location or their nearest absentee in-person or early voting site. We communicate with Alaska voters through targeted digital ads informing them about the different methods of voting offered in Alaska, including absentee in-person voting, mail voting, early voting, and election day voting. We also communicate with voters via text message and physical advertising such as signs and banners. And we work with partner

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organizations around the state with robust field organizing programs aimed at contacting voters in person.

5. I have been active in Alaska politics for over fifty years. I joined the Board of Midnight Sun in part because it became clear to me from my experience working in Alaska that there was a critical unmet need for voter education and protection in rural Alaska. These communities are small, remote, and often inaccessible except by boat or plane. They tend to disproportionately rely on alternative methods of voting such as absentee in-person voting, early voting, and mail voting. Due to unpredictable weather and frequent mail delays, voters who wait until election day to cast or mail their ballot often are unable to do so successfully. The obstacles already imposed by the geography and climate of the state can all too easily deter and discourage voters who cannot afford to undertake the effort it might require to cast a ballot and have it counted. Midnight Sun exists to promote civic participation and access to the franchise in large part to counteract and help Alaskan voters overcome these difficulties.

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6. For example, following the August 2026 primary election, Midnight Sun became aware of public reporting that at least seventy-five absentee ballots cast in-person in rural communities were not counted because they failed to reach the Division of Elections regional office in Nome before the August 31 deadline.[1]

---

[1] *See* James Brooks, *Mail trouble canceled some Alaska primary votes in Western Alaska*, Alaska Beacon (Sept. 17, 2026), https://alaskabeacon.com/2026/09/17/mail-trouble-canceled-some-alaska-primary-votes-in-western-alaska/.

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7. In response to this reporting and in light of our broader experience with Alaska elections, Midnight Sun invested significant resources into encouraging voters to vote as early as possible using absentee in-person voting. We purchased banners encouraging voters in rural communities to vote early or absentee in-person, listing the times and places where those forms of voting would be offered. We relied on the Alaska Division of Elections' website to identify those hours and locations and made sure that our banners were prominently displayed in small rural communities particularly in western Alaska.

8. Since absentee in-person voting opened, however, Midnight Sun has received reports from voters and community members that many of the sites listed on the Division of Elections' website are not in fact open and available to voters. Stories have begun pouring in from voters who arrived at their advertised absentee in-person voting site only to find it was closed, or who encountered local officials who had no idea that they were even supposed to be operating such a site.

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9. Because of the Division of Elections' failure to operate the absentee in-person locations advertised on its website, the information we have been providing to voters is no longer accurate. This has produced a last-minute scramble to ascertain which absentee in-person voting sites are actually operating so that we can provide accurate information to voters.

10. We have ramped up our efforts to communicate with affected voters and educate them about alternative ways to cast their ballot. This is made difficult, however, by the lack of reliable information coming from the Division of Elections. We have had to devote significant time

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and resources to working with partners on the ground to understand the shifting landscape of closures, limited hours, and minimal (or misleading) information.

11. Midnight Sun sent a letter to the Director of the Division of Elections on October 23, 2026, alerting her to the discrepancies between the DOE website and the facts on the ground. Since then, the Division has updated its website to remove some sites and note that others are "temporarily closed." Still, however, the information on the website is not consistent with the reports Midnight Sun is receiving from the field. This puts us in an extremely difficult situation because we are trying to educate voters with constantly changing information.

12. Midnight Sun has explored purchasing "care packages" of fax machines and Starlink satellite internet routers to send to affected communities where absentee in-person voting is unexpectedly unavailable. But even this effort has been hindered by the lack of reliable information coming from the Division of Elections. Because of the ever-changing landscape of absentee in-person voting sites and numerous discrepancies between the information provided by the Division and reporting from our partners on the ground, it is impossible to know which communities to prioritize when sending these care packages. Midnight Sun is thus forced to make critical decisions about the allocation of our limited resources without reliable information.

13. These unanticipated challenges have severely hampered Midnight Sun's ability to execute its mission of educating, protecting, and turning out voters in rural communities. We have

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had to take time and resources away from our planned activities, including contacting low propensity voters and encouraging them to vote. Instead, we are essentially re-treading old ground, correcting information that we already disseminated to voters in reliance on the Division's website.

14. Perhaps more significantly, I am deeply concerned that the confusion created by the Division of Elections will discourage some voters from heading to the polls at all. It has been my experience that when voters receive incomplete, conflicting, or simply wrong information, they lose trust in the electoral process and become less likely to vote. This is all the more problematic for voters who plan and make the effort to vote at an absentee in-person voting site only to find that site is not available when they get there; it is difficult to turn out voters multiple times in a single election in the hopes that they will eventually be able to successfully cast a ballot.

Executed on this 29 day of October, 2026

Frank Gwartney

SUBSCRIBED AND SWORN to before me this 29 day of October 2026.

JADA CRAIG NOTARY PUBLIC STATE OF ALASKA COMMISSION EXPIRES JUNE 16, 2029

Notary Public
My Commission Expires: 06/16/2029

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